

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 1590 of 2018

IN

Company Appeal (AT) (Insolvency) No. 314 of 2017

IN THE MATTER OF:

Shaw Traders

...Appellant

Vs.

Balaji Paper & Newsprint Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Shiv Shamhen Banerjee, Advocate.

For Respondent: - Mr. Abhijeet Sinha and Mr. Mangaljit Mukherjee, Advocates.

ORDER

08.10.2018— This application has been filed by the ‘Corporate Debtor’ for clarification and modification of the last part of the judgment dated 18th September, 2018, wherein taking into consideration the fact that there was no dispute with regard to quality of goods and in absence of any defect, this Appellate Tribunal set aside the order passed by the Adjudicating Authority (National Company Law Tribunal) and directed to admit the application preferred by the ‘Operational Creditor’.

2. Learned counsel appearing on behalf of the ‘Corporate Debtor’ submitted that they have also brought to the notice of the Adjudicating Authority as also this Appellate Tribunal that amount has already been paid and thereby, no amount is payable to the ‘Operational Creditor’ as per law as also on facts. However, such question was not considered by

Contd/-.....

this Appellate Tribunal on the ground that the notice under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) was issued by an Advocate which was the ground taken by the Adjudicating Authority to reject the application under Section 9 preferred by the Appellant, this Appellate Tribunal set aside the order.

3. This Appellate Tribunal while dealt with the notice under Section 8(1) issued by an Advocate and following decision in ***“Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd.- Civil Appeals No. 15135, 15481 and 15447 of 2017”*** while remitting the case directed the Adjudicating Authority to admit the application without deciding the issue whether there is any debt payable as per law and in fact or not as pleaded by the 'Corporate Debtor'.

4. Learned counsel appearing on behalf of the 'Operational Creditor' further submitted that all the facts have been noticed by the Appellate Tribunal in the judgment dated 18th September, 2018. Reference has been made to one or other paragraph wherein this Appellate Tribunal has taken note of various supplies made by the 'Operational Creditor'. However, we find that the issue with regard to the question whether debt is payable under the law or in fact has not been decided by this Appellate Tribunal or the Adjudicating Authority.

5. In the facts and circumstances, without going into the question whether there is a debt due under the law or in fact or not, we make it clear that such issue can be raised by the 'Corporate Debtor' before the Adjudicating Authority before admission of the case and only on satisfaction, the Adjudicating Authority may pass appropriate order admitting or rejecting the petition. The last paragraph 12 of the impugned judgment dated 18th September, 2018 stands modified/clarified to the extent above.

I.A. No. 1590 of 2018 stands disposed of.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/g