

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 158 of 2017

IN THE MATTER OF:

Jord Engineers India Ltd.

...Appellant

Vs

Valia & Co.

....Respondent

Present:

For Appellant: None.

For Respondent: Mr. Dhaval Deshpande, Advocate.

ORDER

09.07.2018: The case has been listed in view of the order of Hon'ble Supreme Court date 2nd April, 2018 in SLP No. 8145/2018. On 25th April, 2018 the Registry was directed to serve notice to the Appellant and the Respondent. After service of notice, the Respondent appeared but nobody appeared on behalf of the Appellant. In this background, fresh notice was issued on 14th May, 2018. Thereafter nobody appeared for the Appellant. From the note given by the postal authority in the returned post we find that the Appellant has left and therefore notice could not be delivered. However, taking into consideration the decision of the Hon'ble Supreme Court and the remand, we have heard learned counsel for the Respondent (Operational Creditor) on merit.

2. The Respondent – 'M/s Valia & Co.' filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') against the Corporate Debtor – 'M/s Jord Engineers India Ltd.', which was admitted on 31.07.2017. The said order was set aside by this Appellate Tribunal by judgment dated 13.10.2017 on the ground that the notice under Section 8(1) was given through the Advocate.

3. In the case of **'Macquarie Bank Limited Vs. Shilpi Cable Technologies Limited'**, (2018) 2 SCC 674, in Civil Appeals No. 15135, 15481 and 15447 of 2017 on 15th December, 2017, Hon'ble Supreme Court held as follows:-

"49. Since there is no clear disharmony between the two parliamentary statutes in the present case which cannot be resolved by harmonious interpretation, it is clear that both statutes must be read together. Also, we must not forget that Section 30 of the Advocates Act deals with the fundamental right under Article 19(1)(g) of the Constitution to practise one's profession. Therefore, a conjoint reading of Section 30 of the Advocates Act and Sections 8 and 9 of the Code together with the Adjudicatory Authority Rules and Forms thereunder would yield the result that a notice sent on behalf of an operational creditor by a lawyer would be in order."

4. The Hon'ble Supreme Court in the appeal preferred by the Respondent in Civil Appeal No. 8145/2018 set aside the order of this Appellate Tribunal dated 13th October, 2017 and remitted back the appeal for fresh disposal in accordance with law.

5. Admittedly, the Application under Section 9 was admitted by the Adjudicating Authority and thereby Corporate Insolvency Resolution Process was started against 'M/s Jord Engineers India Ltd'. Apart from the points as were raised and noticed by the Appellate Tribunal on 13th October, 2017, no other ground was pleaded to come to the conclusion that initiation of Corporate Insolvency Resolution Process under Section 9 was illegal.

6. In the present case we find that apart from advocate notice which is held to be valid by the Hon'ble Supreme Court, the application under Section 9 was complete and no allegation has been made by the Appellant that there is an existence of dispute, nor the Appellant has annexed any evidence to show existence of dispute. One of the ground taken was about maintainability of the application, that the claim amount related to the period during 2011-2012 is barred by limitation, but such ground can not be accepted in view of provision of Article 137 Part II of the Limitation Act 1963, wherein period of three years prescribed from the date when the right to apply accrues.

7. Admittedly, the right to apply under Section 9 accrued to Respondent only after the Insolvency and Bankruptcy Code, 2016 came into force, i.e. 1st December, 2016, the application under Section 9 was preferred within three years, therefore it was not barred by limitation. There was another issue raised by the Corporate Debtor that the goods supplied was of inferior quality, but no such dispute was raised by the Appellant prior to issuance of notice under Section 8(1). The question of quality was raised by the Appellant only when reply under Section 8(2) was filed by the Corporate Debtor. Therefore, that cannot be taken into consideration to annul the initiation of Corporate Insolvency Resolution Process.

8. In view of the fact that the Hon'ble Supreme Court has set aside earlier order passed by this Appellate Tribunal on 13th October, 2017, the Corporate Insolvency Resolution Process initiated against 'M/s Jord Engineers India Ltd.' revived. The Resolution Professional has taken charge of the same as ordered by the Adjudicating Authority and the Moratorium order etc. passed by the Adjudicating Authority is continuing. However, we make it clear that the period

of pendency of the appeal before this Appellate Tribunal and then before the Hon'ble Supreme Court, till its disposal i.e. from 30th August, 2017 till today (date of order) cannot be counted and therefore should be excluded from counting of the period of 180 days or 270 days. The Adjudicating Authority will now ensure that the Corporate Insolvency Resolution Process concludes as per the I&B Code. The appeal stands disposed of. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk