

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 111 of 2017

IN THE MATTER OF:

Shyam Industries Ltd.

...Appellant

Versus

R. L. Steel Energy Ltd.

...Respondent

Present:

For Appellant :

**Ms. Akanksha Jain and Ms. Sayli Petiwale,
Advocates**

For Respondent:

**Shri Rohit Rathi and Shri Rameshwar Totala,
Advocates**

ORDER

06.10.2017 This appeal has been preferred by the appellant against the order dated 24th May, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P. (I.B.) No. 20/9/NCLT/AHM/2017. The appeal has been preferred beyond the prescribed period of 30 days from the date of receipt of the order, and, therefore, the application for condonation of delay has been filed.

2. Learned counsel for the appellant submits that the appeal was required to be filed on 23rd June, 2017 but the Appellate Tribunal was closed during the summer vacations and opened only on 3rd July, 2017. The appeal was presented on 29th June, 2017 and re-presented on 14th July, 2017. If the period of vacation is excluded, then there is a delay of 11 days.

3. Having heard the learned counsel for the parties and being satisfied, the delay of 11 days' is condoned.

4. The main ground taken by the appellant is that the impugned order has been passed by the Adjudicating Authority without taking into consideration the fact that the notice dated 15th January, 2017 under sub-section (1) of Section 8 of the

Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') was not issued by the respondent – 'Operational Creditor' but through legal firm namely 'RT Legal, Advocates & Consultants. Subsequently, another notice was issued on 18th February, 2017 also by the same very legal firm i.e. RT Legal, Advocates & Consultants. This was informed that the settlement has been reached and the amount has already been paid.

5. From the report, we find that notice under sub-section (1) of Section 8 of I & B Code was not issued by the respondent – 'Operational Creditor' and this is also accepted by the learned counsel for the respondent.

6. Similar issue was considered by the Appellate Tribunal in **Uttam Galva Steels Limited v. DF Deutsche Forfait AG & Anr. – Company Appeal (AT) (Insolvency) 39 of 2017**, wherein by an order dated 28th July, 2017, the Appellate Tribunal held as follows :

*“30. From bare perusal of Form-3 and Form-4, read with sub-rule (1) of Rule 5 and Section 8 of the I&B Code, it is clear that an Operational Creditor can apply himself or through a person authorised to act on behalf of Operational Creditor. **The person who is authorised to act on behalf of Operational Creditor is also required to state “his position with or in relation to the Operational Creditor”, meaning thereby the person authorised by Operational Creditor must hold position with or in relation to the Operational Creditor and only such person can apply.***

31. The demand notice/invoice Demanding Payment under the I&B Code is required to be issued in Form-3 or Form - 4. Through the said formats, the 'Corporate Debtor' is to be informed of particulars of 'Operational Debt', with a demand of payment, with clear understanding that the 'Operational Debtor' (in default) required to pay the debt, as claimed, unconditionally within ten days from the date of receipt of letter failing which the 'Operational Creditor' will initiate a Corporate Insolvency Process in respect of 'Corporate Debtor', as

apparent from last paragraph no. 6 of notice contained in Form – 3, and quoted above.

Only if such notice in Form-3 is served, the ‘Corporate Debtor’ will understand the serious consequences of non-payment of ‘Operational Debt’, otherwise like any normal pleader notice/Advocate notice, like notice under Section 80 of C.P.C. or for proceeding under Section 433 of the Companies Act 1956, the ‘Corporate Debtor’ may decide to contest the suit/case if filed, distinct Corporate Resolution Process, where such claim otherwise cannot be contested, except where there is an existence of dispute, prior to issue of notice under Section 8.

32. *In view of provisions of I&B Code, read with Rules, as referred to above, we hold that an ‘Advocate/Lawyer’ or ‘Chartered Accountant’ or ‘Company Secretary’ in absence of any authority of the Board of Directors, and holding no position with or in relation to the Operational Creditor cannot issue any notice under Section 8 of the I&B Code, which otherwise is a ‘lawyer’s notice’ as distinct from notice to be given by operational creditor in terms of section 8 of the I&B Code.*

33. *In the present case as an advocate/lawyer has given notice and there is nothing on record to suggest that the lawyer has been authorised by ‘Board of Directors’ of the Respondent – ‘DF Deutsche Forfait AG’ and there is nothing on record to suggest that the lawyer hold any position with or in relation with the Respondents, we hold that the notice issued by the lawyer on behalf of the Respondents cannot be treated as a notice under section 8 of the I&B Code and for that the petition under section 9 at the instance of the Respondents against the Appellant was not maintainable.”*

7. In view of the aforesaid findings in the case of Uttam Galva Steels Limited (*Supra*), there is no option but to set aside the impugned order.

8. In effect, order(s), if any, passed by Ld. Adjudicating Authority appointing any ‘Interim Resolution Professional’ or declaring moratorium, freezing of account, if any,

and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The appellant company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

9. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed, and the Respondents will pay the fees of the Interim Resolution Professional, for the period he has functioned. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Balvinder Singh]
Member (Technical)

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