

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 133 of 2018

IN THE MATTER OF:

Prateek Gupta

...Appellant

Vs

M/s Columbia Petro Chem Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Ms. Gauri Rishi and Ms. Srishti Juneja, Advocates.

**For Respondent: Ms. Radhika, Mr. Atul Kumar Singh and
Mr. Janender Kumar Chumbak, Advocates for R-1.**

O R D E R

28.05.2018: This appeal has been preferred by Mr. Prateek Gupta, Director and shareholder of 'Petrolube India Limited' against order dated 25th January, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Bench III, New Delhi whereby and whereunder an application under Section 9 preferred by Respondent – 'M/s Columbia Petro Chem Pvt. Ltd.' has been admitted, order of moratorium has been passed and Interim Resolution Professional has been appointed with certain directions.

2. The impugned order was passed on 25th January, 2018 but the appeal was filed on 26th March, 2018. However, in view of the fact that the Appellant is the Director and Shareholder of the Corporate Debtor and was not a party before the Adjudicating Authority by name, on the basis of date of knowledge of the Appellant, we find that the appeal is on time.

3. Learned counsel appearing on behalf of the appellant submitted that the impugned order has been passed by the Adjudicating Authority without notice to the Corporate Debtor. She further submitted that notice under Section 8(1) was never served on the Corporate Debtor.

4. Learned counsel appearing on behalf of the Respondent disputed such claim and taken plea that notices were served on the Corporate Debtor.

5. However, in absence of any record to suggest that the notices were issued to the Corporate Debtor, we are not deliberating on question whether the application was admitted without notice to the Corporate Debtor or not.

6. The other question raised by the learned counsel for the appellant is that there is an existence of dispute. But there is nothing on record to suggest that the Corporate Debtor disputed any of the claim of the 'Operational Creditor' prior to issuance of notice under Section 8(1) of the I&B Code.

7. Learned counsel for the Appellant submits that demand notice under Section 8(1) was not served on the Corporate Debtor. Referring to the notice under Section 8(1) dated 03.08.2017 it is submitted that record suggest that the said notice was served in the Post Office at Mera Bagh.

8. Learned counsel appearing on behalf of the Respondent brought on record the letter dated 07.02.2017 issued by Mr. Vinit N Misha, Advocate, High Court Mumbai, whereunder the demand notice issued under Section 8(1) on the Corporate Debtor. The Respondent has also filed the receipt issued by the 'Indian Post' and track record of consignment shows that the notice under Section 8(1) dated 07.02.2017 was booked on 09.02.2017, and was delivered with acknowledgement at Punjabi Bagh Office of the Corporate Debtor. This is apparent from the 'Indian Post's' receipt at page 61. Therefore, we find that notice under Section 8(1) was served on the Corporate Debtor.

9. For the reasons aforesaid, we are not inclined to interfere with the impugned order. We find no merit in this appeal. It is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc