

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No.311 of 2017

IN THE MATTER OF:

**PCK Buderus (India) Special Steels Pvt. Ltd.
84, South West Boag Road,
Chennai – 600 017, Tamil Nadu, India.**

...Appellant

Vs

**Sungil India Pvt. Ltd.
Flat No.351, LIG, L&T, PKT,
(Shree Awas RWA), PH-2, Sector – 18B,
Dwarka, South West Delhi – 110078, India.**

...Respondent

Present:

For Appellants: Mr. Ranjeet K Ranjan, Advocate.

For Respondents: None.

ORDER

11.12.2017: The Appellant is aggrieved of order dated 3rd November, 2017 passed by Adjudicating Authority, NCLT, New Delhi Bench in (IB) 399(ND)/2017 by virtue whereof notice u/s 8 of 'I & B Code' issued by Ms. Ashmita A. Naik, Advocate on behalf of Operational Creditor has been held to be suffering from inherent technical defect which was incurable.

2. After hearing learned counsel for appellant for a while, we are of the considered opinion that in view of the dictum of this Appellate Tribunal in '**Macquarie Bank Limited versus Uttam Galva Metallics Limited in Company Appeals (AT) (Insol) No. 96 of 2017**' that an advocate or a Chartered Account or a Company Secretary or any other person in absence of any authority by the 'Operational Creditor', and if such person does not hold any position with or in relation to the 'Operational Creditor', cannot issue notice under Section 8 of 'I & B Code', no fault can be found with the impugned order as admittedly the

advocate issuing notice under Section 8 of 'I & B Code', though authorised, did not hold any position with or in relation to the 'Operational Creditor'.

3. The demand notice in the case in hand does not satisfy the requirements of Section 8 of Insolvency & Bankruptcy Code. The notice is defective and the defect is incurable. The aforesaid Judgement has been reiterated in a number of cases and holds field as on date. Keeping the same in view the impugned order does not suffer from any legal infirmity and no fault can be found with the same. The appeal is without any substance and same is dismissed. However, this order will not preclude the Appellant from initiating fresh process after complying with the mandate of law.

(Justice Bansi Lal Bhat)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

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