

NATIONAL COMPANY LAW APPELLAT TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 588 Of 2020

IN THE MATTER OF:

**Devesh S. Amin,
11, Niyojan Nagar,
Near Manekbaug Hall,
Ambawadi,
Ahmedabad.**

...Appellant/Operational Creditor.

Versus

**Kalon Beauty and Healthcare Services LLP,
Having its registered office at:
3 F.F. Indraprasth Corporate,
Opposite Venus Atlantis,
Besides Safal Pag,
Prahladnagar,
Ahmedabad-380015.**

...Respondent/Corporate Debtor.

Present:

For Appellant: Ms. Anushree Kapadia and Ms. Apurva Vakil, Advocates.

For Respondent: None

**O R D E R
(Virtual Mode)**

24.09.2020 Heard the Learned Counsel for the Appellant/Operational Creditor. This Appeal has been filed against the Impugned Judgment and Order passed by the Adjudicating Authority, NCLT, Ahmedabad Bench, Ahmedabad in C.P. No. (IB)/670/NCLT/AHM/2019. The Adjudicating Authority dismissed the Application of the Appellant which was filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (In short I & B Code). The Appellant claimed that as Contractor he had done construction works for the Corporate Debtor which were of civil nature. The Appellant claimed that the Appellant had raised invoices

between 03rd October, 2017 and 21st January, 2018 and had received part payments after adjusting which Rs. 1,45,716/- was still due.

2. It appears from the Impugned Order that the Corporate Debtor was served and the Learned Counsel for the Corporate Debtor (Kalon Beauty and Healthcare Services LLP) appeared and took time but did not file Reply. The Adjudicating Authority has recorded findings in Para 7 to 15 of the Impugned Order as under:

“7. Heard the counsels appearing for both the sides and perused the documents annexed to the Application.

8. On perusal of the records it is found that the corporate debtor has not filed any reply to the petition. On perusal of the records it is also found that from 21.10.2019, on the behest of both the parties, the matter got adjourned for settlement and the respondent has not filed reply on the garb of settlement.

9. On perusal of the record it is found that the demand notice issued by the operational creditor on 09.01.2019 is incomplete and it is not as per the format prescribed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

10. On perusal of the records it is found that the operational creditor has not filed any document like appointment letter/contract in support of his claim that he was engaged by the corporate debtor to perform duties of a supervisor.

11. One must keep in mind that Insolvency & Bankruptcy Code is not a recovery process. Recovery is an individual effort by a creditor to recover his dues through process that has debtor and creditor on opposite sides. In fact, the I & B Code prohibits and discourages recovery in several ways.

12. On perusal of the records it appears that the operational creditor intentionally filed this application with some malicious

intent so as to pressurize the corporate debtor, where the legislation intention is purely based on the resolution of the company. That, the operational creditor also failed to show that the corporate debtor is insolvent.

15. Under the facts and circumstances as discussed herein above, the application, so filed by the applicant is not maintainable and, therefore, stands dismissed.”

3. Thus, the present Appeal has been filed.

4. The Learned Counsel for the Appellant is submitting that the Adjudicating Authority should have admitted the Application under Section 9 of Insolvency and Bankruptcy Code, 2016, as the Corporate Debtor had failed to file any Reply-Affidavit and thus, the Application should have been treated as not disputed. The Learned Counsel submits that there were various invoices raised as mentioned in Part-IV of the Application under Section 9 (Annexure A/14) and the work done was of Rs. 11,05,716/- and the Cash Payments were received which are noted and after giving credit of part payments Rs. 1,45,716/- was due. It is claimed in spite of requests the Corporate Debtor did not clear the dues.

5. We have already seen above the reasons recorded by the Adjudicating Authority for not accepting the claim of the Appellant in spite of the Respondent not filing Reply-Affidavit before the Adjudicating Authority. The Operational Creditor could not invoke confidence of the Adjudicating Authority for initiating such stringent action as one under Section 9 of Insolvency and Bankruptcy Code, 2016. The Learned Counsel for the Appellant states that the Adjudicating Authority wrongly referred the notice under Section 8 of I & B Code (copy of

which is at Page 43 Annexure A/13) to be not in Format. The Learned Counsel says that the notice is in terms of Section 8 of Insolvency and Bankruptcy Code, 2016 (In short I & B Code). We are not going into that technicality. The fact remains that if the Demand Notice at Annexure A/13 under Section 8 of I & B Code is seen, the Demand Notice is addressed as follows:

*“To
Kalon Beauty and Healthcare Services LLP
Having its registered office at:
2 Sudarshan Bungalows,
Near Manekbaug Cross Road,
Vastrapur, Ahmedabad – 380015.”*

6. Now, if the Section 9 Application at Annexure A/14 is seen in part-II of the Format, the address given of the Corporate Debtor is as under:

*“3 F.F. Indraprasth Corporate,
Opposite Venus Atlantis,
Besides Safal Pag, Prahaladnagr,
Ahmedabad-380015.”*

7. Clearly, the Addresses do not match and service of Notice under Section 8 on Corporate Debtor cannot be accepted. The Learned Counsel is relying only on the Postal Cash Receipts which are at Page 44 which relate to booking of the document with the Postal Authorities. The Respondent did not appear or did not contest. That would not be material looking to the fact that it is burden on the Operational Creditor to make out a case for admitting an Application under Section 9 when the address of the Section 8 notice does not match with the registered address mentioned in Application under Section 9, it cannot be said that the burden on the Operational Creditor has been discharged. The Learned Counsel now submits that this was not the stand taken before the Adjudicating

Authority. Even if such stand was not taken, we cannot close our eyes to what is obvious from the record. Insolvency and Bankruptcy Code, 2016 Proceedings are serious matters and we cannot simply admit Application under Section 9 if we are not satisfied with compliance of requirements of law.

8. For these and reasons recorded by the Adjudicating Authority, we are also not convinced that the Application under Section 9 is required to be admitted.

There is no substance in the Appeal. The Appeal is dismissed.

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

[Kanthi Narahari]
Member (Technical)

Basant B./md.