

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 700 of 2018

IN THE MATTER OF:

Container Corporation of India Ltd.

.....Appellant

Vs.

Kohinoor India (P) Ltd.

.....Respondents

O R D E R

11.03.2019 – Kohinoor India (Private) Limited (‘Operational Creditor’) had filed an application u/s 9 of the Insolvency & Bankruptcy Code (I&B Code) for initiation of *Corporate Insolvency Resolution Process* against Container Corporation of India Limited (‘Corporate Debtor’) in May, 2018. In the said petition / application, the Container Corporation of India Limited (‘Corporate Debtor’) requested to implead the Custom Authority as party Respondent. The Adjudicating Authority by impugned order dated 26th September, 2018 rejected the prayer of impleadment of party.

....contd./

2) Learned Counsel appearing on behalf of the Appellant ('Corporate Debtor') submits that out of total dues, a sum of Rs. 22,56,800/- has already been refunded to the Respondent Kohinoor India Private Limited ('Operational Creditor') much prior to filing of application u/s 9 of the Insolvency & Bankruptcy Code (I&B Code). Rest of the amount of Rs. 3,59,163/- was deducted towards custom and deposited with the Custom Authority who in their turn is required to refund the amount to the Kohinoor India Private Limited.

3) Learned Counsel appearing on behalf of the Respondent submits that Kohinoor India Private Limited is a small scale industry and they are not liable to pay custom duty. However, according to the Container Corporation of India ('Corporate Debtor') the fact is that custom duty was deducted and deposited with the Custom Authority, then Custom Authority should return the amount and not the 'Corporate Debtor'.

....contd./

4) We have noticed the rival contention but do not want to express any opinion at this stage as the matter is pending consideration before the Adjudicating Authority (National Company Law Tribunal), Court No. – IV, New Delhi. In the circumstances, while we are not inclined to interfere with the impugned order and allow the Adjudicating Authority to pass an appropriate order on the application filed by Kohinoor India Limited after hearing the parties, taking into consideration the stand as has been taken by the parties before this Appellate Tribunal. It is expected that the Adjudicating Authority will pass appropriate order within three weeks from the date of receipt of this order. The appeal stands disposed of.

[Justice S. J. Mukhopadhaya]
Chairperson

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

ss/sk