

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

**Company Appeal (AT) (Insolvency) No. 39 of 2020**

**IN THE MATTER OF:**

**Raj Kumar Garg & Anr.**

**...Appellants**

**Vs.**

**Health Care at Home India Pvt. Ltd. & Anr.**

**...Respondents**

**Present: For Appellants: - Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rupesh Tyagi, Advocate.**

**For Respondents: -Mr. S.K. Sharma, Advocate.**

**O R D E R**

**09.01.2020—** Learned counsel for the Appellants submits that the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) was filed by 1<sup>st</sup> Respondent- 'M/s. Health Care At Home India Private Limited'- ('Operational Creditor') fraudulently with malicious intent for any purpose other than for the resolution of insolvency or liquidation and deserves heavy penalty under Section 65 of the 'I&B Code'.

2. It appears that the 1<sup>st</sup> Respondent issued Demand Notice under Section 8(1) on 25<sup>th</sup> February, 2019 referring 16 invoices to which the Appellant denied by letter dated 9<sup>th</sup> March, 2019 (page 176). The Appellant specifically pleaded that the total amount has been paid and

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the Respondent has used pressure tactics giving reference to 16 invoices, out of which 3 invoices are genuine and other 13 invoices are not genuine. Amount of all three genuine invoices have been paid.

3. The aforesaid stand taken by the 'Corporate Debtor' was not denied by the Respondents and by letter dated 16<sup>th</sup> April, 2019, he merely stated that there are inadvertent errors in the Demand Notice and hence recalled the Demand Notice dated 25<sup>th</sup> February, 2019 by lawyer's letter dated 16<sup>th</sup> April, 2019 (page 181).

4. Simultaneously, on the same date i.e. 16<sup>th</sup> April, 2019, another Demand Notice under Section 8(1) was issued raising therein 18 invoices, which were also disputed by the 'Corporate Debtor'.

5. Though the aforesaid facts were brought to the notice of the Adjudicating Authority, according to counsel for the Appellant, without appreciating the fact that the Respondent- 'Operational Creditor' had accepted that it restored to arm twisting wrongly and admitted the application under Section 9 instead of penalising 1<sup>st</sup> Respondent under Section 65 of the 'I&B Code'.

6. Issue Notice. Mr. S.K. Sharma, Advocate accepts notice on behalf of 2<sup>nd</sup> Respondent ('Interim Resolution Professional'). He is allowed to file reply affidavit along with Vakalatnama within a week.

7. Let notice be issued on 1<sup>st</sup> Respondent by speed post. Requisite along with process fee, if not filed, be filed by 10<sup>th</sup> December, 2020. If the Appellant provides the e-mail address of 1<sup>st</sup> Respondent, let notice be also issued through e-mail. Dasti service is permitted.

Post the appeal 'for orders' on 30<sup>th</sup> January, 2020 on the top of the list before 1<sup>st</sup> Bench. The appeal may be disposed of the on the next date.

In the meantime, the 'Interim Resolution Professional' is directed not to constitute the 'Committee of Creditors'. However, he will ensure that the Company remains a going concern and will take assistance of the (suspended) Board of Directors and the officers/Directors/employees. The person who is authorised to sign the bank cheques may issue cheques but only after approval of the 'Interim Resolution Professional'. The bank account of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of the employees'/workmen electricity bills etc.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

Ar/g