

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 57 of 2019**

**IN THE MATTER OF:**

Ravindran Sivamani & Anr. .... Appellants

Vs

M/s Real Soya Enterprises & Ors. .... Respondents

**Present:**

**For Appellants: Mr. Ashwani Kr. Advocate.**

**For Respondents: Appeared but attendance not marked.**

**O R D E R**

**22.08.2019** This Appeal has been preferred by the Appellants, Director of the 'Corporate Debtor' and another against order dated 19<sup>th</sup> December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, admitting application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') preferred by Respondent – M/s Real Soya Enterprises, a proprietorship firm.

2. When the matter was initially taken up, the only plea taken by the Counsel of the Appellants was that no notice under Section 8(1) was served on the 'Corporate Debtor', nor any notice was issued by the Adjudicating Authority. In reply, the Counsel for the Respondent referred to the pleadings made by the Appellants, wherein it is pleaded that Demand Notice issued by the 2<sup>nd</sup> Respondent was not received by the Appellants. On the other hand, it is stated that the said Demand Notice was issued at the registered office of Respondent No.2 of the 'Corporate Debtor' and as per the records available, no such Demand Notice was ever received, on the contrary irrelevant documents were received by the 'Corporate Debtor' during the tenure.

3. The aforesaid vague statement made by the Appellants at paragraph 9 of the Appeal, clearly shows that 'Corporate Debtor' received the letter in its registered office, but now a statement is made that Demand Notice with some irrelevant documents was received. At the time of admission of the application, as such plea was not taken before the Adjudicating Authority, we are not inclined to grant any relief on a vague statement made by the Appellants.

4. Subsequently, the Counsel for the Appellants took time to obtain instructions whether the Appellants intends to settle the matter, however, the settlement could not reach and, therefore, we decided to take up the matter on merit.

5. From the record we find that an email dated 16<sup>th</sup> December, 2016 was issued by Rakesh Kumar Thakur for the Appellant – 'Corporate Debtor' to Vasudev Mangharamani, with copy to Devender Singh Rawat for 'Operational Creditor', intimating that the material supplied recently were unfit for consumption and, therefore, the 'Corporate Debtor' has rejected the material. The 'Operational Creditor' was asked to arrange to lift the material on their own risk. In reply to the said email, Mr. Ravindran sent an email dated 27<sup>th</sup> December, 2018 to [vineet@vineetthakral.com](mailto:vineet@vineetthakral.com) with a copy to Vivek Kumar, intimating that PFA for the material rejection note send to the party. Now, learned Counsel for the Respondent submitted that the matter was subsequently settled with the Appellants and materials were accepted, consumed and part payment was released, only rest of the part payment was not released. However, this is a question of fact and amounts to 'pre-existence' of dispute, as the claim of the Appellants is based on material supplied, which was intimated to Respondent – 'Operational Creditor' on 16<sup>th</sup> December, 2016 that it is unfit for consumption. For the said reason, we are of the view that application under Section 9 of the I&B Code was not maintainable. We accordingly set-aside the impugned order of admission dated 19<sup>th</sup> December, 2018. Consequently, the appointment of 'Interim Resolution Professional' by order dated 24<sup>th</sup> December, 2018 is also set-aside.

6. In the result, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional' are set aside. The application preferred by the Respondent under Section 9 of the I&B Code is disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. The appeal is disposed of with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

Ash/GC