

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 182 of 2017**

**IN THE MATTER OF:**

**Rajesh Arora**

**...Appellant**

**Versus**

**M Y Agro Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant :**           **Shri Harish Malhotra, Senior Advocate assisted by  
Shri Simran Jyot Singh and Shri Ruchin Middha,  
Advocates**

**For Respondent :**       **Shri Ashok Kumar Jumesh and Shri Mithlesh Kr.  
Singh, Advocates**

**O R D E R**

**06.11.2017**       This appeal has been preferred by Mr. Rajesh Arora, Director of Amira Pure Foods Private Limited (Corporate Debtor) against order dated 24<sup>th</sup> August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, New Delhi whereby and whereunder the application preferred by the respondent (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I & B Code') has been admitted, order of moratorium has been passed, Insolvency Resolution Professional has been appointed and orders have been passed in terms of the I & B code.

2.     As the appeal is being decided on a short question of law, it is not necessary to notice all the facts except the relevant one.

3. The respondent (Operational Creditor) issued a demand notice under sub-section (1) of Section 8 of the I & B Code on the Corporate Debtor on 5<sup>th</sup> June, 2017. The Corporate Debtor through an advocate replied on 28<sup>th</sup> June, 2017 and disputed the claim. Thereafter, the respondent – Operational Creditor filed an application under Section 9 on 11<sup>th</sup> July, 2017 which has been admitted by the impugned order dated 24<sup>th</sup> August, 2017.

4. Learned counsel for the appellant submits that the Corporate Debtor issued cheques in favour of the Operational Creditor but they bounced; thereafter after negotiation the admitted dues has been paid to a third party as per wish and intimation given by the Operation Creditor. The amount has been paid by R.T.G.S. However, aforesaid plea taken by appellant is disputed by the learned counsel for the respondent (Operational Creditor). According to him no meeting was held and therefore the question of payment of debt to third party does not arise.

5. Learned counsel for the appellant next contended that the notice under sub-section (1) of Section 8 was issued by the Operational Creditor in Form 3 was incomplete and no proper opportunity was given to the respondent to file reply.

6. Learned counsel appearing on behalf of the appellant also referred to the application preferred by the Operational Creditor under Section 9 in Form 5 (at page 57) to suggest that the said application is also incomplete and therefore the Adjudicating Authority should have rejected the application.

7. Learned counsel for the respondent submits that the returned envelopes were produced before the Adjudicating authority which was opened there and found all the documents were enclosed therein. The aforesaid stand taken by

respondent makes it clear that the notices sent to the Corporate Debtor was not served and returned unserved.

8. Learned counsel for the appellant submits that Form 3 dated 05.06.2017, whereunder the demand notice under sub-section (1) of Section 8 was issued therein list of documents were mentioned which were required to be attached but no such documents were attached. Therefore, according to counsel for the appellant the notice under sub-section (1) of Section 8 was incomplete and therefore the application under Section 9 was not maintainable.

9. However, from the reply dated 28<sup>th</sup> June, 2017 (at page 138) we find that the Corporate Debtor has taken a specific plea that the notice under sub-section (1) of Section 8 was served on Corporate Debtor was not complete, relevant portion of which reads as follows:

*“That the notice as served is not complete as there is no enclosure in tabular form enclosed with the notice demonstrating the working for computation of default; although the Enclosure has been referred in the averments of Notice in 2<sup>nd</sup> Para, 2<sup>nd</sup> Row and 3<sup>rd</sup> Column of notice. further in devoid of said enclosure it is incomprehensible on what basis M Y Agro has computed the amount of alleged debt.”*

10. In the said letter it is also mentioned that against the head ‘Computation of Claim is Baseless’ as there is no debt due from the Corporate Debtor in terms of the settlement and consequential there is no default, relevant portion of which is quoted below:

“III. Computation of Claim Baseless

*That M Y Agro has computed the Claim adding along with the alleged Outstanding Debt an interest of 18%.*

*That as, already been stated, here is no debt due from Our Client Company in terms of settlement and consequently there is no default. Hence there is no case of interest. Without prejudice to aforesaid it is further submitted that the exercise of your Client to demand interest on 18% is erroneous as there was no covenant to pay interest.”*

11. There is nothing on record to suggest that “Operational Creditor” served the documents alongwith notice under Section 8(1). Therefore, the oral submissions made on behalf of respondents cannot be accepted.

12. It is also curious to notice that in Form 5 filled up by the Operation Creditor which is the format of application under Section 9 therein, with regard to ‘Statutory demand notice under Section 8’, the following plea has been taken:

*“Statutory demand notice under section 8 of Insolvency & Bankruptcy Code, 2016 was issued by OC 10<sup>th</sup> June, 2017 to CD at its registered office and all its Directors and KMP (Copy of Demand notice in form – 3 along with copy of Form -4 and proof of service attached hereto as Annexure F).*

*All the notices issued to CD at Registered office, Corporate office and directors at their address available on website of Ministry of Corporate Affairs came back as undelivered to Operational Creditor (except two notices issued to – their Company Secretary and ex-director Mr. Shyam Poddar shown as delivered. (Copy of the delivery status of speed post attached as Annexure F).”*

13. From the statement made by the ‘Operational Creditor’ it is clear that the demand notice issued to the Corporate Debtor at its registered office and to the

Director(s) were returned unserved. Notices were served only to the Company Secretary and to one ex-Director, Mr. Shyam Poddar. Though such specific statement has been made by the Operational Creditor in the application under Section 9, the Adjudicating Authority ignoring the same and without verifying the other facts admitted the case.

14. In view of the plea taken by the appellant and the facts as narrated above, we hold that notice under sub-section(1) of Section 8 in form 3 was incomplete and the application under Section 9 was not maintainable. For the reasons aforesaid, we set aside the order dated 24<sup>th</sup> August, 2017 passed in C.P. No. (IB)-211(ND)/2017.

15. In effect, order(s), if any, passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional' or 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.

16. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed, and the Corporate Debtor 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 Bansi Lal Bhat ]  
Member(Judicial)

/ns/gc