

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 136 of 2018

IN THE MATTER OF:

Mr. Satyaprakash Aggarwal & Ors.

...Appellants

Vs.

Vistar Metal Industries Pvt. Ltd.

...Respondent

Present: For Appellants: - Mr. Shyam Babu, Advocate.

For Respondent:- Mr. Sandeep S. Ladda, Mr. Soumik Ghosal, Mr. Devender Singh and Mr. Gaurav Singh, Advocates.

ORDER

21.05.2018- This appeal has been preferred by the Appellants against an order dated 15th February, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in C.P. No. 1331/I&BP/2017. By the impugned order, the joint application has been preferred by the Appellants ('Financial Creditors') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been rejected on the ground that the tabular chart reveals that the 'dates of default' are not specifically mentioned. It has been observed that the debt due as on 15th December, 2015, 15th March, 2017 and 15th May, 2017 in respect of three claims of the 'Financial Creditors' has been mentioned therein.

Contd/-.....

It is informed that out of the three dates, there is a typographical error, which could have been corrected if allowed time.

2. Notice was issued to the Respondent. They have appeared but not filed any reply affidavit denying the averment made in the Form 1 or the appeal.

3. Admittedly, we find that on the technical ground i.e. the application is defective, the Adjudicating Authority has rejected the application under Section 7 of the 'I&B Code'. Therefore, we cannot appreciate the impugned order, as before rejecting the application the Adjudicating Authority was required to give an opportunity to the Appellant to rectify the defect.

4. Further, in a petition under Section 7 of the 'I&B Code', the Adjudicating Authority is required to decide whether the Form 1 along with documents is complete or not. The Adjudicating Authority is not required to decide as to what is the actual amount of claim and other details, which is required to be determined by the 'Resolution Professional' after initiation of 'Corporate Insolvency Resolution Process'.

5. For the reasons aforesaid, we set aside the impugned order dated 15th February, 2018 and remit the case to the Adjudicating Authority to

find out whether the application in Form 1 is complete or not after notice to the parties and hearing the parties. If there is any defect, the Adjudicating Authority will allow time to the Appellant to remove the defects. In the meantime, it will be also open to the Respondent- 'Corporate Debtor' to settle the claim with the 'Financial Creditor'.

6. The appeal stands disposed of with aforesaid observations and directions. No Cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/g