

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 135 of 2017

IN THE MATTER OF :

Ardor Global Pvt. Ltd.

... Appellant

Versus

Nirma Industries Pvt. Ltd.

... Respondent

Present: For Appellants: - Shri Virender Ganda, Senior Advocate with Shri Ashok Bhailal Shah, Shri Arvind Kumar and Ms. Henna George, Advocates

ORDER

21.08.2017 The appellant has preferred this appeal against order dated 11th July, 2017 passed by the learned Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad (hereinafter referred to as 'Adjudicating Authority') in C.P. (I.B.) No. 34/9/NCLT/AHM/2017. The order reads as follows :

"Learned Advocate Mr. Nandish Chudgar present for Operational Creditor/ Petitioner. Learned Advocate Mr. Arjun Sheth present for Respondent.

Objections filed by Learned Counsel for Respondent.

Heard arguments of Learned Counsel for petitioner and Respondent.

During the course of arguments, it is noticed that there are following defects in the Application.

1. *In respect of the written communication filed by IRP in form no. 2.*

2. *In respect of the affidavits of Mr. Jitendra Patel dated 26.05.2017 filed along with the petition.*

It is contended by the Learned Counsel for the petitioner that there is no defect in the written communication filed by IRP even if such defect is there it is rectifiable.

It is contended by the Learned Counsel for Respondent that defect pointed out is a defect which cannot be rectified.

Coming to the affidavits this Adjudicating Authority is of a view that defects in the Affidavit are rectifiable.

At this stage Learned Counsel appearing for the petitioner on the instructions of his client requested this Tribunal to grant leave to withdraw this petition with liberty to file fresh petition.

Learned Counsel appearing for the Respondent opposed the same.

Rule 8 of the Adjudication Rules gives discretion to the Adjudicating Authority to permit withdrawal of the petition of the petitioner on the request made by the petitioner before its admission.

Petitioner is permitted to withdraw this petition with liberty to file fresh petition if so advised.

Petition is disposed of accordingly.”

2. Learned counsel for the appellant submits that once the defect was pointed out, then it was mandatory for the Adjudicating Authority to allow seven day' time to the 'Operational Creditor' to remove the defect and it has no authority to allow the 'Operational Creditor' to withdraw the application, but such submission cannot be accepted as it is always open to the Adjudicating Authority to allow the party(s) to withdraw an application and to grant liberty of filing a fresh application before admission of a case and where default has not been decided, in view of Rule 8 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which is as follows :

"8. Withdrawal of application.— The Adjudicating Authority may permit withdrawal of the application made under rules 4, 6 or 7, as the case may be, on a request made by the applicant before its admission."

3. Next it was contended that filing of the subsequent petition will be hit by 'constructive res judicata' but we do not agree with such submission, as no decision was given by the Adjudicating Authority while allowing a party to withdraw the application with liberty to file a fresh application.

4. In the absence of any merit, the appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)