

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Company Appeal (AT) (Insolvency) No. 435 of 2018

(Arising out of Order dated 25th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in TCP No. 532/IBC/NCLT/MB/MAH/2017)

IN THE MATTER OF:

Pushti Impex

...Appellant

Vs.

**Shree Satyanarayan Industrial Suppliers
Private Limited**

...Respondent

Present: For Appellant:- Mr. Ankur Singhal, Advocate.

For Respondent:- Mr. S.S. Karkera, Advocate

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant- 'M/s. Pushti Impex'- ('Operational Creditor') filed a winding-up petition before the Hon'ble Bombay High Court under Section 433(e) of the Companies Act, 1956 on 14th December, 2016, which was subsequently transferred to National Company Law Tribunal ("Tribunal" for short), Mumbai Bench, Mumbai, pursuant to "The Companies (Transfer of Pending Proceedings) Rules, 2016".

2. Rule 5 relates to transfer of pending proceedings of winding up on the ground of inability to pay debts which are to be transferred from the Hon'ble High Court's to the respective Tribunal and reads as follows: -

“5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.- (1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

2. All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.”

3. As per Rule 5, the Appellant- ('Operational Creditor') furnished Form-5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) against the 'Corporate Debtor'.

4. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, rejected the application by impugned order dated 25th May, 2018 on the ground of 'pre-existence of dispute'.

5. Learned counsel for the Appellant submitted that there is no pre-existing dispute. However, it has not been disputed that Form-5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was filed on 17th July, 2017 without issuance of any Demand Notice under Section 8(1) of the 'I&B Code' to

the 'Corporate Debtor'- ('M/s. Shree Satyanarayan Industrial Suppliers Private Limited').

6. As per proviso to Rule 5(1), the Appellant was required to submit all the information for admission of petition under Section 9 including the information relating to Demand Notice under Section 8(1). Admittedly, such Demand Notice under Section 8(1) was not issued. Therefore, we hold that the application under Section 9 in Form-5 was not maintainable.

7. In view of the aforesaid finding, it is not necessary to decide the question as to whether there is pre-existence of dispute or not. As per Rule 5 aforesaid, the Appellant having failed to provide information relating to Section 8, the transfer petition stood abated.

8. We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

NEW DELHI

30th January, 2019

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