

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal(AT)(Insolvency) No. 70 of 2018

IN THE MATTER OF:

Mr. Naresh Hansrajmal Bulchandani

...Appellant

Vs

Deep Constructions Co. & Anr.

....Respondents

Present:

For Appellant: Mr. Virender Ganda, Senior Advocate, Ms. Monisha Handa, Mr. Mohit D. Ram and Mr. Aastha Trivedi, Advocates

For Respondents: Mr. Sharvil Majumdar, Mr. Pradhuman Gohil, Mr. Shashwat Shukla, Mr. Himanshu Chaubey Advocates for Respondent No. 1

Mr. Madhusudan Sharma, Advocate for Respondent No. 2 through – R.P.

ORDER

04.05.2018 The Appellant, a shareholder of ‘Corporate Debtor’ (A & I Hospitality Private Limited) has challenged the order dated 18.01.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P.(I.B) No. 166/9/NCLT/AHM/2017 whereby and whereunder the application preferred by Respondent- Deep Construction Company (‘Operational Creditor’) under Section 9 has been admitted, the order of ‘Moratorium’ has been passed and ‘Interim Resolution Professional’ has been appointed with certain directions.

2. Learned Counsel for the Appellant submits that there was no ‘debt’ due to the ‘Operational Creditor’ and therefore the question of ‘default’ does not arise. He further submits that the construction work to the extent it was completed by ‘Operational Creditor’ for such work payment has been made.

3. From the records we find that the ‘Operational Creditor’ issued demand notice under Section 8(1) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’). However, no notice of dispute in reply was given by the ‘Corporate Debtor’, as required under Section 8(2) of ‘I&B Code’. Learned Senior Counsel appearing for the Appellant submitted that the managing partner of the ‘Operational Creditor’ is one of the Directors of the ‘Corporate Debtor’ he actually received the notice and had not brought the same to the notice of the ‘Corporate Debtor’. However, such submission cannot be accepted in absence of specific allegation levelled against any individual. The Director against whom reliance has been placed has also not been impleaded as party Respondent. In absence of any specific evidence and necessary party, it cannot be accepted that some mischief had been played by one or other Director of the ‘Corporate Debtor’.

4. This aspect has been considered by the Adjudicating Authority and recorded the following finding:

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“8. In the case on hand, no notice of dispute has been given in reply to the notice issued under Section 8 of the Code by the Operational Creditor to the Corporate Debtor. In the case on hand, the dispute of the Corporate Debtor that the construction work is not completed has been taken for

the first time only in the Affidavit-in-Reply. Even according to the Valuation Report given by SIDBI the construction work of the building to the extent of Rs. 876 lacs has been completed against which payment is made of Rs. 840 lacs to the Operational Creditor. This was in July 2017. But even according to the Corporate Debtor, they made payment of Rs. 88,40,62.000/-. The Corporate Debtor is admitting that it has not made the entire payment because the construction work is not completed. Before filing to this Petition, no objection had been raised by the Corporate Debtor. The Corporate Debtor did not choose to give any reply to the notice.”

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5. Learned Senior Counsel for the Appellant next contended that the application was incomplete. However, in absence of such plea taken before the Adjudicating Authority, we are not inclined to look into those factual aspects after admission of the application under Section 9 of the I & B Code. If the Appellant would have pointed out the defects, the Adjudicating Authority would have granted time to the ‘Operational Creditor’ to remove the defects.

6. However, with a view to find out the defects, we asked the Counsel to point out the defects. It is submitted that the Affidavit was filed by Respondent in English but the signature is in Gujrati. It is also submitted that the paraphrase has not been made properly. We find that frivolous grounds have been taken by the Appellant to delay the matter.

For the reasons aforesaid and in absence of merit, the appeal is dismissed with cost of Rs. 1 lakh to be paid by the Appellant- Mr. Naresh Hansrajmal Bulchandani in favour of Registrar NCLAT within one month.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Akc/unk