

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 89 of 2019

IN THE MATTER OF:

Praveen Kumar Mundra

...Appellant

Versus

CIL Securities Ltd.

...Respondent

Present:

For Appellant : **Mr. Aditya Diwan, Mr. Arpit Marwah and Mr. Karan Nagpal, Advocates**

For Respondent : **Mr. Y. Suryanarayana, Advocate**

ORDER

14.05.2019 This appeal has been preferred by 'Mr. Praveen Kumar Mundra', who claims to be 'Operational Creditor' of 'CIL Securities Limited' (Corporate Debtor) against order dated 10th December, 2018 whereby application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016 (for short, the '**I&B Code**') preferred by the Appellant has been rejected.

2. The case of the Appellant was that in spite of repeated requests to the 'Corporate Debtor', it failed to make payment. It is further averred for the services provided till 28th February, 2018 there is an outstanding due amount of Rs. 3,26,807.12, which is also confirmed by the 'Corporate Debtor' by its ledger account up to 28th February, 2018.

3. The respondent (Corporate Debtor) appeared and took plea that it is willing to process the invoices raised by the petitioner (Appellant herein) subject to the condition that the petitioner (Appellant herein) gets himself registered under the

GST Act, 2017. It is also averred that by virtue of an agreement between the parties, the remedy for a dispute is available under the Trading Member and authorised 'Person Agreement' and that as per the provisions of the GST Act, 2017 it is applicable.

4. Taking into consideration the fact that the Respondent (Corporate Debtor) was ready to pay the amount subject to the process of the GST, the Adjudicating Authority refused to entertain the application under Section 9 of the I&B Code.

5. On 24th April, 2019, when the matter was taken up, the following order was passed :

“An application of appellant u/s 9 of the I&B Code having rejected, the appellant has preferred this appeal against the order of rejection dated 10th December, 2018.

Learned counsel for the respondent submits that there is no merit in this appeal and in spite of the same the respondent has agreed to pay the claimed amount and draft is ready. He is allowed to file reply-affidavit within 10 days enclosing therewith a copy of the draft.

In the meantime, it will be open to the appellant to accept the draft and settle the matter and may file a rejoinder within 3 days thereof.

We may observe that if the appellant refuses to accept the claimed amount, in that case adverse opinion may be formed by this Appellate Tribunal.”

6. Learned counsel appearing on behalf of the respondent while he submitted that the Respondent is not a 'corporate person' within the meaning of Section 3(7) of the I&B Code, submitted that in spite of the same, it has come out with the Demand Draft dated 5th March, 2019 bearing No. 000356 issued by the HDFC Bank in favour of 'Peenus Investments' (Operational Creditor) for Rs. 3,36,978.48, which is the total claimed amount shown in the petition under Section 9 of the I&B Code.

7. The Appellant is present in person along with learned counsel for the Appellant. Learned counsel for the Appellant, on instructions, submits that the Appellant is not ready to accept the Demand Draft for Rs.3,36,978.48 as no such offer was made on the date when the application was filed before the Adjudicating Authority. It is further submitted that the application under Section 9 of the I&B Code was not filed for recovery of the amount. From the impugned order, we find that the amount was deposited with the 'Operational Creditor' but the 'Operational Creditor' returned back the amount.

8. On hearing the counsel for the parties, we find that the Respondent had taken a plea before the Adjudicating Authority that it is agreeable to pay the amount subject to the registration of the 'Operational Creditor' under the 'GST Act, 2017'. It further appears that before the admission of the application, the Respondent was ready with the draft for Rs.3,36,978.48. However, the Appellant is not inclined to accept the same.

9. From the aforesaid action of the Appellant - 'Operational Creditor', we find that the Appellant initiated 'corporate insolvency resolution process' with fraudulently and malicious intent for any purpose other than the resolution of

insolvency or liquidation and, therefore, it is clearly covered under Section 65 of the I&B Code.

10. For the reasons aforesaid, we are not inclined to interfere with the impugned order. The appeal is dismissed with no cost. However, this order will not come in the way of the Appellant to approach the Respondent and to accept the Demand Draft for Rs.3,36,978.48. If the Appellant approached the Respondent within 15 days, the Respondent will hand over the same.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc