

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Insolvency) No. 771

of 2019

[Arising out of order dated 14th June, 2019 passed by the
Adjudicating Authority, National Company Law Tribunal, New Delhi
Bench-III, New Delhi in (IB)- 310/ND/2019]

IN THE MATTER OF:

Ms. Poonam Gupta,
62-C, SFS MIG, DDA Flats
Motia Khan, Paharganj,
New Delhi- 110 055

.. Appellant

Vs.

1. Smt. Suman Chadha,
R/o 1071, Third Floor, Rani Bagh
New Delhi- 110 034

2. Lifestyle Fitness Pvt. Ltd.
62-C, SFS MIG, DDA Flats
Motia Khan, Paharganj,
New Delhi- 110 055

.. Respondents

Present:

For Appellant: Mr. Gautam Bajaj, Advocate

**For Respondents: Mr. Neeraj Yadav, Mr. Sidharth Arora,
Ms. Aditi Sharma, Advocates for
Respondent No. 1**

J U D G M E N T

(26th November, 2019)

KANTHI NARAHARI, MEMBER(TECHNICAL)

The present appeal is filed by the Appellant/shareholder of and for M/s Lifestyle Fitness Private Limited (Corporate Debtor) (hereinafter referred as Appellant) aggrieved by the order dated 14th June, 2019 whereby the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench-III, New Delhi admitted the application filed by the Respondent No. 1 (Operational Creditor).

2. Respondent No. 1 filed application before the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-III, New Delhi under Section 9 of Insolvency and Bankruptcy Code, 2016 (In short '**IBC**') seeking triggering Corporate Insolvency Resolution Process (in short '**CIRP**') against the Corporate Debtor i.e. M/s Lifestyle Fitness Private Limited on the ground that the Corporate Debtor defaulted payment of dues.

3. The learned Counsel for the Appellant submitted that the Appellant runs and operates Fitness Centre and had availed counselling and other professional services in the year 2016-17 from the 1st Respondent against a consideration of Rs. 35,00,000/-. It is stated that the Appellant had issued various cheques from time to time in the years 2017-2018 towards the discharge of the amount due and payable to the 1st Respondent.

4. Learned Counsel for the 1st Respondent submitted that the Appellant failed pay the dues and issued Demand Notice dated 03.12.2018 demanding an amount of Rs. 26,85,907/- and interest thereon and the total due is Rs. 26,95,907/-. The Appellant failed to pay and clear the dues. Hence the above Demand Notice got issued on the Corporate Debtor. The Appellant in their reply dated 17.12.2018 denied the claim of the debt due to the Respondent/Operational Creditor.

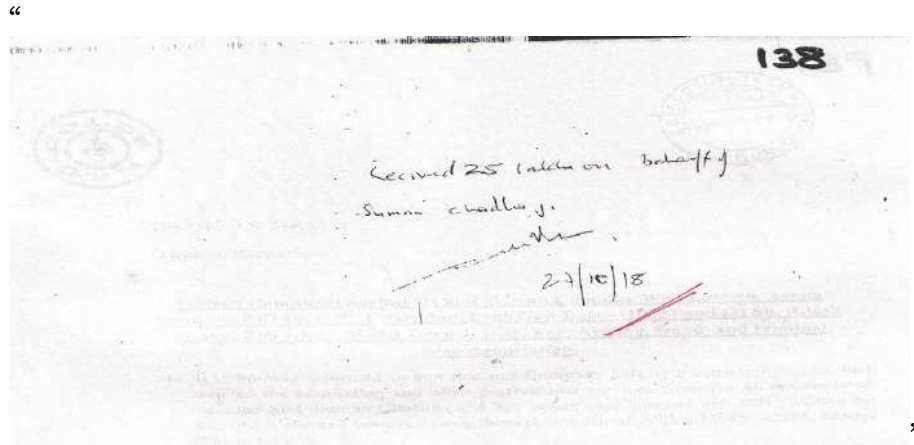
5. Heard learned Counsel for the respective parties, perused the pleadings and documents in its support.

6. The learned Adjudicating Authority was of the view that the Corporate Debtor was unable to give satisfactory evidence in relation to any pending dispute or the claim. Taking the aforesaid view, the Adjudicating Authority admitted the application.

7. The main ground taken by the Appellant in this appeal is that they have paid the amount of Rs. 25 lakhs to one Mr. Ritesh Vijhani, the authorized representative of the 1st Respondent and therefore there are no dues or default.

