

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI**

Company Appeal (AT) (Ins) No. 05 of 2023

IN THE MATTER OF:

Amarprakash Agarwal

...Appellant

Versus

Evergreen Corporation

...Respondent

Present:

For Appellants : Mr. Mily Ghoshal, Advocate

**For Respondent : Mr. Amit Pai, Mr. Rahat Bansal, Advocates
Mr. Akhil Ahuja, Adv for IRP**

O R D E R

Per: Justice Rakesh Kumar Jain: (Oral)

16.03.2023 This appeal is directed against the order dated 23.12.2022, passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench – I) by which an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short ‘Code’) by the Respondent (Operational Creditor) has been admitted, IRP was appointed and moratorium was imposed.

2. Shorn of unnecessary details, the petition under Section 9 of the Code was filed on 17.12.2019 by the Operational Creditor for resolution of a debt of Rs. 25,88,608/- which constitutes principal amount of Rs. 16,97,448/- and interest amount of Rs. 8,91,160/- calculated at the rate of 21% p.a in terms of the amount mentioned in the invoices. The Operational Creditor mentioned the date of default as 12.05.2017 alleging that it is a stockist of engineering tools, measuring ins, hardware and general merchants based in Mumbai. The said engineering tools etc were being sold by the Operational Creditor to the Corporate Debtor raising invoices from

time to time. Since, the principal amount as alleged was not paid and the interest was also not serviced, the Operational Creditor thought of filing the application under Section 9 of the Code and as it is a pre-requisite under Section 8 of the Code to serve an advance notice, the Operational Creditor sent a notice dated 08.08.2019 to the Corporate Debtor on 13.08.2019 to which reply was also filed by the Corporate Debtor on 21.08.2019.

3. Counsel for the Corporate Debtor/Appellant has submitted, while referring to the submission made and noticed by the Adjudicating Authority in the impugned order, that the Appellant has raised pre-existing dispute between the parties in regard to the quality of the goods sold and in this regard various emails have been referred to starting from 19.04.2018. However, the Adjudicating Authority while admitting the application while recording its finding in Para 22 which are reproduced as under:-

“It is observed that the Notice under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 dated 08.08.2019 issued to the Corporate Debtor and was served on 13.08.2019. It is also noted that the Corporate Debtor replied to the said Demand Notice on 21.08.2019, however, in the reply to demand notice the Corporate Debtor raised defence that there is dispute regarding the claim. It is observed that defence raised by the Corporate Debtor is illusory disputes which were raised first time with an intention to fraudulently evade the liability, on the contrary the Operational Creditor brought to our attention that amounts for which the Corporate Debtor states that there is dispute, in fact the Corporate Debtor already received Credit Note for the same therefore the amount claimed by way of this present petition is over and above the disputed amount.”

4. Counsel for the Appellant has vehemently argued that the finding recorded in Para 22, in order to admit the application and denying the presence of pre-existing dispute, does not deal with the evidence led by the Appellant, therefore, the order is totally non-speaking and without reasons. She has submitted that the Hon'ble Supreme Court in the case of State of

Orissa Vs. Binapani Dei, (1967) 2 SCR 625, has held that not only the judicial order but also an administrative order should be passed by following the principle of natural justice if those orders affects a person in his civil life. It is thus submitted that the impugned order may be set aside and the matter may be remanded back to the Adjudicating Authority for taking a decision afresh after considering evidence led by the Appellant to substantiate the existence of a pre-existing dispute.

5. On the other hand, Counsel appearing on behalf of Operational Creditor/Respondent has submitted that the finding recorded in Para 22 of the impugned order does not call for any interference because reasons have been recorded.

6. We have heard Counsel for the parties and after examining the record are of the considered opinion that the cause shown by the Appellant is justified because on the one hand the Adjudicating Authority is referring to the pleadings coupled with the evidence led by the Appellant in the impugned order, reply and rejoinder and on the other hand while recording the finding, it does not deal with any of the evidence led by the Appellant by which the Appellant could have proved that there is a pre-existing dispute between the parties and therefore, the application under Section 9 of the Code was not maintainable. It is needless to mention that a reasoned order is the heart and soul of the principle of natural justice whereas in the present case the same is conspicuous by its absence.

7. In view of the aforesaid discussion, we have no alternative but to set aside the order much less the finding recorded in Para 22 and in further paragraphs where by not only IRP has been appointed but also the moratorium has been imposed as well.

8. Thus, the appeal is allowed and the impugned order is set aside. The appointment of the IRP is set aside and the rigours of moratorium is removed. The matter is remanded back to the Adjudicating Authority to decide the matter again after taking into considerations the evidence led by the Appellant and Respondent and then pass a reasoned speaking order.

9. With these observations, the appeal is allowed. The parties are directed to appear before the Adjudicating Authority on **17th April, 2023**.

10. The amount which has been deposited by the Appellant in terms of the first order dated 03.01.2023 shall be refunded to the Appellant on production of the certified copy of this order within 15 days. The said amount shall be paid to the person, authorised by the Appellant, after due verification.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sheetal/RR