

was due from the 'Operational Creditor' and if such amount is set off then it will be evident that no amount is payable to the 'Operational Creditor'.

4. It is not in dispute that the 'Operational Creditor' has supplied goods to the 'Corporate Debtor' and has timely raised invoices. However, the payment against the two of the invoices, by way of which the 'Operational Creditor' has supplied 'CR Sheet' to the 'Corporate Debtor' on 30th November, 2014, remained partly unpaid. The outstanding amount against the invoices aggregates to Rs. 38,82,916/-. Out of which the aggregate amount of only Rs. 1,10,486/- was paid by the 'Corporate Debtor', leaving a balance to the principal amount of Rs. 37,72,430/-.

5. The case of the 'Operational Creditor' was that the last payment of Rs. 10,00,000/- was paid on 15th and 18th September, 2017, thereby the application under Section 9 of the 'I&B Code' was within time.

6. The 'Corporate Debtor' taken plea that the VAT amounting to Rs. 18,01,726/- is to be adjusted. On the other hand, the 'Operational Creditor' had taken plea that VAT confirmation Certificate on entire amount/ value of the goods supplied by the 'Operational Creditor' for F.Y. 2013-14, 2014-15, 2015-16 were issued. However, we are not going to decide aforesaid issue as they are not required to be noticed. It is to be seen as to whether there is a debt payable by the 'Corporate Debtor' and whether there is an existence of dispute.

7. In **“Innoventive Industries Limited v. ICICI Bank and Another- (2018) 1 SCC 407”**, the Hon’ble Supreme Court observed and held:

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing- i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”

8. In **“Binani Industries Limited Vs. Bank of Baroda & Anr. – Company Appeal (AT) (Insolvency) No. 82 of 2018 etc.”**, this Appellate Tribunal by its judgment dated 14th November, 2018 held that the ‘Corporate Insolvency Resolution Process’ does not amount to recovery proceeding or a money claim. Therefore, the question of set off after

determining the claim or counter claim cannot be decided by the Adjudicating Authority.

9. The Adjudicating Authority having noticed that there is debt payable which is more than Rs. 1,00,000/- and in absence of any existence of dispute rightly admitted the application under Section 9 of the 'I&B Code'.

10. At this stage, learned counsel appearing on behalf of the Appellant submits that the Appellant is ready to settle the matter with the 'Operational Creditor'. However, even after such settlement, we cannot set aside the impugned order to give any relief to the 'Corporate Debtor'.

11. In fact, the appeal at the instance 'Corporate Debtor'- 'AP Coated Drums and Barrels Pvt. Ltd.' is not maintainable in the light of the decision of the Hon'ble Supreme Court in **"Innoventive Industries Limited"** (Supra), wherein the Hon'ble Supreme Court held:

"11. Having heard learned counsel for both the parties, we find substance in the plea taken by Shri Salve that the present appeal at the behest of the erstwhile directors of the appellant is not maintainable. Dr. Singhvi stated that this is a technical point and he could move an application to amend the cause title stating that erstwhile directors do not represent

the company, but are filing the appeal as persons aggrieved by the impugned order as their management right of the company has been taken away and as they are otherwise affected as shareholders of the company. According to us, once an insolvency professional is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the company. In the present case, the company is the sole appellant. This being the case, the present appeal is obviously not maintainable. However, we are not inclined to dismiss the appeal on this score alone. Having heard both the learned counsel at some length, and because this is the very first application that has been moved under the Code, we thought it necessary to deliver a detailed judgment so that all Courts and Tribunals may take notice of a paradigm shift in the law. Entrenched managements are no longer allowed to continue in management if they cannot pay their debts.”

12. While no relief can be granted in this appeal, make it clear that this order will not come in the way of any other person to move an appropriate application before the 'Committee of Creditors' under Section 12 A of the 'I&B Code' for appropriate relief.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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