

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 202 of 2021**

In the matter of:

Chandra Shekhar Ramrakhiya

....Appellant

Vs.

M/s. Radhakrishna Acua Pvt. Ltd. & Anr.

....Respondents

Present:

Appellant: Mr. Shantnu Chourasia, Advocate.

Respondents: Mr. Mohd. Nazim Khan, Ms. Babita Jain, Mr. Satyendra Sharma, Advocates for R2 (IRP).

ORDER

(Through Virtual Mode)

17.03.2021: Application filed by Respondent No.1 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of Respondent No.2- 'Digital Micron Roto Print Private Limited' (Corporate Debtor) came to be admitted at the hands of the Adjudicating Authority (National Company Law Tribunal), Indore Bench at Ahmedabad, Court-1 in terms of the impugned order dated 11th January, 2021 which has been assailed through the medium of the instant appeal by Mr. Chandra Shekhar Ramrakhiya, an erstwhile member of the Suspended Board of Directors of the Corporate Debtor on the ground that the Corporate Debtor had no intimation of any proceedings going on before the Adjudicating Authority.

2. Heard Mr. Shantnu Chourasia, Advocate representing the Appellant and Mr. Mohd. Nazim Khan, PCS appearing for Interim Resolution Professional (IRP).

3. It emerges from the record that the Corporate Debtor was served with the demand notice in terms of the provisions of Section 8(1) of the 'I&B Code' on

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11th September, 2019 which was not responded to or replied by the Corporate Debtor. It further emerges from the record that as many as 14 post-dated cheques had been issued by the Corporate Debtor towards discharge of its liability on account of operational debt due and payable but the same got dishonored. This clearly establishes default in respect of the operational debt claimed through the demand notice and with no issue being raised about any pre-existing dispute with respect to quality of goods supplied, the inevitable conclusion is that the Corporate Debtor has committed default in respect of the operational debt due and payable to Respondent No.1 (Operational Creditor). No exception can be taken to view adopted by the Adjudicating Authority in regard to its satisfaction about operational debt and the Corporate Debtor being in default. It would be appropriate to bring on record the fact that even the limited notice served by the Adjudicating Authority upon the Corporate Debtor failed to evoke any response from it leading to passing of the impugned order in *ex parte*. In absence of any pre-existing dispute in regard to quality of goods or discharge of liability under the invoices raised, it cannot be said that the Adjudicating Authority has not applied its mind and the impugned order has been passed in violation of the Rules of Natural Justice viz. without affording opportunity of being heard to the Corporate Debtor.

4. We are told by Mr. Mohd. Nazim Khan, PCS representing IRP that the Committee of Creditors (COC) has been constituted and as many as six claims have been received so far. It is, therefore, evident that there are multiple claims against the Corporate Debtor.

5. Learned counsel for the Appellant submits that the Corporate Debtor has been classified as MSME and it is prepared to settle the claim. If that be so, COC can be approached in the manner prescribed, through IRP, for settlement within the ambit of Section 12A of the 'I&B Code'.

6. In view of the forgoing, we find no merit in this appeal. The same is dismissed. However, there shall be no order as to costs.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

AR/g