

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (INS) No.619 of 2019

IN THE MATTER OF:

Sri Krishna Constructions

...Appellant

Versus

**Vasudevan, R.P. of Tiffins Barytes
Asbestos & Paints Ltd.**

...Respondents

For Appellant:

Shri Subas Chandra Das, Sr. Advocate with B. Dhanaraj, Shri S. Santanam Swaminadhan and Shri Kartik Malhotra, Advocates

For Respondent:

Shri M.A. Venkata Subramanian and K. Moorthy for RP

ORDER

12.06.2019 Operational Creditor, who may not be able to trigger CIRP process under Section 9 of Insolvency and Bankruptcy Code, 2016 ('Code' – in short) due to pre-existing dispute, wants to hold up pending CIRP process, insisting that its claim be first decided.

2. Heard Advocate Shri Subas Chandra Das for the Appellant and Advocate Shri M.A. Venkata Subramanian, who on his own appears for the Respondent – Resolution Professional. Perused Impugned Order. In this matter, Section 7 Application was filed by Financial Creditor – M/s. Udhyaman Investments Private Limited against M/s. Tiffins Barytes Asbestos and Paints Limited which is admitted on 12th March, 2018. The Appellant claims to be an Operational Creditor who moved the IRP with a claim of more than Rs.17 Crores claiming to have provided services sometime between 2005 - 06 – 2008 - 09. The IRP while collating did not accept the claim of the Appellant as not being supported by

documents. The Appellant took up the matter with the Adjudicating Authority (National Company Law Tribunal, Chennai) asking to admit its claim of Rs.17,07,99,270/-; forensic audit and injunct CIRP in the meanwhile. The Adjudicating Authority has after hearing the Appellant and going through the record placed by the Appellant, noticed that the Appellant had earlier moved the Hon'ble High Court of Madras for winding up without success. Annexure – A12 shows, Appellant had filed Petition against the Corporate Debtor for winding up on ground of inability to pay debt and the Hon'ble High Court had found that the claim of the Appellant was not substantiated, the claim of the Appellant relying on an execution of Agreement dated 31.01.2005 was also doubtful considering the partnership firm and its formation. The High Court had found that mere statement of account was not sufficient to prove business transaction. The High Court had after duly considering the claim, which was put up by the Appellant, found the defence raised by the Corporate Debtor to be bona fide and found it was likely to succeed in Civil Court and thus, it was observed that there was sufficient reason for the High Court to reject the Petition which was filed by the Appellant. Thus, the High Court had relegated the Appellant to Civil Court and it appears that the Appellant moved Civil Court by filing Suit with Additional Senior Civil Judge and CJM at Ballari in 2014 which is still pending. The learned Counsel for the Appellant submits that in the Suit, there was also an Order of attachment and so it should be accepted that the Appellant has a good case, and that the Application of the Corporate Debtor for setting aside the attachment was not accepted.

3. We have gone through the material placed on record. The Judgement of the Hon'ble High Court which was passed is perused. The High Court had expressed surprise even regarding the manner in which claim was being made where the Appellant in statutory Notice claimed Rs.20 Crores and odd, and in the petition claimed Rs.10 Crores and odd. Now in NCLT, claim of Rs.17 Crores and odd has been made. The NCLT has looked into the matter and found that the claim being made is not substantiated by document.

4. Under Section 18, the IRP is required to receive and collate all the claims submitted by the Creditors. This is not a process of sitting and deciding disputed claims. For collating, the IRP has to receive the claim and examine the same. While examining, the IRP did not find that the claim was made out with support of appropriate documents. As such, the IRP may not have considered the claim and the Adjudicating Authority has looked into it and did not find anything wrong with the act of collating done by IRP. CIRP process cannot be converted into adjudication Forum to settle claims already in disputes in Court. In the circumstances, we do not find any reason to interfere with the Order which has been passed. The Suit of the Appellant is already pending. Once the Moratorium period is over, the Appellant would be free to pursue its suit.

We dismiss the Appeal without admitting the same.

No orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/sk