

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 945 of 2019

IN THE MATTER OF:

Sri Jawahar Lal Luthra

...Appellant

Versus

Ganesh Rice and General Industries & Anr.

...Respondents

Present:

For Appellant :

Though present, attendance not marked

O R D E R

25.09.2019 This appeal has been preferred by ‘Sri Jawahar Lal Luthra’ against the order dated 19th August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), (Court No. IV), New Delhi admitting the application under Section 9 of the ‘Insolvency and Bankruptcy Code, 2016’ (for short, ‘the **I&B Code**’) filed by M/s. Ganesh Rice & General Industries (Operational Creditor).

2. Learned counsel appearing on behalf of the Appellant submitted that four invoices of which reference has been made in the ‘Form 5’ (Application under Section 9 of the I&B Code) relate to supply of ‘basmati rice’ to some other persons and not to the ‘Corporate Debtor’ namely ‘M/s. Umachi Foods & Commodities Pvt. Ltd.’. The cheques which were issued by the ‘Corporate Debtor’ in favour of ‘M/s. Ganesh Rice & General Industries’ (Operational Creditor) relate to supply of basmati rice to the ‘Corporate Debtor’ but which having not been supplied, the cheques were allowed to be bounced. Therefore,

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according to him, there is no 'debt' payable by the 'Corporate Debtor' and application under Section 9 was not maintainable.

3. From the record, we find that the 'Operational Creditor' issued Demand Notice under Section 8(1) which was served on the 'Corporate Debtor'. However, no reply was given by the 'Corporate Debtor' to deny the claim made by the 'Corporate Debtor'.

4. Learned counsel for the Appellant submitted that the Demand Notice was not served on the 'Corporate Debtor' but such submission was not accepted by the Adjudicating Authority nor we can accept such submission as the Post India which served copy of the notice reported that the notice has been served on the 'Corporate Debtor'.

5. From the record we find that earlier 'M/s. Umachi Foods & Commodities Pvt. Ltd.' (Corporate Debtor) issued a cheque in favour of 'M/s. Ganesh Rice & General Industries' (Operational Creditor). It having bounced, notice was issued to the 'Corporate Debtor' and the Directors including 'Mr. Jawahar Lal Luthra' (Appellant herein) and 'Mrs. Rachna Luthra' and other 2 Directors by Notice dated 11th July, 2018 (page 103). In reply to the same, the 'Corporate Debtor' through its Advocate replied on 31st July, 2018 (page 108) that no amount as mentioned in cheque No. 000347 was due and payable by the 'Corporate Debtor'. Further, it was claimed that 'Operational Creditor' misused the cheque and Addressee Nos. 3 to 5 which includes 'Ms. Rachna Luthra' (w/o 'Mr. Jawahar Lal Luthra' filed this appeal) herein were not responsible for any day to day affairs of the company. From the stand as was taken by the 'Operational Creditor', we find that for the 'debt' claimed by the Appellant and other Directors accepted issue of cheque of specific amount of Rs. 68,08,385/- but the Corporate Debtor

took plea that Co-Appellant of – ‘Mr. Jawahar Lal Luthra’ namely Ms. Rachna Luthra and other Directors, the ‘Corporate Debtor’ is not responsible. Now said ‘Corporate Debtor’ who did not want to put all blame on its Directors including the Co-Appellant of ‘Mr. Jawahar Lal Luthra’ has filed the appeal. It shows that the Appellant is unreliable and the Director of the ‘Corporate Debtor’ receiving the materials are now denying the fact. There is nothing to show ‘pre-existing dispute’ on the part of ‘Corporate Debtor’ that goods for which cheque was issued had not been supplied.

6. For the reason aforesaid, we are not inclined to grant any relief at the instance of the Appellant, who is not reliable and trying to mislead the court.

7. The appeal is accordingly dismissed with costs of Rupees One Lakh to be paid by Mr. Jawahar Lal Luthra in favour of the ‘Interim Resolution Professional’/ ‘Resolution Professional’. Let a copy of this order be communicated to ‘Mr. Ajit Sood’, ‘Interim Resolution Professional’.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc