

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 236 of 2018

IN THE MATTER OF:

**The State Trading Corporation
of India Ltd.**

...Appellant

Versus

Gandhar Oil Refinery India Ltd.

...Respondent

Present:

For Appellant : **Mr. Dinesh Agnani, Senior Advocate assisted by
Ms. Sumati Anand, Advocate**

For Respondent : **Mr. S. Nithin and Ms. Arunima Singh, Advocates**

O R D E R

24.05.2018 The appellant (Corporate Debtor) preferred this appeal against order dated 15th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal Court No. IV, New Delhi) whereby and whereunder the application preferred by the respondent – Gandhar Oil Refinery India Limited (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I & B Code’) has been admitted, moratorium has been passed and the name of the ‘Resolution Professional’ has been appointed.

2. Learned counsel appearing on behalf of the appellant submitted that though there was a ‘debt’ but there was no ‘default’ in terms of the agreement between the parties. As per the agreement, the ‘Corporate Debtor’ was liable to

pay the amount to the 'Operational Creditor', on receipt of the payment from third party to whom the goods had been supplied by the 'Operational Creditor'. The matured portion of the debt due to the 'Operational Creditor' amounting to Rs. 78 Crores approximately had already been paid and rest the amount of Rs. 1.75 Crores having not been provided by the third party, in terms of the Agreement it was not paid. Therefore, period of payment of debt had not matured.

3. Learned counsel for the appellant further submits that the third party has now released Rs. 1.75 Crores as is due to the respondent and the claim of the 'Operational Creditor' has now matured i.e. after the impugned order. The 'Corporate Debtor' has already paid the amount to the respondent (Operational Creditor).

4. Learned counsel appearing on behalf of the respondent (Operational Creditor) accepts that a sum of Rs. 1.75 crores has now been paid. Thereby the total dues have been paid in favour of the 'Operational Creditor'. It has not been disputed that in terms of the agreement reached between the 'Corporate Debtor' and the 'Operational Creditor', the 'Corporate Debtor' was liable to pay the amount only on receipt of the amount from the third party to whom the goods were supplied. The Adjudicating Authority having failed to consider the aforesaid fact, we hold that in absence of any 'default', the order of initiation of 'corporate insolvency resolution process' was illegal. For the aforesaid reasons, we set aside the impugned order dated 15th May, 2018 in (IB)-562(PB)/2017.

5. In effect, order(s) passed by Ld. Adjudicating Authority appointing 'Resolution Professional', declaring moratorium and all other order(s) passed

by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

6. Ms. Rita Gupta, Resolution Professional has appeared and agreed to accept a sum of Rupees One Lakh towards her fees and other cost incurred by her. This amount is to be paid by the 'Corporate Debtor' within fifteen days.

7. The appeal is allowed with aforesaid observations and directions. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc