

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 156 of 2019

IN THE MATTER OF:

Sudeep Mahendra Shah & Anr.

...Appellants

Vs.

Cornelian Properties Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Ankur Singhal, Advocate.

For Respondent: -None.

O R D E R

13.03.2019— Learned counsel for the Appellant submits that the Company Petition does not relate to the claim amount. Some of the Company Petitions are under Sections 397, 398 & 402 of the Companies Act, 1956/ Section 241 & 242 of the Companies Act, 2013. The other application under Section 433 (e) read with Section 434 of the Companies Act, 1956 was transferred in which the impugned order was passed and was treated as an application under Section 9 of the 'I&B Code' and has been rejected by the impugned order dated 9th January, 2019 on wrong presumption that there is a pre-existence dispute.

2. Admittedly, after transfer of the case before the Adjudicating Authority, the Appellant had not issued any demand notice under Section 8(1) of the 'I&B Code'. No such notice was enclosed with the petition and

Contd/-.....

therefore, the application under Section 9 was not maintainable as per Rule 5 of the “*Transfer of pending proceedings of winding up on the ground of inability to pay debts*”, which reads as follows: -

“5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.- (1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part

of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

2. All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.”

3. In fact, transfer application under Section 433(e) and Section 434 stood abated as per the aforesaid Rule 5.

4. In the circumstances, while we are not inclined to interfere with the impugned order dated 9th January, 2019, give liberty to the Appellant to

issue demand notice under Section 8(1) on the Respondent and thereafter to take appropriate step in accordance with law. In case, after issuance of demand notice any application under Section 9 is filed, the Adjudicating Authority will decide the same uninfluenced by the impugned order dated 9th January, 2019 as we have not decided the question of pre-existence of dispute in this appeal.

The appeal stands disposed of with aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g