IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-615/(ND)/2021

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s Bajaj Kagaj Limited

...Operational Creditor/Applicant

Versus

M/s Kaka Sons Private Limited

...Corporate Debtor/Respondent

Coram:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 21.07.2022

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER (JUDICIAL)

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

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2. The applicant, M/s Bajaj Kagaj Limited has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.

3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

    a. The Operational creditor used to supply writing and printing paper materials to the Corporate Debtor.

    b. The Operational Creditor submitted that the Corporate Debtor has placed the order for which the Operational Creditor has raised invoices total amounting of Rs. 28,98,158/-.

    c. The Operational Creditor sent a Demand Notice dated 17.07.2020 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

4. The Corporate Debtor has filed his reply against the said Application. The main objections raised by the corporate debtor are as follows:

    a. The Corporate Debtor states that the present application filed before the Tribunal is claiming the amount which is less than the pecuniary limit as mandated under the IBC, 2016.

    b. The Corporate Debtor also submitted that Operational Creditor had supplied more goods than what was ordered by the Corporate Debtor.

    c. The Corporate Debtor also stated that the quality of goods supplied by the Operational Creditor was of inferior quality, to which the Corporate Debtor raised objection against the same.

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5. We have heard Ld. Counsel for the Applicant and the respondent. In the instant Application before examining the said application on merits, it is necessary to examine whether the said petition is maintainable in terms of Section 4 of the IBC, 2016. As the Applicant is claiming Rs. 28,98,158/-. from the Corporate Debtor and the same is been filed before this Tribunal on 20.02.2021. With reference to the Judgment of Hon'ble NCLAT in the matter of **Jumbo Paper Products V. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT)** (Ins) No. 813 of 2021) wherein it was held **that any** statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification of MCA dated 24.3.2020 makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.3020 even if debt is of a date earlier than 24.3.2020.

6. We further refer to the Judgement of Hon'ble High Court of Kerala passed in the matter of **M/s. Tharakan Web Innovations Pvt. Ltd. Vs. National Company Law Tribunal Kochi Bench and Anr. in WP(C) NO. 27636 OF 2020 & 14158 of 2021 dated 01.02.2022.**

> *"24. In Ext.P9 order, the Tribunal has held that the notification dated 24.03.2020 is prospective in nature and it is not retrospective or retro-active in nature. It is further stated by the Tribunal that notification will not apply to pending applications before the concerned Adjudicating Authority under the IBC prior to the issuance of the aforesaid notification. Ext.P9 was an order of the Tribunal at New Delhi and the issue was concerning an application which had been filed and was pending before the Tribunal. The order of the National Company Law Appellate*

Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Ins) No.813 of 2021 was placed before the Court in which the order Ext.P9 was also considered. The Appellate Tribunal found that on facts, in the case considered in Ext.P9 demand notice under Section 8 was issued on 31.7.2019 and the application under Section 9 was filed on 5.9.2019 which were both before 24.3.2020, on which date the threshold limit was increased to Rs.1 Crore. The Tribunal hence found that the said decision cannot be relied upon to decide whether a petition can be maintained for an amount of less than Rs.1 Crore after 24.3.2020. The Appellate Tribunal went on to hold that the threshold limit will be applicable for applications filed under Section 7 or Section 9 on or after 24.3.2020, even if the debt is on a date earlier than 24.3.2020. The above view of the Tribunal is in consonance with the decision of the Hon'ble Supreme Court in ***Manish Kumar (supra).***

25. Even otherwise, the Tribunal has in my opinion, gone wrong in its interpretation of Section 4 of the Act. Section 4, after amendment on 24.3.2020 clearly says that Part II of the IBC shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is Rs.1 Crore. As per Section 3(12) of the IBC, "default" means nonpayment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. What is to be noted is that Corporate debtors who are in default of less than Rs.1 lakh prior to the amendment and Rs.1 Crore after the amendment, also are defaulters. However, whether a proceeding for insolvency or liquidation of such corporate debtor should be initiated would depend on the amount in default. It is only if the Corporate debtor has incurred a default of at least the minimum amount stated in Section 4 that a proceeding under the provisions of the IBC under Part II can be initiated. The minimum

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amount of default is statutorily fixed, with power available to the Government to refix, upto a sum of Rs.1 Crore. Once the Government has exercised the said power by issuance of a notification fixing the minimum amount of default as Rs.1 Crore, the Section will have to be read by replacing the words "one lakh rupees" by "rupees one crore". ***As such, from the date of amendment, Part II of the IBC can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 Crore.*** *(emphasis supplied). Once that is the position, the application of Part II itself is taken away with effect from 24.03.2020 as far as defaults less than Rs.1 Crore are concerned and hence no application can be filed after 24.03.2020 regarding an amount where the default is less than Rs.1 Crore. By application of Section 10A, even in cases where the default is more than Rs.1 Crore, an application cannot be filed for a period of six months from 24.3.2020. There can be no other understanding of the statutory provisions, as there is no ambiguity in the language. It is well settled that the grammatical and ordinary sense of the words of the Statute should be adhered to, unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the provisions of the statute. In the words of* ***Viscount Simon L.C.*** *"The golden rule is that the words of a statute must prima facie be given their ordinary meaning...... Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction" (see* ***Nokes v. Doncaster Amalgamated Collieries Ltd., [(1940) AC 1014 (HL)], Chandvarkar Sita***

Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447] and B. Parmanand v. Mohan Koikal [(2011) 4 SCC 266)]. *The above observations are fully supported by the judgment of the Apex Court in* ***Manish Kumar (supra),*** *wherein the Hon'ble Supreme Court categorically held that the litmus test is whether there exists a default as defined in Section 4 of IBC, on the date of the application....”*

7. Since the instant application filed under section 9 of the Code which is the subject matter of our consideration was filed on 20.02.2021 and even the statutory demand notice U/s 8 was sent on 17.07.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case. Hence, for the above-mentioned reasons the said Application is ***dismissed as not maintainable.***

Let copy of the order be served to the parties.
Consign the file to the record room.

Sd/-

(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-

(DHARMINDER SINGH)
MEMBER (J)