8. After going through the documents, we are of the view that the bone of contention is with regard to alleged payment of Rs. 25 lakhs

in cash to Mr. Ritesh Vijhani said to be authorized representative of the 1st Respondent (Operational Creditor) by the Appellant for Corporate Debtor herein. It is admitted that the Appellant issued cheques in the name of 1st Respondent dated 30.04.2017, 30.06.2017 and 31.07.2017. However, the stand of the 1st Respondent (Operational Creditor) is that those cheques have been dishonored with the remarks “funds insufficient”. The Respondent No. 1 issued notice dated 15.10.2018 under Section 138 of Negotiable Instruments Act, 1881 on the Appellant. Having not received the dues from the Appellant, the 1st Respondent got issued Demand Notice dated 03.12.2018 under Section 8(1) of IBC claiming an amount of Rs. 26,85,907/- taking a stand that the Appellant failed to clear the entire payment. The Appellant in their reply dated 17.12.2018 have stated that when notice dated 15.10.2018 was received demanding Rs. 26,85,907/-, the Appellant paid Rs. 25 Lakhs in cash to Shri Ritesh Vijhani on 27.10.2018 who is the authorized Representative of 1st Respondent and said Ritesh Vijhani has acknowledged the receipt of Rs. 25 lakhs. It is also stated that the balance Rs. 1 lakh will be paid at the time of returning all the cheques which were in possession of the 1st Respondent. The Appellant relied upon a receipt dated 27.10.2019 (page 138 of the paper book) is re-produced,



It reads: - “Received 25 lakhs on behalf of Suman Chadhaji”.

The document claims receipt of 25 lakhs on behalf of 1st Respondent- herein Operational Creditor, namely Smt. Suman Chadha. The said stand was taken before and the Adjudicating Authority and at paragraph-9 of the impugned order Adjudicating Authority was of the view that receiving note dated 27.10.2018 has been signed by someone without identifying himself which it is alleged by the Corporate Debtor, to have been made on behalf of the Operational Creditor for an amount of Rs. 25 lakhs which is vehemently disputed by the Operation Creditor. In fact, we note that it does not even state 25 lakhs “Rupees” or what is received. We are also of the view that even if it is treated as amount to be received on behalf of Suman Chadha the 1st Respondent herein, but person who actually received the amount and signed beneath could not be identified. Appellant wants us to compare signatures in this regard but in the summary jurisdiction of Adjudicating Authority it may not be possible.

9. Learned Counsel for the Appellant stressed upon this Tribunal on the payment of Rs. 25 lakhs in “cash” to one Shri Ritesh Vijhani and contended that the said Shri Ritesh Vijhani was an authorized representative of the Operational Creditor. Neither the Adjudicating Authority nor this Appellate Tribunal will go into the veracity and authenticity of such document since the proceedings before the Adjudicating Authority are summary in nature and cannot adjudicate upon seriously disputed documents which need to examine the persons involved to be cross-examined in a regular trial before competent Court of Jurisdiction and if necessary, the documents need to be sent to Forensic Department for its genuineness. Even otherwise, Income Tax Act does not appear to be recognizing such cash payment. Therefore, the said contention of the Appellant that they have paid a sum of Rs. 25 Lakhs on 27.10.2018 to an authorized representative of the Operational Creditor- 1st Respondent herein, we refuse to accept. On the other hand, we are of the view that there is no existence of dispute prior to the issuance of Demand Notice dated 03.12.2018 with regard to dues payable to the 1st Respondent. As stated supra, the Appellant/ Corporate Debtor had availed the services of Respondent No. 1- Operational Creditor and in pursuance of the same, the Appellant issued cheques to 1st Respondent and in one of the letters of the Appellant (annexed at page-90 of the Paper Book), it is clearly mentioned that they have issued cheques for Rs. 3 lakhs to be deposited on 31.03.2018. The dispute must be bonafide dispute as

held by the Hon'ble Apex Court and this Tribunal in various judgments. The payment of huge cash, which is impermissible, that too, to a third party and trying to adjust the payments due to the Operational Creditor i.e. 1st Respondent herein cannot be recognized.

10. We are of the view that the said dispute is not a bonafide dispute and therefore the Adjudicating Authority has rightly admitted the application. Apart from above, even if Rs. 25 lakhs is held to be paid was to be accepted, admittedly Corporate Debtor held back Rs. 1 lakh. If the default is Rs. 1 lakh, the insolvency can be triggered against the Corporate Debtor as per Section 4 of IBC. The Appellant in grounds of appeal has stated that the balance of Rs. 1 lakh was withheld by the Appellant. Thus the default is admitted.

11. In view of the reasons aforesaid, we do not find any reason to interfere with the order passed by the learned Adjudicating Authority. The Appeal stands dismissed. No orders as to cost.

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

(Kanthi Narahari)
Member(Technical)

(V P Singh)
Member(Technical)

Akc