

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 782 of 2019

IN THE MATTER OF:

Excel Metal Processors Limited Appellant

Vs

Benteler Trading International GMBH and Anr. Respondents

Present:

**For Appellant: Mr. Javeed Hussain and Mr. Ashish Rana,
Advocates.**

ORDER

21.08.2019 An application for substitution has been filed by Mr. Imran Iqbal Khan, Director of 'Corporate Debtor' - M/s Excel Metal Processor Limited, to substitute him as the Appellant in place of M/s Excel Metal Processors Limited ('Corporate Debtor') and transpose M/s Excel Metal Processors Limited through 'Interim Resolution Professional' as Respondent. However, as we find that Mr. Imran Iqbal Khan is already Appellant No.2., we allow the Appellant to delete the name of the 1st Appellant – M/s Excel Metal Processors Limited from the Cause Title and to treat Mr. Imran Iqbal Khan as sole Appellant. M/s Excel Metal Processors Limited through 'Interim Resolution Professional' is allowed to be impleaded as 3rd Respondent. Counsel for the Appellant will make necessary corrections in the Cause Title of the paper book and the Cover Page in course of the day.

2. The Respondent – Benteler Trading International GMBH, a German Company ('Operational Creditor') filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') against Excel Metal Processors Private Limited ('Corporate Debtor') alleging that the 'Corporate Debtor' committed default on 27th March, 2016 in making the payment to an extent of US \$1,258,219.42 inclusive of interest @ 15% per annum. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 25th June, 2019 having admitted the application, the Appellant – Imran Iqbal Khan, Director has challenged

the said order. Learned Counsel appearing on behalf of the Appellant referred to the Agreement reached between the parties and submitted that as per the Agreement and as the Office of the Respondent – Benteler Trading International GMBH is in Germany, any suit or case is maintainable only in the Court at Germany. No case can be filed in any Court in India. Therefore, Counsel has raised the question of jurisdiction of the National Company Law Tribunal, Mumbai Bench in entertaining the application under Section 9 of the I&B Code.

3. However, we are not inclined to accept the aforesaid statement as it is now settled and decided by this Appellate Tribunal in ***Binani Industries Limited vs. Bank of Baroda and Anr. – Company Appeal (AT) (Insolvency) No.82 of 2018 etc.*** decided on **14th November, 2018** wherein it was held that ‘Corporate Insolvency Resolution Process’/ insolvency proceedings is not a ‘suit’ or a ‘litigation’ or a ‘money claim’ for any litigation; No one is selling or buying the ‘Corporate Debtor’ a ‘Resolution Plan’; It is not an auction; it is not a recovery, which is an individual effort by the creditor to recover the dues through a process that had debtor and creditor on opposite sides; and it is not liquidation. The object is mere to get resolution brought about, so that the Company do not default on dues.

4. Pursuant to Section 408 of the Companies Act, 2013, the National Company Law Tribunal has been constituted in different States. In terms of the said provision, the Central Government has notified and vested the power on respective National Company Law Tribunals to deal with the matter within its territory, where the registered Offices of the Companies are situated. As per Section 60(1) of the I&B Code, “*The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located*”. As admittedly, the Registered Office of the ‘Corporate Debtor’ namely – Excel Metal Processors Private Limited is situated at 132, B, Mittal Towers Nariman Point, Mumbai-400021, we hold

that the National Company Law Tribunal, Mumbai Bench has the jurisdiction to entertain an application under Section 9 of the I&B Code and the Appellant cannot derive advantage of the terms of the Agreement reached between the parties.

5. Next, it was pointed out that the 'Corporate Debtor' was not served with the Demand Notice in terms of Section 8(1) of the I&B Code. However, from the record we find that Demand Notice under Section 8(1) of the I&B Code was issued by the Respondent - 'Operational Creditor' on 6th March, 2018 demanding the repayment of US \$971,412.98 plus ancillary obligations @ 15 % p.a. amounting to US \$286.804.44 and despite receiving of the said Demand Notice, the 'Corporate Debtor' had not replied, nor repaid the outstanding dues. The Adjudicating Authority has as such not accepted such plea based on record.

6. In spite of the same, we gave option to the Appellant to suggest whether the Appellant or the 'Corporate Debtor' would agree to repay the debt as payable to the 'Operational Creditor', but it is informed that the 'Corporate Debtor' or the Appellant is not in a position to do so.

7. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 25th June, 2019 and in absence of any merit, the Appeal is accordingly dismissed. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/GC