

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 336 of 2019

IN THE MATTER OF:

Girish Surajmal Chandak

...Appellant

Versus

Nandlal Giridhar Popat

...Respondent

Present:

For Appellant :

Mr. G.P. Madaan, Ms. Payal Juneja, Ms. Pankhuri Kaur and Mr. Utkarsh Mishra, Advocates

For Respondent :

Mr. Kamal Ahuja and Mr. Chetan Tripathi, Advocates

O R D E R

06.05.2019 The Appellant, shareholder of 'Samadhan Marketing & Merchandise Pvt. Ltd.' has preferred this appeal against order dated 11th February, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench whereby the application u/s 9 of the Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**') filed by the Respondent 'Nandlal Girdhar Popat' (Operational Creditor) for claiming the amount of Rs. 2,81,250/- has been admitted. Learned counsel appearing on behalf of the appellant submits that for a meagre amount of Rs. 2,81,250/- the 'Corporate Debtor' has been made to suffer though it was brought to the notice of the Adjudicating Authority that a civil suit was filed much prior to issue of a Demand Notice dated 22nd February, 2018. It is also submitted that in any case the Appellant is ready with Demand Draft of Rs.2,81,250/- to pay in favour of the 'Operational Creditor'.

2. 'Operational Creditor' claimed that in view of Lease Deed, 'Corporate Debtor' had issued post-dated cheques which got dishonoured. Learned counsel appearing on behalf of the Respondent accepts that a civil suit was filed though he adds that it relates to some other case. However, from the record we find that the suit was filed by the 'Corporate Debtor' on 22nd February, 2017 against the 'Operational Creditor' being '*R.C.S. No. 98 of 2017*' before the Hon'ble Civil Judge, Junior Division – 9 Court, Chandrapur. The prayer of the suit sought to restrain 'Operational Creditor' from encashing the cheques. It is only thereafter the application u/s 9 of the I&B Code was filed and Demand Notice was issued by the 'Operational Creditor' on 22nd February, 2018.

3. In view of the reasons aforesaid, we hold that there is 'existence of dispute' and the application u/s 9 was not maintainable. However, further the counsel for the Appellant has handed over the draft of Rs.2,81,250/- dated 8th March, 2019 issued by the IDBI Bank, Chandrapur, Maharashtra. We are of the view that it is a fit case to close the proceedings.

4. For the reasons aforesaid, we set aside the impugned order dated 11th February, 2019 and dismiss the application u/s 9 of the I&B Code filed by the Respondent (Operational Creditor) as not maintainable. The matter having been settled by payment of Rs. 2,81,250/-, the learned counsel for the Respondent will transmit the draft to the 'Operational Creditor' immediately.

5. 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. 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.

6. So far as the fee and resolution cost of the 'Interim Resolution Professional' is concerned, the Adjudicating Authority will fix the fee of the 'IRP', which the 'Corporate Debtor' will pay the amount. If any amount has already been paid, it shall be adjusted.

[Justice S.J. Mukhopadhaya]
Chairperson

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

/ns/gc