

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 344 of 2019
AND
I.A. No. 1832 of 2019

IN THE MATTER OF:

Janmejaya Mahapatra

...Appellant

Versus

FLSmidth Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : **Mr. Arjun Asthana and Ms. Sreenita Ghosh,
Advocates**

For Respondents : **Mr. Raju Ramachandran, Senior Advocate with
Mr. Vijayant Paliwal and Ms. Jasveen Kaur,
Advocates for Respondent No. 4**

O R D E R

05.09.2019 This appeal has been preferred by ‘Janmejaya Mahapatra’, Director of ‘Jhabua Power Limited’ (Corporate Debtor) against order dated 27th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata admitting the application under Section 9 of the ‘Insolvency and Bankruptcy Code, 2019’ (for short, the **I&B Code**) filed by ‘FLSmidth Private Limited’ (Operational Creditor).

When the matter was taken up on 5th April, 2019, learned counsel for the Appellant submitted that the ‘Financial Creditor’ had taken over the management of the ‘Corporate Debtor’ and after taking over the Company, it is in profit. The ‘Settlement Agreement’ dated 8th February, 2018 was made but it could not be given effect as the financial control is with the ‘Financial Creditors’

(Committee of Lenders) and not with the Board of Directors. It was submitted that the Adjudicating Authority without taking into consideration the aforesaid fact passed the impugned order on 27th March, 2019. However, on 5th April, 2019 while this Appellate Tribunal recorded the aforesaid submissions, this Appellate Tribunal observed that it is not clear as to who ordered to pay the amount pursuant to which Rs.5 Crores had been paid on 21st February, 2018, though the settlement reached on 8th February, 2018. Later on, learned counsel for the Appellant, who intended to settle the matter with the respondent, informed that no settlement has been reached. In the aforesaid circumstances, learned counsel for the Appellant addressed to this Appellate Tribunal on merit and took plea as was taken before the Adjudicating Authority that there is no default. However, the record shows that there is a 'debt' payable by 'Corporate Debtor' to 'FLSmidth Private Limited' (Operational Creditor). The management of the 'Corporate Debtor' have not taken plea before the Adjudicating Authority which was required to be raised while the application under Section 9 of the I&B Code was considered. Record suggests that letters of award were issued one on 9th August, 2011, followed by memorandum of understanding and 'terms of settlement' reached on 8th February, 2018. It is also not in dispute that the 'Operational Creditor' issued Demand Notice under Section 8(1) of the I & B Code on 12th of September, 2017 and in spite of receipt of Demand Notice, the Corporate Debtor failed to pay the 'debt' within 10 days and thereby the 'Corporate Debtor' defaulted to make payments. The application under Section 9 otherwise being complete, it was admitted. We find no reason to interfere with the impugned order dated 27th March, 2019.

In absence of any reason, the appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc