

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 958 of 2019

IN THE MATTER OF:

Hindprakash Industries Pvt. Ltd.

...Appellant

Vs.

Modern Syntax (India) Ltd.

...Respondent

Present: For Appellant: - Ms. Rashi Bansal, Advocate.

**For Respondent: - Ms. Anju Jain and Mr. Hitesh Sachar,
Advocates.**

O R D E R

18.09.2019— Having heard learned counsel for the Appellant and being satisfied with the grounds, delay of 2 days in preferring the appeal is hereby condoned. I.A. No. 2879 of 2019 stands disposed of.

The Appellant has filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'Modern Syntex (India) Ltd.'- ('Corporate Debtor'). The case was registered in the year 2018 but in view of stay order passed by the Hon'ble High Court of Rajasthan, no specific order was passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench.

Contd/-.....

2. By the impugned order dated 6th August, 2019, the application has been adjourned and tied with another case, which reads as follows:

“The learned counsel for the respondent submits that the stay earlier granted by Hon’ble High Court of Rajasthan continues. Post this matter along with the IA No. 18/JPR/2019 in IB No. 39(PB)/2018 & TA No. 71/2018 on 20.09.2019”

3. Learned counsel appearing on behalf of the Appellant submits that the case of the Appellant is different and has got no relevancy with the case which has been tied up.

4. However, counsel for Respondent- ‘Modern Syntax (India) Limited’, objected to the submission of the Appellant and submits that it has got relevancy with the other case.

5. In the present case, we are not deciding the question as to whether the case of the Appellant should have been tied with the other case or not but we find that the matter is pending for more than a year.

6. Normally, when an application has been filed under Section 9 of the ‘I&B Code’ after notice to the parties in absence of any dispute or if there is any debt and default and application is complete, it is to be

admitted. However, in case where there is no debt payable in law or in fact, if somebody shows that there is pre-existence dispute, matter requires consideration.

7. However, if a matter is kept pending for more than a year, the 'Corporate Debtor' gets an opportunity to divert its funds and may transfer its assets, which in result may affect the Creditors, if the 'Corporate Insolvency Resolution Process' starts.

8. The time is the essence of 'Corporate Insolvency Resolution Process' and if for one or other reason the matter is delayed; it may affect the Creditors as observed above.

9. In these circumstances, while we are not interfering with the impugned order, we allow the Appellant to bring this fact to the notice of the Adjudicating Authority that the other case has no relevancy with this and further direct the Respondent- 'Modern Syntax (India) Limited' not to sell or transfer or make third party encumbrance of moveable and immoveable properties of the 'Corporate Debtor' till appropriate order is passed by the Adjudicating Authority on the application under Section 9.

10. However, it will be open to the 'Corporate Debtor' to perform its day to day functioning and may draw the amount from its Bank for the purpose of performing such functions and other duties such as payment

of salary to paid Directors, Officers, employees, workmen, statutory dues as also to the suppliers of goods and services and also to the 'Operational Creditors'.

The appeal stands disposed of with aforesaid observations and directions. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/sk