

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 04 of 2019

IN THE MATTER OF:

Smart Timing Steel Ltd.

...Appellant

Vs.

National Steel & Agro Industries Ltd.

...Respondent

Present: For Appellant: - Mr. Sanjay Grover and Mr. Shival Singh, Advocates.

For Respondent: - Ms. Siddhi, Ms. Abhisree Saujanya and Ms. Tishampati Sen, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant- 'Smart Timing Steel Ltd.'- ('Operational Creditor') filed an 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 'National Steel & Agro Industries Ltd.'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai by impugned order dated 31st October, 2018 rejected the application on one of the grounds that as per Section 9, a copy of the certificate from the Financial institution reflecting non-payment of the 'operational debt' has not been filed.

2. The Adjudicating Authority noticed that the Demand Notice was issued on 23rd December, 2016 demanding the payment of the amounts involved in default to the 'Corporate Debtor'. Due to failure of the 'Corporate Debtor' to bring to the notice of the 'Operational Creditor', the existence of dispute and record of the pendency of suits or arbitration proceedings filed before the receipt of the demand notice in relation to such dispute, or the repayment of the unpaid operational debt, 'Operational Creditor' filed a Petition 06/I&BP/NCLT/MAH/2017 before the Adjudicating Authority under Section 9. However, as the 'Operational Creditor' was unable to produce a copy of the certificate from the Financial Institution defined under Section 3(14) of the 'I&B Code', the Adjudicating Authority rejected the claim earlier on 30th January, 2017.

3. Against the order of the Adjudicating Authority, Company Appeal (AT) (Insolvency) No. 28/2017 was filed before this Appellate Tribunal, which was also dismissed by an order dated 19th May, 2017 and affirmed by the Hon'ble Supreme Court in Civil Appeal No. 9813/2017.

4. Taking into consideration all the aforesaid facts and that the Hon'ble Supreme Court also considered the order of this Appellate Tribunal in the case of 'Smart Timing Ltd. v. National Steel & Agro Industries Ltd.', the Adjudicating Authority dismissed the petition as the second petition was for same cause of action, was not maintainable.

5. Notice was given to the Respondent. They have appeared and opportunity was given to the parties to settle the matter but no progress made.

6. In view of the fact that earlier petition under Section 9 was filed by the Appellant- 'Smart Timing Steel Ltd.'- for initiation of the Corporate Insolvency Resolution Process' against 'National Steel & Agro Industries Ltd.'- ('Corporate Debtor') was earlier dismissed by the Adjudicating Authority and affirmed by the Hon'ble Supreme Court, we agree with the observations made by the Adjudicating Authority that the second petition for same cause of action is not maintainable.

The appeal is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

NEW DELHI

13th November, 2019

/AR/