

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 81 of 2019

IN THE MATTER OF:

M/s. Good Luck Traders

...Appellant

Versus

M/s. Valley Iron & Steel Co. Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Anshuj Dhingra and Mr. Shubhangda Singh,
Advocates**

For Respondents: **Mr. Arun Saxena and Mr. Saral Sharma, Advocates**

ORDER

19.07.2019 The Appellant – ‘M/s. Good Luck Traders’ filed an application u/s 9 of the ‘Insolvency and Bankruptcy Code, 2016 (for short, the I&B Code)’ for ‘initiation of corporate insolvency resolution process’ against ‘Valley Iron & Steel Co. Ltd.’ (Corporate Debtor), the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench by impugned order dated 17th December, 2018 rejected the application on the ground that the claim is barred by limitation with the following observations :

“11. It is not disputed that Rs. 39,46,440.26 has already been paid by the Respondent to the applicant after issuance of demand notice under Section 8. It is seen that Rs. 54,46,440.26 was the actual amount of unpaid amount due to be paid by the Respondent. Rs.15,00,000/- was paid by the Respondent through

3 demand drafts in the month of Feb 2018. It is admitted by the petitioner in its petition that out of claim of Rs.1,06,39,290.26/-, Rs. 39464440.26/- is principal amount remained to be paid by the Respondent and remaining 66,92,850.26/- is the amount towards interest calculated by Petitioner @ 24% per annum.

12. The entire principal amount was also paid through RTGS within 10 days of receipt of demand notice u/s 8 of the Code. Accordingly, it can be concluded that Respondent has already paid Rs. 54,46,440.26/- which was the principal amount due towards unpaid invoices and no amount towards invoices remained to be paid by the respondent to the applicant within 10 days of issue of demand notice u/s 8 of the Code.

13. In the present application, the applicant has failed to explain the delay as their claim pertains of the year 2012, which is beyond the limitation period of 3 years. The same should not be entertained for triggering Corporate Insolvency Resolution Process under Section 9 of the Code.”

Having found that the observations made by the Adjudicating Authority is contradictory as at one stage, it is stated that the entire principal amount has been paid and at another stage it observed that the application is beyond the period of limitation. Learned counsel appearing on behalf of the Respondent submits that the total amount has been paid and the respondent has not raised the question of limitation. However, such submission cannot be accepted as the Adjudicating Authority has observed that the Appellant failed to explain the delay which pertains to the year 2012.

We have noticed that by Demand Drafts of February, 2018, Respondent paid certain amount. In such case, we are of the view that the amount having last paid in February, 2018 the application is not barred by limitation.

Learned counsel appearing on behalf of the Appellant submits that after issuance of Demand Notice u/s 8(1), the Respondent also paid a sum of Rs. 39,46,440.26 through RTGS dated 31st May, 2018, therefore, it cannot be said to be a delay or held to be beyond limitation as held by the decision of Hon'ble Supreme Court in "*Innoventive Industries Ltd. v. ICICI Bank [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407]* :

27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt

means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under subsection (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to*

Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to

the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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.”*

From the aforesaid finding, it is evident that the claim is disputed, we find that the ground of delay wrongly shown by the Adjudicating Authority. Further no ground has to be given as to why the claim of the Appellant has not ‘Operational Debt’.

Learned counsel for the Respondent submits that the total amount as was due to the Appellant has already been paid but we have noticed that it is disputed. However, such issue cannot be determined by us so it would have been brought to the notice of the Adjudicating Authority.

For the reasons aforesaid, we set aside the order dated 17th December, 2018 and remit the case to the Adjudicating Authority (National Company law Tribunal), New Delhi passed in (IB) 870(ND)/2018 and to pass order issue after notice and hearing the parties.

The appeal is allowed with aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)

/ns/gc