

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 238 of 2017

IN THE MATTER OF:

Electrosteel Steels Ltd.

...Appellant

Versus

Imperia Structures Ltd.

...Respondent

Present:

For Appellant : **Mr. Naman Joshi and Mr. Ankit Rajgarhia,**
Advocates

For Respondent : **Mr. Tarun Singla, Advocate**

O R D E R

09.02.2018 The appellant – M/s. Electrosteel Steel Ltd. (through Resolution Professional) has preferred this appeal against order dated 15th September, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, which reads as follows:

*“Application on behalf of the management is incompetent as the management is now in the hands of Insolvency Resolution Professional. Any application has to be filed by the IRP alone as the erstwhile management has no locus standi. This aspect has also been clarified by Hon’ble Supreme Court in the case of **Innoventive Industries Ltd. v. ICICI Bank & Anr. (Civil Appeal Nos. 8337-8388/2017, decided on 31st August, 2017.***

Therefore, the application is dismissed.”

2. Learned counsel appearing on behalf of the appellant submits that the day on which an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') was filed by Electrosteel Steels Ltd., no corporate insolvency resolution process was initiated against it and, therefore, the application by Electrosteel Steels Ltd. (Operational Creditor) to the Management/erstwhile Board of Directors was maintainable. According to the learned counsel the subsequent order of corporate insolvency resolution process against the appellant – Electrosteel Steels Ltd. cannot take away the right of Corporate Debtor to pursue the application under Section 9 of the I & B Code, which was maintainable at the time of filing.

3. Mr. Tarun Singla, learned counsel appearing on behalf of the respondent submits that the parties are negotiating to settle the dispute.

4. Having heard the learned counsel appearing on behalf of the appellant and the respondent while we are of the view that the application under Section 9 of the I & B Code as on the date of filing was maintainable through the original Management, but taking into consideration the fact that Electrosteel Steels Ltd. has already undergoing the corporate insolvency resolution process and now the resolution professional was intends to proceed against the respondent under Section 9 of the I & B Code, we give liberty to the appellant through Resolution Professional to file fresh application under Section 9 of the I & B Code after giving demand notice to the Corporate Debtor in terms of sub-section (1) of Section 8. If the matter is not settled and amount is not paid, it will be open to the appellant to file fresh application under Section 9 of the I & B Code and pursue the same.

In such case, the Adjudicating Authority determine the matter independently uninfluenced by the impugned order dated 15th September, 2017.

The appeal stands disposed of with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk