NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 733 of 2019

IN THE MATTER OF:

M/s. Smartron Indian Private Limited **...Appellant**

Vs.

M/s. ZTE Corporation **...Respondent**

Present: **For Appellant: - Mr. Mithun Shashank and Mr. M.V. Mukunda, Advocates.**

For Respondent: - None

O R D E R

18.07.2019– The Respondent- 'M/s. ZTE Corporation' filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) in January, 2019 wherein notice was issued on Appellant- 'M/s. Smartron Indian Private Limited'- ('Corporate Debtor') which filed its reply. It appears that the Respondent filed a rejoinder to the same.

2. The 'Corporate Debtor' thereafter sought permission to file sur-rejoinder/ additional counter and additional documents, which has been rejected by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, by impugned order dated 21st June, 2019 asking the parties to argue on merit.

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3. Learned counsel for the Appellant submitted that certain more documents are required which are necessary for the proper adjudication of the case. However, we are not inclined to grant any more time to the Appellant as already six months have passed and application under Section 9 still pending.

4. In the case of ***"Binani Industries Limited vs. Bank of Baroda & Anr.– Company Appeal (AT) (Insolvency) No. 82 of 2018 etc."*** , this Appellate Tribunal has already held that an application under Sections 7 or 9 or 10 relates to initiation of the 'Corporate Insolvency Resolution Process'. It is neither a litigation nor a money suit or money claim, therefore, the question of sur-rejoinder/additional counter and additional documents does not arise.

5. One opportunity which was required to be given to the 'Corporate Debtor' has since been given and it has filed its reply affidavit. Now, it is on the basis of the record available and the stand so taken by the 'Corporate Debtor', the Adjudicating Authority is required to decide the matter, as has already been held by the Hon'ble Supreme Court in ***"Innoventive Industries Ltd. Vs. ICICI Bank and Ors, (2018) 1 SCC 407"*** disposed on 31st August, 2017, wherein the Hon'ble Supreme Court made following observations:

"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.

"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 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.*
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> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

6. Such law having laid down by the Hon'ble Supreme Court, the Adjudicating Authority and the parties are required to deal with it in accordance with law. However, we make it clear that we are not expressing any opinion on merit or counter claim made by the parties,

which is required to be decided by the Adjudicating Authority. The Adjudicating Authority has already heard the case and reserved the order, we hope the Adjudicating Authority will pass appropriate order at an early date.

The appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Kanthi Narahari)
Member(Technical)

Ar/g