

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 385 of 2018

IN THE MATTER OF:

G. M. Lingaraju

...Appellant

Versus

**Gurudatt Sugars Marketing
Private Limited & Anr.**

...Respondents

Present:

For Appellant : Mr. P.K. Mittal, Advocate

For Respondents : Ms. Sonam Gupta and Mr. Manu Mishra, Advocate

ORDER

10.09.2018 This appeal has been preferred by the appellant (Shareholder) of G.M. Sugar & Energy Ltd. (Corporate Debtor) against order dated 15th June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench whereby the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the, “**I&B Code**”) preferred by the respondent (Operational Creditor) has been admitted, order of moratorium has been passed and the ‘Interim Resolution Professional’ has been appointed.

2. Learned counsel appearing on behalf of the appellant submits that there is an ‘existence of dispute’ since prior to the issuance of demand notice under sub-section (1) of Section 8 of the I&B Code. The demand notice was issued on 20th November, 2017 but much before the same by letter dated 10th February, 2017 (Annexure A-7) M/s. Kejriwal Sugar Agencies Pvt. Ltd., which was the

broker between the 'Operational Creditor' and the 'Corporate Debtor', informed about cancellation of the agreement. In the said letter, it was mentioned that due to some unforeseen reasons, M/s. Shri Gurudatta Sugars Marketing Private Limited, Mumbai (Operational Creditor) does not want to receive supply of sugar.

3. According to the learned counsel for the appellant the Adjudicating Authority has failed to notice the existence of dispute. It is also informed that the admitted dues have already been paid to the respondent pursuant to settlement with the 'Operational Creditor'.

4. Learned counsel appearing on behalf of the respondent (Operational Creditor) accepts that M/s. Kejriwal Sugar Agencies Pvt. Ltd. was the broker between the 'Financial Creditor' and the 'Corporate Debtor'. She also accepts that the amount as was due has also been paid.

5. Having heard the learned counsel for the parties and taking into consideration the fact that there is an 'existence of dispute' prior to issuance of demand notice, we hold that the petition under Section 9 was not maintainable. The impugned order dated 15th June, 2018 is accordingly set aside.

6. In effect, order (s) passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional', declaring moratorium, freezing the account of 'Corporate Debtor' and all other order (s) passed pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications as also all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' company is

released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. Learned Adjudicating Authority will fix the fee of 'Resolution Professional', and the 'Corporate Debtor' will pay the fees of the 'Resolution Professional', for the period he has functioned. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

/ns/gc/