

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) (Insolvency) No. 207 of 2017

IN THE MATTER OF:

Transparent Technologies Pvt. Ltd.

...Appellant

Versus

Multi Trade

...Respondent

Present:

For Appellant : **Ms. Sumi Soman, advocate**

For Respondent: **Shri Narpat Mehta, Proprietor**

O R D E R

25.10.2017 The respondent – Multi Trade filed a Petition under Sections 433 and 434 of the Companies Act,1956 for winding up of the appellant – Transparent Technologies Pvt. Ltd. (Corporate Debtor) before the High Court of Bombay on 12.04.2016. During the pendency of the said case and in view of introduction of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') and pursuant of transfer Notification of 7th December, 2016 issued by Central Government, the matter was transferred from High Court of Bombay to the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench. On hearing the counsel for the respondent – Multi trade, the Adjudicating Authority treated the application under Section 9 of the I & B Code, admitted the case, declared moratorium and called for the names from Insolvency and Bankruptcy Board of India (IBBI) by the impugned order dated 17th August, 2017 which is under challenge in this appeal.

2. At this stage, it is relevant to state that the Central Government in exercise of powers conferred under sub-sections (1) and (2) of Section 434 of the

Companies Act, 2013 read with sub-section (1) of Section 239 of the I & B Code framed rules namely “Companies (Transfer of pending proceedings) Rules, 2016”, with regard to transfer of pending proceedings of winding up on the ground of inability to pay debts. Rule 5 thereof reads as follows:

“5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.-

(1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

(2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.”

3. In view of the aforesaid Rule 5, the application filed under Sections 433 and 434 was transferred from High Court to the Adjudicating Authority who treated the application under Section 9 and admitted the case.

4. Learned counsel for the appellant submits that no notice under sub-section (1) of Section 8 was issued and the copy of Form 5 was also not served on the appellant. In fact, no application under Section 9 or Form 5 was filed before the Adjudicating Authority. The Adjudicating Authority has passed the order only after consideration of the reply filed by the appellant pursuant to notice under Section 434 of the Companies Act, 1956 which cannot be taken into consideration for admitting the application under section 9 of the I & B Code.

5. Shri Narpat Mehta, Proprietor of Multi Trade appeared in person has also filed a reply to the appeal. Though with regard to paragraph 8(f), the respondent has denied the averments relating to serving a copy of Form 5, but there is nothing on record to suggest that any notice under sub-section (1) of Section 8 was issued and served or the application under Form 5 was filed. The respondent has also taken a plea that there is no requirement of furnishing the copy of the application on the appellant. However, such submission cannot be accepted in view of Rule 5 aforesaid.

6. In view of the fact that as per the requirement the respondent has not submitted the information as required for admission of application under Section 9 before the Adjudicating Authority, we hold that in terms of Rule 5 and in absence of non-supply of requisite informations in terms of the Rule aforesaid

the application cannot be treated as an application under Section 9 for initiation of Corporate Insolvency Resolution Process of the appellant.

7. For the reasons aforesaid, we set aside the impugned order dated 17th August, 2017 passed by the Adjudicating Authority in TC.P. No. 183/I&BP/NCLT/MAH/2017.

8. In effect, order(s) passed by Ld. Adjudicating Authority appointing the 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order(s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Interim Resolution Professional', including the advertisement published in the newspaper calling for applications and all such orders and actions are declared illegal and are set aside. The application preferred by Respondent is dismissed. Learned Adjudicating Authority will now close the proceeding. The appellant company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

9. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and the Appellant will pay the fees of the Interim Resolution Professional, for the period he has functioned. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)