

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 664 of 2019

IN THE MATTER OF:

NUI Pulp and Paper Industries Pvt. Ltd.

...Appellant

Vs.

M/s. Roxcel Trading GMBH

...Respondent

Present: For Appellant: - Mr. S. Santanam Swaminadhan, Ms. Nishtha Khurana and Mr. Kartik Malhotra, Advocates.

For Respondent: - Mr. Arun Kathpalia, Senior Advocate with Mr. Ankur Khandelwal, Mr. Gowrang, Mr. Vatsal Joshi, Advocates.

O R D E R

17.07.2019— The Respondent- ‘M/s. Roxcel Trading GMBH’- (‘Operational Creditor’) filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) against ‘NUI Pulp and Paper Industries Pvt. Ltd.’- (‘Corporate Debtor’).

2. The matter was listed before the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, on 25th June, 2019 and counsel for the ‘Corporate Debtor’ appeared by filing a Caveat. The counsel for the ‘Corporate Debtor’ submitted that there is an existence of dispute between the parties and thereby prayed for time for filing reply. On the request of the counsel for the ‘Corporate Debtor’, time was allowed to file reply affidavit and time was also allowed to the ‘Operational Creditor’ for file rejoinder.

Contd/-.....

3. However, while adjourning the case for 15th July, 2019, the following interim order was passed:

“However, the apprehension of the Applicant can be taken note of till the time either the Application is admitted or rejected, the assets and the accounts of the Company need to be maintained on date except withdrawal of the legitimate expenses required for carrying on the day-to-day expenses. Therefore, this Authority in exercise of the powers conferred under Rule 11 of the NCLT Rules, 2016, restrains the Corporate Debtor and its Directors from alienating, encumbering or creating any third party interest on the assets of the 1st Respondent Company till further orders.”

4. Learned counsel for the Appellant submits that before admission of an application under Sections 7 or 9, the Adjudicating Authority has no jurisdiction to restrain the ‘Corporate Debtor’ and its Directors from alienating, encumbering or creating any third party interest on the assets of the ‘Corporate Debtor’. No such power can be exercised under Rule 11 of the National Company Law Tribunal Rules, 2016.

5. It is submitted that inherent power can be exercised by the Adjudicating Authority (National Company Law Tribunal), if it comes to the notice on receipt of reply that the 'Corporate Debtor' somehow or other trying to get adjournment or to alienate the matter after filing of the application under Sections 7 or 9. No such ground having shown by the 'Operational Creditor' on the first day of issuance of notice or allowing the 'Corporate Debtor' to file reply. The Adjudicating Authority has no jurisdiction to pass interim order.

6. Learned counsel appearing on behalf of the Respondent-'Operational Creditor' while submitted that there was an apprehension that the 'Corporate Debtor' and its Directors are intended to sell the assets of the 'Corporate Debtor' to defeat the purpose of the 'I&B Code' and cause wrongful losses to all the creditors including the 'Operational Creditor' before the Adjudicating Authority. It is always open to the Adjudicating Authority to pass interim order.

7. Before deciding the issue, we asked learned counsel for the Appellant as to whether the 'Corporate Debtor' intends to sell or alienate or transfer or create any third party interest on the assets of the 'Corporate Debtor', it is submitted that the 'Corporate Debtor' cannot give any such undertaking as it will act taking into consideration the necessity of the 'Corporate Debtor' for its day-to-day functioning.

8. Rule 11 of the National Company Law Tribunal Rules, 2016 deals with 'inherent powers' of the National Company Law Tribunal and reads as follows:

*“11. **Inherent Powers.**- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

9. From the aforesaid Rule 11, it is clear that the Tribunal (Adjudicating Authority herein) can make any such order as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

10. From the aforesaid provisions, it is clear that once an application under Sections 7 or 9 is filed by the Adjudicating Authority, it is not necessary for the Adjudicating Authority to await hearing of the parties for passing order of 'Moratorium' under Section 14 of the 'I&B Code'. To ensure that one or other party may not abuse the process of the Tribunal or for meeting the ends of justice, it is always open to the Tribunal to pass appropriate interim order.

11. The Respondent- 'Operational Creditor' had issued Demand Notice under Section 8(1) and after receipt of the reply under Section 8(2), informed that the 'Corporate Debtor' has not made payment, filed an application under Section 9. It was at this stage, the 'Operational Creditor' brought to the notice of the Adjudicating Authority (National Company Law Tribunal) that there is an apprehension that the 'Corporate Debtor' may abuse the process of the 'I&B Code' to deny the creditors from its legitimate rights if admission of the application under Section 9.

12. The Appellant having not given any undertaking or made any specific reply and refused to say that they have no such intention, we are of the view that it is always open to the Adjudicating Authority to pass ad-interim order before admitting any application under Sections 7 or 9 or 10 of the 'I&B Code'. However, on reply, once the application is admitted, then the order of 'Moratorium' under Section 14 will follow, taking away the right of the Board of Directors of the 'Corporate Debtor' to take any decision on behalf of the 'Corporate Debtor' prohibiting others from taking any action against the 'Corporate Debtor' which is different from interim order. On the other hand, if application under Sections 7 or 9 or 10 is rejected, the interim order will automatically stands vacated.

13. For the reasons aforesaid, we are not inclined to interfere with the impugned order. The appeal is dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Kanthi Narahari)
Member(Technical)

Ar/g