

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 283 of 2018

IN THE MATTER OF:

S. N. Plumbing Pvt. Ltd., **...Appellant**
(Through RP- Sanjay Kumar Ruia)

Vs

IL&FS Engineering & Construction Co. Ltd. **....Respondent**

Present:

For Appellant: Mr. Pankaj Jain, Mr. Sagar Bansal and Ms. Dhriti Sarin, Advocates.

For Respondent: Mr. Abhinav Bhatia, Advocate.

With

Company Appeal (AT) (Insolvency) No. 642 of 2018

IN THE MATTER OF:

Charu Desai, R.P. of **...Appellant**
Mandhana Industries Ltd.

Vs

Instyle Exports Pvt. Ltd. **....Respondent**

Present:

For Appellant: Ms. Pooja Mahajan and Mr. Savar Mahajan, Advocates.

For Respondent: Mr. Nakul Mohta and Mr. Johnson Subba, Advocates.

ORDER

07.12.2018:

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This appeal has been preferred by Resolution Professional against order dated 24th April, 2018 passed in CP (IB) No. 20/9/HDB/2017 by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad wherein the Adjudicating Authority while explained the provisions of Section 11 of the Insolvency and Bankruptcy Code, 2016 (for short I&B Code) observed as follows:

“15. Section 11 of the IB code clearly disentitles or disqualifies a Corporate Debtor undergoing the CIRP to file an application to initiate CIRP against its debtor.

16. The object of the CIRP is to revive the company in the first instance but not to involve the company undergoing CIRP in multifarious litigations. No doubt section 14 did not bar a suit or proceedings or application by Corporate Debtor but it does not mean that Resolution Professional representing the Corporate Debtor in CIRP can go on filing suits or other proceedings in order to recover the amount due to the Corporate Debtor, although it is a duty of the IRP to preserve and protect the assets of the Corporate Debtor. Therefore, this Tribunal is of the considered view that in view of the Section 11 of the IB Code SN Plumbing Private Limited (Operational Creditor) that is undergoing CIRP in CP (IB) 1268/IBC/NCLT/MB/MAH/2017 is not entitled to file this petition.”

2. Learned counsel appearing on behalf of the Appellant submits that the Corporate Debtor is not disqualified to file an application under Section 7 or 9 to initiate Corporate Insolvency Resolution Process against its own debtor. The Adjudicating has failed to notice the same as Section 11 applies only on the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor i.e. Corporate Debtor represented by the Resolution Professional. It is not applicable in respect to any third party Corporate Debtor of which the present Corporate Debtor (represented by the Resolution Professional) is either Financial Creditor or Operational Creditor.

3. Learned counsel appearing on behalf of 'IL&FS Engineering and Construction Company Ltd.' who is the Corporate Debtor in respect to 'S. N. Plumbing Pvt. Ltd.' against which Corporate Insolvency Resolution Process was pending, submits that the resolution process has already been completed as the matter has already been settled.

4. In the circumstance while we do not express any opinion with regard to the Corporate Insolvency Resolution Process initiated against 'S. N. Plumbing Pvt. Ltd.', we are of the view that a prima facie case has been made out by the Resolution Professional that 'S. N. Plumbing Pvt. Ltd.' has right to trigger Corporate Insolvency Resolution Process against 'IL&FS Engineering and Construction Company Ltd.', if 'S. N. Plumbing Pvt. Ltd.' is Operational Creditor or Financial Creditor qua 'IL&FS Engineering and Construction Company Ltd.'. However, taking into consideration the fact that 270 days has already over and further time of 90 days under Section 55 of I&B Code is also over and as the moratorium period has come to an end, we are not inclined to deliver on the claim of 'S. N. Plumbing Pvt. Ltd.' qua 'IL&FS Engineering and Construction Company Ltd.'. If 'S. N. Plumbing Pvt. Ltd.' initiates proceeding under Section 7 or Section 9 against 'IL&FS Engineering and Construction Company Ltd.', in such case, the Adjudicating Authority will decide the question uninfluenced by the observations made in the impugned order and the prima facie finding given by us. The appeal stands disposed of with aforesaid observations and directions. No costs.

Company Appeal (AT) (Insolvency) No. 642 of 2018

This appeal has been preferred by 'Ms. Charu Desai, Resolution Professional of M/s Mandhana Industries Ltd.' against order dated 30th August, 2018 passed in Company Petition No. (IB)-301(ND)/2018 by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No.IV), wherein

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similar observations has been made by the Adjudicating Authority as made in Company Appeal (AT) (Insolvency) No. 283 of 2018 and held that the Corporate Insolvency Resolution Process against 'M/s Instyle Exports Pvt. Ltd.' by 'M/s Mandhana Industries Ltd.' (Corporate Debtor) against whom Corporate Insolvency Resolution Process was pending is not maintainable. In this appeal also it is informed that period of 270 days has been completed and now Resolution Plan has been approved.

2. In this background of matter, without deliberating in the issue, we make similar observations as made in the case of 'S. N. Plumbing Pvt. Ltd.' Vs. 'IL&FS Engineering and Construction Company Ltd.'. If 'M/s Mandhana Industries Ltd.' through its present proprietor files any application under Section 7 or Section 9 of the I&B Code against 'M/s Instyle Exports Pvt. Ltd.', the Adjudicating Authority will decide the matter uninfluenced by the observations made in the impugned order or in view of the prima facie finding given by us.

However, we make it clear that we have not decided the question as to whether in view of bar under Section 11 'S. N. Plumbing Pvt. Ltd.' or 'M/s Mandhana Industries Ltd.' are eligible to file application under Section 7 or Section 9 against their respective Corporate Debtors or not, which may be decided in an appropriate case. Both the appeals stands disposed of with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc

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