

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 472 of 2018

IN THE MATTER OF:

B.S.E. Ltd.

...Appellant

Vs

Neo Corp International Ltd.

....Respondent

Present:

For Appellant: Ms. Surekha Raman, Advocate.

For Respondent: None.

ORDER

05.04.2019: The Appellant – ‘Bombay Stock Exchange Limited.’ (hereinafter referred to as ‘BSE Ltd.’) filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short ‘I&B Code’) for initiation of Corporate Insolvency Resolution Process against ‘Neo Corp International Ltd.’ (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 26th June, 2018 rejected the application under Section 9 on the ground that the Corporate Debtor defaulted in making payment of Rs.5,37,939 towards annual listing fee as on 1st April, 2014 and thereby the application is barred by limitation.

2. Learned counsel for the Appellant relied on Form-5, the application under Section 9 of the I&B Code wherein particulars of operational debt of Rs.5,57,959/- have been shown due since 1st April, 2014 till the date of filing.

3. From the record we find that invoices were also issued on 1st April, 2017, which shows the total amount payable including service tax for the year 2017-18, Swachh Bharat Cess and Krishi Kalyan Cess, totalling Rs.5,57,959/-. It appears that the Adjudicating Authority failed to consider the aforesaid documents attached with Form-5 and came to a wrong conclusion that the application under Section 9 is barred by limitation.

4. It is true that Limitation Act, 1963 is applicable in terms of Section 238A of the I&B Code. For the purpose of filing application under Section 9, Part II of the Schedule of Limitation Act, 1963 will apply, which reads as under:-

PART II - OTHER APPLICATIONS

<i>Description of application</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>137. Any other application for which no period of limitation is provided elsewhere in this division.</i>	<i>Three years</i>	<i>When the right to apply accrues.</i>

5. As in the present case, the right to apply accrues on 1st April, 2017, we hold that the application under Section 9 was not barred by limitation.

6. Part I of the Schedule relates to filing of suits, money suits, etc. If the claim is barred by limitation then a person can take plea that “there is no debt payable in law”. In the present case, as we find that the invoice raised on 1st April, 2017 is more than Rupees One Lakh and a suit if filed will not be barred by limitation, the Corporate Debtor cannot take plea that the amount is barred by limitation.

7. The Adjudicating Authority before passing the impugned order dated 26th June, 2018 had issued notice to the Corporate Debtor but the Corporate Debtor failed to appear. In the present case also, the notice on Corporate Debtor having returned undelivered, we directed the Appellant to take publication of notice in the Newspapers intimating the Corporate Debtor the next date of hearing. In spite of publication of notice in two newspapers namely ‘Times of India’ (English), Mumbai Edition and ‘Loksatta’ (Marathi), Mumbai Edition, the Corporate Debtor failed to appear before this Appellate Tribunal and has not raised any objection that there is a pre-existing dispute. In the circumstance, we are of the opinion that the application under Section 9 being complete, the Adjudicating Authority should have admitted the application under Section 9 instead of rejecting it on the ground of limitation.

8. In view of the aforesaid finding, we set aside the impugned order dated 26th June, 2018 and remit the matter to the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench to admit the application under Section 9 after notice to the Corporate Debtor to enable the Corporate Debtor to settle

the matter in the meantime. However, in case, the Corporate Debtor fails to appear inspite of notice, as we have noticed earlier, the Adjudicating Authority will admit the application under Section 9 and initiate the Corporate Insolvency Resolution Process immediately. The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

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