

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 311 of 2017

IN THE MATTER OF:

**PCK Buderus (India) Special
Steel Pvt. Ltd.**

...Appellant

Versus

Sungil India Pvt. Ltd.

...Respondent

Present:

For Appellant : Mr. Prashant Shukla, Advocate

ORDER

17.05.2018 This appeal has been listed on remand by the Hon'ble Supreme Court in view of the decision of the Hon'ble Apex Court in "*Macquarie Bank Limited v. Shilpi Cable Technologies Limited*" – (2018) 2 SCC 674".

2. The appellant preferred an application before the National Company Law Tribunal, New Delhi (hereinafter referred to as the 'Adjudicating Authority') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') for triggering the 'corporate insolvency process' against the respondent – 'Corporate Debtor' on the ground of default of payment Rs.39,86,530/-. It was registered as (IB) 399(ND)/2017. The Adjudicating Authority noticed that the demand notice issued by the 'Operational Creditor' under Section 8(1) of the I & B Code was by an advocate and referring the decision of this Appellate Tribunal in "*Macquarie Bank Ltd. vs. Uttam Galva Metallics Limited*" in "*Company Appeal (AT)(Insolvency) No. 96 of 2017* dismissed

the application on the ground that the notice under Section 8(1) was issued by an advocate. The said order was affirmed by this Appellate Tribunal.

3. The appellant thereafter moved before the Hon'ble Supreme Court against the order this Tribunal. The Hon'ble Supreme Court's decision in '*Macquarie Bank Limited vs. Shilpi Cable Technologies Ltd.*' which was analogous with appeal of the appellant held and observed as follows:

“49. *Since there is no clear disharmony between the two parliamentary statutes in the present case which cannot be resolved by harmonious interpretation, it is clear that both statutes must be read together. Also, we must not forget that Section 30 of the Advocates Act deals with the fundamental right under Article 19(1)(g) of the Constitution to practise one's profession. Therefore, a conjoint reading of Section 30 of the Advocates Act and Sections 8 and 9 of the Code together with the Adjudicatory Authority Rules and Forms thereunder would yield the result that a notice sent on behalf of an operational creditor by a lawyer would be in order.”*

4. After remand from the Hon'ble Supreme Court, though notices were issued to the respondent but it has not appeared in spite of service of notice by Speed Post.

5. In view of decision of the Hon'ble Supreme Court in the case of "*Macquarie Bank Limited (Supra)*", we set aside the order passed in (IB) 399(ND)/2017 and remit the case back to Adjudicating Authority, New Delhi Bench to hear the case after notice to the parties. If the application is complete, the Adjudicating Authority will admit the appeal and in case of any defect, the Adjudicating Authority will grant appropriate time to the appellant. It will be open to the respondent to settle the claim in the meantime. The appeal is allowed with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk