

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 270 of 2018

IN THE MATTER OF:

Sugan Choudhary

...Appellant

Vs.

Khandelwal Busar Industries Pvt. Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. Brijender Chahar, Senior Advocate with Mr. Ashutosh Kumar, Mr. Pulkit Agarwal and Mr. Palav Agarwal, Advocates.

For Respondents: Mr. Rakesh Kumar, Mr. Hitesh Raj Singh and Mr. Aashish Khattar, Advocates.

Mr. Pankaj Khaitan, IRP.

O R D E R

08.03.2019— The Respondent- 'M/s. Khandelwal Busar Industries Private Limited'- ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Mansfield Cables Company Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No. IV), by impugned order dated 15th May, 2018, having admitted the application, the Appellant- Director of the 'Corporate Debtor' has challenged the same.

2. The main plea taken by the Appellant is that the demand notice under Section 8(1) was issued by the 'Operational Creditor' on

28th December, 2017 in its old address at 'Lajpat Nagar' whereas in the meantime, the company had changed its address from 1st November, 2017 at the new address at 305, 3rd Floor, DLF Court Yard, Saket, Delhi- 110017. In view of the same, the 'Corporate Debtor' could not submit reply in terms of sub-section (2) of Section 8 and was not given opportunity to settle the matter. It is further intimated that the parties have settled the claim.

3. Mr. Rakesh Kumar, learned counsel appearing on behalf of the 'Operational Creditor' accepts that the notice was issued at the 'Lajpat Nagar' address of the Company. He further submits that the parties have settled the matter.

4. Mr. Pankaj Khaitan, the 'Resolution Professional' who appears in person objected the prayer on the ground that in Form No. INC-22 the 'Corporate Debtor' has shown 'Lajpat Nagar' address from retrospective date of 1st November, 2017. This Form No. INC-22 was filled up by the 'Corporate Debtor' in May, 2018. Therefore, according to him, the 'Corporate Debtor' is now showing a different address and the notice was properly served in its proper address.

5. Pursuant to the direction of this Appellate Tribunal, the Appellant has filed a supplementary affidavit enclosing the copy of the letter addressed to the Registrar of Companies, Ministry of Corporate Affairs,

4th Floor, IFCI Tower. By the said letter, the change of address of the 'Corporate Debtor' was with effect from 1st November, 2017 it was intimated to the Registrar of the Companies, NCT of Delhi and Haryana change address of 305, 3rd Floor, DLF Court Yard, Saket, Delhi- 110017 has been mentioned. In the said letter, no date has been shown but it shows that the letter was received by the Company Registrar, NCT of Delhi and Haryana on 7th December, 2017. Original copy of receipt has been filed. Thus, we find that the change of the company address was intimated to the Registrar of Companies prior to the date of issuance of the demand notice under Section 8(1).

6. Mr. Pankaj Khaitan, submitted that there is no office situated at the address shown by the 'Corporate Debtor' but he has taken possession of the company at a different place. He wanted to produce some photographs but they being not on record, we are not inclined to deliberate on such issue. It is also informed that in absence of any 'Resolution Plan', the 'Resolution Professional' has moved before the Adjudicating Authority to pass order of liquidation.

7. Having heard learned counsel for the parties, we are of the view that the Appellant has made out a case of non-service of demand notice on the 'Corporate Debtor', it having changed the Registered Office of the company prior to the date of issuance of demand notice under Section 8(1).

8. For the reasons aforesaid, while we set aside the impugned order dated 15th May, 2018, make it clear that this order will not come in the way of the other creditors to move before the competent forum/ authority if any amount is payable, after notice to the 'Corporate Debtor'.

9. The 'Resolution Professional'- Mr. Pankaj Khaitan, submits that he has been paid fee for Rs. 2 lakh per month as approved by the 'Committee of Creditors' and for the present month Rs. 2 lakh is payable, apart from the actual expenses cost of 'Corporate Insolvency Resolution Process' amounting to Rs. 3.99 which is pending consideration before the 'Committee of Creditors'.

10. In the circumstances, we direct the 'Corporate Debtor' to pay a total sum of Rs. 5.99 lakhs in favour of Mr. Pankaj Khaitan, 'Resolution Professional' towards the rest of the fee and cost of Insolvency Resolution within three weeks.

11. In effect, order (s), passed by the Adjudicating Authority declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The

application preferred by Respondent under Section 7 of the 'I&B Code' is disposed of as withdrawn. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect. The appeal is allowed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g