

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 373 of 2018

IN THE MATTER OF:

Shashi Kanth Jain

...Appellant

Versus

M/s. Alloys & Metals (India)

...Respondent

Present:

For Appellant : **Ms. Poonam Agarwal, Mr. Dilip Agarwal and Ms. Rachna Singh, Advocates**

For Respondent : **Mr. Sumant Batra, Ms. Srishti Kapoor and Ms. Priyanka Anand, Advocates**
Mr. Vivek Sibal and Mr. Yash Patel, Advocate for R.P.

O R D E R

08.01.2019 This appeal has been preferred by the appellant - 'Mr. Shashi Kanth Jain', Director of 'Hindustan Paper Corporation Ltd.' (Corporate Debtor) against the order dated 13th June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench whereby and whereunder the application under Section 9 of the 'I&B Code' preferred by 'M/s. Alloys & Metals (India)' has been admitted, order of moratorium has been passed and the 'Resolution Professional' has been appointed.

2. Learned counsel appearing on behalf of the appellant submits that the Adjudicating Authority had not provided sufficient opportunity to the 'corporate debtor' to file reply though the notice was issued to the 'corporate debtor' and after hearing the parties, the impugned order was passed. One Mr. Dilip Agarwal, Advocate appears on behalf of the 'corporate debtor' and raised all the objections.

3. It is next contended that many of the documents were not proper or fabricated but such objection was not raised by the 'corporate debtor' before the Adjudicating Authority. On the other hand from the record we find that the Demand Notice under Section 8(1) of the I&B Code, the 'corporate debtor' has not disputed the amount claimed by the 'operational creditors'.

4. Learned counsel for the appellant submitted that the accounts have not yet been considered but that cannot be a ground to set aside the order.

5. In ***"Innoventive Industries Ltd. v. ICICI Bank, (2018) - (2018) 1 SCC 407 [Civil Appeals Nos. 8337-38 of 2017]"*** wherein the Hon'ble Supreme Court has held :

"20. Under Section 4 of the Code, Part II applies to matters relating to the insolvency and liquidation of corporate debtors, where the minimum amount of default is rupees one lakh. Sections 6, 7 and 8 form part of one scheme and are very important for the decision in the present case. They read as follows:

"6. Persons who may initiate corporate insolvency resolution process.—Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in

respect of such corporate debtor in the manner as provided under this Chapter.

7. Initiation of corporate insolvency resolution process by financial

creditor.—(1) *A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the adjudicating authority when a default has occurred.*

Explanation.—*For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

- (2) *The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*
- (3) *The financial creditor shall, along with the application furnish—*
 - (a) *record of the default recorded with the information utility or such other record or evidence of default as may be specified;*

- (b) *the name of the resolution professional proposed to act as an interim resolution professional; and*
 - (c) *any other information as may be specified by the Board.*
- (4) *The adjudicating authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).*
- (5) *Where the adjudicating authority is satisfied that—*
 - (a) *a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application;*
 - or*
 - (b) *default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

Provided that the adjudicating authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the adjudicating authority.

- (6) *The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).*
- (7) *The adjudicating authority shall communicate—*
 - (a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;*
 - (b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.*

8. Insolvency resolution by operational creditor.—(1) *An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

- (2) *The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of*

the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

*Explanation.—For the purposes of this section, a “**demand notice**” means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.”*

21. *Section 12 provides for a time-limit for completion of the insolvency resolution process and reads as follows:*

“12. Time-limit for completion of insolvency resolution process.—*(1) Subject to sub-section (2), the corporate insolvency resolution process*

shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the adjudicating authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares.

(3) On receipt of an application under subsection (2), if the adjudicating authority is satisfied that the subject-matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”

29. *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first*

deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”

6. It is not in dispute that the ‘debt’ is payable by the ‘corporate debtor’ and the ‘corporate debtor’ is defaulted in payment of the ‘debt’ and the records were complete, we find no ground to interfere with the impugned order.

7. In absence of any merit, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

/ns/sk/