

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 94 of 2018

(Arising out of Order dated 15th December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in C.P. No. 1378/IBC/NCLT/MB/MAH/2017))

IN THE MATTER OF:

Sh. Romi Datta

...Appellant

Vs.

S. Gurumoorthi & Anr.

...Respondents

Present: For Appellant: - Mr. Saurab Jain, Ms. Neha Gupta, Mr. Mustafa Alam, Mr. Simranjeet Singh and Mr. Siddharth Jain, Advocates.

For Respondents:- Mr. Divyanshu Sahay and Ms. Shradha Narayan, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Mr. S. Gurumoorthi, filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) against 'M/s. Sahara Q Shop Unique Products Range Limited'- ('Corporate Debtor'), which was admitted by the impugned order dated 15th December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai on the main ground that there is default on the part of the 'Corporate Debtor'. Sh. Romi Datta,

Shareholder of 'M/s. Sahara Q Shop Unique Products Range Limited'- ('Corporate Debtor') has challenged the impugned order.

2. Learned counsel for the Appellant submitted that the impugned order was passed *ex-parte* on 15th December, 2017 and suffers from various infirmities.

3. According to him, the Hon'ble Supreme Court of India has prohibited 'Sahara Group of Companies' to pay any amount to any person. In an on-going Contempt (Civil) Petition 412 and 413 of 2012 titled as 'SEBI v. SIRECL & Ors.' and 'SEBI v. SHICL & Ors.' respectively, the 'Sahara Group of Companies' vide a common interim application bearing I.A No. 59-61/ 2015 had sought permission to clear the unpaid salaries of employees. The Hon'ble Supreme Court by its order dated 19th June, 2015, disposed of the said applications with the observation that the prayers herein are deferred for the time being and would be considered upon the deposit of the balance amount by the Appellant therein in compliance of its judgment/ final order dated 31st August, 2012 at Para 11, Page 11-12 of the said order, therefore, according to counsel for the Appellant, 'M/s. Sahara Q Shop Unique Products Range Limited'- ('Corporate Debtor') being one of the 'Sahara Group Companies' cannot pay any amount even to 1st Respondent- 'Operational Creditor' and therefore, no default can be alleged.

4. Learned counsel for the Appellant placed reliance on part of the order dated 21st November, 2013 passed by the Hon'ble Supreme Court in Contempt Petition No. 412-413 of 2012 and directed as follows:

“We are convinced that the order dated 28.10.2013 passed by this Court has not been complied within its letter and spirit. In such circumstances, we direct that the Sahara Group of Companies shall not part with any movable and immovable properties until further orders. We further direct that all the alleged contemnors shall not leave the country without the permission of this Court.”

5. It is further submitted that 'M/s. Sahara Q Shop Unique Products Range Limited'- ('Corporate Debtor') is a trading member and client of the 'Indian Bullion Market Association Ltd.' and as such it was supposed to receive a sum of Rs. 226.96 crores from the 'National Spot Exchange Ltd.' (NSEL), however, the 'Security Exchange Board of India' (SEBI) vide its letter dated 26th September, 2013 to NSEL called upon it not to release any amount due and payable to 'M/s. Sahara Q Shop Unique Products Range Limited' and further directed it to hold the said amount in a deposit account with any public sector bank bearing maximum rate of interest till further instructions. Pursuant to the direction of the SEBI, the 'Forward Markets Commission', Ministry of Finance had vide its letter dated 23rd October, 2013 directed the NSEL to comply with the directions

of SEBI vide their letter dated 26th September, 2013. The aforementioned attachment of funds of the 'M/s. Sahara Q Shop Unique Products Range Limited'- ('Corporate Debtor') was also confirmed by the 'Forward Markets Commission' vide its letter dated 18th December, 2013.

6. Reliance has been placed on Status Report of SEBI filed before the Hon'ble Supreme Court in Civil Appeal No. 9813 of 2011 whereby they have confirmed of having taken steps to recover the amount from 'M/s. Sahara Q Shop Unique Products Range Limited'- ('Corporate Debtor').

7. Learned counsel for the 1st Respondent submitted that the orders dated 21st November 2013 and 19th June, 2015, relied upon by the counsel for the Appellant, have no implication on the 'Corporate Debtor' at hand because even after passing of the said orders, the 'Corporate Debtor' has paid salary till September, 2014 until it voluntarily stopped paying; as also Income Tax amounting to Rs. 153,03,53,020 paid on 2nd November, 2015 and Provident Fund amounting to Rs. 7,88,73,464 paid on 30th June, 2016.

Besides, 'Sahara Group Companies' have even settled claims relating to 'Operational Debt' amounting to Rs. 20 crores as recently as on 30th April, 2019. The final order dated 30th April, 2019 rendered by the Adjudicating Authority, Mumbai Bench, in C.P. (IBC) 2430 (MB)/ 2018 in re: "**M/s. Delta Electro Mechanical Pvt. Ltd. v. M/s. Sahara Hospitality Ltd.**" has been enclosed.

8. It was further submitted that Contempt Petitions were preferred before the Hon'ble Supreme Court for non-compliance of judgment dated 31st August, 2012 by 'Sahara India Real Estate Corporation Ltd.' and 'Sahara Housing Investment Corporation Ltd.'. resultantly, all orders that have been passed by the Hon'ble Supreme Court in the Contempt Petitions are to be read and understood in the context of these two companies only.

9. It was further submitted that a bare and collective reading of the orders passed by the Hon'ble Supreme Court on 17th July, 2013, 28th October, 2013 and 21st November, 2013 as modified by the Three Judge Bench on 4th June, 2014, make it clear that the 'Corporate Debtor' is nowhere within the frame of the Contempt Petitions.

10. Having heard learned counsel for the parties and perused the record, we find that except vague statement made by the Appellant, there is nothing on the record to suggest that the Hon'ble Supreme Court has passed specific order prohibiting 'M/s. Sahara Q Shop Unique Products Range Limited'- ('Corporate Debtor') to release or pay any amount.

11. On the other hand, from the stand taken by the 1st Respondent and order dated 30th April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in C.P. (IBC) 2430 (MB)/2018, it appears that another Group Company of Sahara Group namely— 'M/s. Sahara Hospitality Ltd.' has settled the claim of

'M/s. Delta Electro Mechanical Pvt Ltd.'- ('Operational Creditor') amounting to Rs. 20 Crores.

12. In view of the aforesaid factual aspect, we are not inclined to interfere with the impugned order dated 15th December, 2017 on purported ground that there is no default on the part of the 'Corporate Debtor'.

In absence of any merit, the appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

NEW DELHI
14th August, 2019

AR