

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 190 of 2017

IN THE MATTER OF:

D. Srinivasulu and Anr.

...Appellants

Versus

Dr. Reddy's Laboratories Ltd.

...Respondent

Present:

For Appellants : Shri Sourav Roy, Advocate

**For Respondent : Shri Mullapudi Rambabu and Vijayshree Pathak,
Advocates**

O R D E R

16.10.2017 This appeal has been preferred by the appellant against the order dated 22nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CP (IB) No. 109/9/HDB/2017 whereby and whereunder the application preferred by the respondent – Operational Creditor under section 9 has been admitted, order of moratorium has been passed, IRP has been appointed and further directions passed in Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code').

2. The main plea taken by the learned counsel for the appellant is that a dispute is in existence and other plea is that the notice under sub-section (1) of Section 8 has been issued not by the 'Operational Creditor' but a Law Firm/Advocate.

3. Respondent in its affidavit has not disputed that the notice under sub-section (1) of Section 8 was issued by a lawyer.

4. Similar issue fell for consideration before this Appellate Tribunal in Uttam Galve Steels Limited v. DF Deutsche Forfait AG & Anr. in Company Appeal (AT) (Insolvency) 39 of 2017. In the said case the Appellate Tribunal by judgment dated 28th July, 2017 observed and held as follows :

“27. From a plain reading of sub-section (1) of Section 8, it is clear that on occurrence of default, the Operational Creditor is required to deliver the demand notice of unpaid Operational Debt and copy of the invoice demanding payment of the amount involved in the default to the Corporate Debtor in such form and manner as is prescribed.

28. Sub-rule (1) of Rule 5 of the ‘Adjudicating Authority Rules’ mandates the ‘Operational Creditor’ to deliver to the ‘Corporate Debtor’ the demand notice in Form-3 or invoice attached with the notice in Form-4, as quoted below: -

“Rule 5. (1) An operational creditor shall deliver to the corporate debtor the following documents, namely: -

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.”

29. Clause (a) and (b) of sub-rule (1) of Rule 5 of the ‘Adjudicating Authority Rules’ provides the format in which the demand notice/invoice demanding payment in respect of unpaid ‘Operational Debt’ is to be issued by ‘Operational Creditor’. As per Rule 5(1) (a) & (b), the following person (s) are authorised to act on behalf of operational creditor, as apparent from the last portion of Form-3 which reads as follows: -

“6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency

resolution process in respect of [name of corporate debtor].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor
Name in block letters
Position with or in relation to the operational creditor
Address of person signing

“

30. From bare perusal of Form-3 and Form-4, read with sub-rule (1) of Rule 5 and Section 8 of the I&B Code, it is clear that an Operational Creditor can apply himself or through a person authorised to act on behalf of Operational Creditor. The person who is authorised to act on behalf of Operational Creditor is also required to state “his position with or in relation to the Operational Creditor”, meaning thereby the person authorised by Operational Creditor must hold position with or in relation to the Operational Creditor and only such person can apply.

31. The demand notice/invoice Demanding Payment under the I&B Code is required to be issued in Form-3 or Form - 4. Through the said formats, the ‘Corporate Debtor’ is to be informed of particulars of ‘Operational Debt’, with a demand of payment, with clear understanding that the ‘Operational Debt’ (in default) required to pay the debt, as claimed, unconditionally within ten days from the date of receipt of letter failing which the ‘Operational Creditor’ will initiate a Corporate Insolvency Process in respect of ‘Corporate Debtor’, as apparent from last paragraph no. 6 of notice contained in Form – 3, and quoted above.

Only if such notice in Form-3 is served, the ‘Corporate Debtor’ will understand the serious consequences of non-payment of ‘Operational Debt’, otherwise like any normal pleader

notice/Advocate notice, like notice under Section 80 of C.P.C. or for proceeding under Section 433 of the Companies Act 1956, the 'Corporate Debtor' may decide to contest the suit/case if filed, distinct Corporate Resolution Process, where such claim otherwise cannot be contested, except where there is an existence of dispute, prior to issue of notice under Section 8.

32. *In view of provisions of I&B Code, read with Rules, as referred to above, we hold that an 'Advocate/Lawyer' or 'Chartered Accountant' or 'Company Secretary' in absence of any authority of the Board of Directors, and holding no position with or in relation to the Operational Creditor cannot issue any notice under Section 8 of the I&B Code, which otherwise is a 'lawyer's notice' as distinct from notice to be given by operational creditor in terms of section 8 of the I&B Code."*

5. The case of the appellant being covered by the decision in "Uttam Galva Steels Limited" (Supra), we have no other option but to set aside the impugned order.

6. In effect, order(s) passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional' or declaring moratorium, freezing of account, if any, and all other order(s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Interim Resolution Professional', including the advertisement 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 appellant company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed, and the Respondents will pay the fees of the Interim

Resolution Professional, for the period he has functioned. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Balvinder Singh]
Member (Technical)

/ns/