

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Insolvency) No. 859 of 2019

[Arising out of Order dated 03rd July 2019 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench, New Delhi in IB-989(ND)/19]

IN THE MATTER OF:

Good Morning Fin-Advisory Private LimitedAppellant

Vs.

PC Jain Textile Private LimitedRespondent

Present :

For Appellants: Mr. Gaurav Bahl, Advocate

For Respondent: Mr. Manu Bakshi, Advocate

J U D G M E N T

V.P. Singh, Member(T)

This appeal has been preferred against the order passed by the Adjudicating Authority ('National Company Law Tribunal') New Delhi Bench, whereby the petition filed by the Appellant Under Section 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) has been rejected.

2. Learned Counsel for the Appellant submitted that the 'Operational Creditor' is in the business of raising finances for Companies to meet their

business exigencies. The 'Corporate Debtor' approached the 'Operational Creditor' in May 2018 and at the request worked for and on their behalf, when he successfully arranged loans of Rs. 25 crores under various limits for the 'Corporate Debtor' from the 'State Bank of India'. As per the terms of the Agreement, 'Operational Creditor' is entitled to 1% of the sanctioned limit procured from the 'Corporate Debtor', as their service charges. Upon successfully sanctioning of the loan amount, the same was communicated to the 'Corporate Debtor' on 03/11/2018.

3. Learned Counsel for the Appellant contended that they raised the invoices for the sum of Rs. 25 lacs which along with the GST of Rs. 4,50,000/- accrued to Rs. 29.50 lacs. The 'Corporate Debtor', however, failed to make the payment. In the circumstances, the Appellant / Applicant issued Demand Notice Under Section 8(1) of the 'I&B' Code. The said notice was duly replied to by the 'Corporate Debtor' stating that no services were availed by the 'Corporate Debtor', neither any request was made by them to procure the sanction of loans.

4. The Adjudicating Authority has rejected the application on the ground that there is the existence of dispute regarding the outstanding amount claimed by the Applicant. There is no letter of engagement agreeing to pay the service charges of the sanctioned loan plus GST. The Adjudicating Authority has further held that 'Operational Creditor' has not filed any evidence to substantiate that the 'Operational Creditor' was engaged for their service.

5. The appeal has been filed mainly on the ground that the impugned order has been passed without appreciating the evidence, that services were rendered by the 'Operational Creditor' and dispute regarding the invoices was never raised. The Adjudicating Authority decided the application in undue haste and without appreciating the documents filed on record.

6. Learned Counsel for the Appellant further contends that the Adjudicating Authority failed to appreciate the principles of Section 70 of the Contract Act, whereby no act is stated to be done gratuitously. As per Industry Standards, the amount of 2% of the sanctioned amount is to be paid to the service provider, who takes the pain to ensure that the loan is sanctioned by the Bank.

7. Heard the learned Counsel for the parties and perused the records. Appellant has filed copies of e-mail correspondence with the respondent corporate debtor. But no document has been filed to show that the 'Corporate Debtor' had requested for any service from the 'Operational Creditor'. The 'Operational Creditor' relies on the Industries Practice, whereby for any service minimum 2% of the sanctioned amount is being provided.

8. The Appellant / the operational creditor has not filed any document about the letter of engagement, assignment to the operational creditor to act for and on their behalf in liaising with Bank for raising loan. There is no document on record to substantiate the claim of operational creditor /Appellant to pay service charge, as claimed by the Appellant, i.e. 1% service charge on the total sanctioned term loan amount.

9. The Ld Counsel for the Appellant contends that appellants and Respondents communicated with each other about the proposal of sanctioning of loan by way of email, Whatsapp communications etc. Various WhatsApp communication is on record as Annexure A-5 & A-6 which shows that the respondent further discussed the term loan amount, which may be required to be disbursed, which reflects that the corporate debtor took services. The document submitted by the Appellants requires further investigation to prove its claim, which can't be done in summary proceedings. The Documents relied on are not sufficient to show engagement for service charge fixed, and the rate of service charge.

In the circumstances, there is nothing on record to show that the amount is due and payable. Thus, the Adjudicating Authority has rightly rejected the application filed u/s 9 of the 'I&B' Code. We find no merit in this appeal. The appeal is accordingly dismissed — no order as to costs.

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

[Kanthi Narahari]
Member (Technical)

[V.P. Singh]
Member (Technical)

NEW DELHI

5th DECEMBER, 2019
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