

**NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.**

**BEFORE NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.**

C.P. No. (IB) 10/ALD/2017

CORAM: SRI H.P. CHATURVEDI, MEMBER (Judicial)

Application by Operational Creditor to initiate Corporate Insolvency Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

(DISTRICT-KANPUR)

IN THE MATTER OF

M/s. Surednra Trading Company,
Through Sri Mahendra Kumar Baid
(Sole Proprietor), House No. 102,
Village and Post Office-Farbesganj,
War No. 12, District Araria, Bihar-854311.

Applicant/Operational Creditor

VERSUS

M/s. Juggilal Kamlpal Jute Mills Company Ltd.
Having its Registered Office at 84/49, Zareeb Chowki,
Kalpi Road, Kanpur-208012.

Corporate Debtor

PRESENT:- Sri Vinayak Mithal and Sri Kaushlendra Nath Singh, learned Counsel for applicant, Sri Arvind Gupta, Advocate along with Sri Jahangir Haidar, Sri Sachindra Mohan, learned counsel for the corporate debtor.

ORDER

(Pronounced on 03.05.2017)

The case is reserved for pronouncement of the order in respect of the present company petition.

The present company petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by the operational creditor M/s.




Surendra Trading Company a sole proprietary concern seeking initiation of corporate insolvency resolution process, against the corporate debtor named as Juggilal Kamlapat Jute Mills Ltd, under the provision of Insolvency and Bankruptcy Code, 2016.

It is stated in the prescribed format (Part V) of the application, by providing particulars about operational debts, that the applicant / operational creditors has claim for an amount of Rs. 17,06,766.95, as unpaid debts. Which is due on 24.10.2004, and has allegedly been defaulted by the corporate debtor, despite acknowledging the outstanding liability on 31.03.2004.

The above mentioned application is annexed with certain documents and is supported by an affidavit of Sri Mahendra Kumar Baid dated 06.02.2017 being proprietor of the operational creditor firm (M/s. Surendra Trading Company). The affidavit was sworn on 06.02.2017 thereafter the above stated application filed on 14.02.2017 thereafter the matter was listed for hearing before this Bench on 16.02.2017 that day this Court pointed out certain procedural defects in the application to be removed before registration of application and for the purpose to pass an appropriate order on admission / rejection of the IRP application. The operational creditor through his counsel was instructed to clarify about the above mentioned debts whether it is barred by law limitation or otherwise. Further as to whether it initiated any recovery proceedings earlier, before a competent Court of law and whether such proceedings deemed to be stayed, in view of the provision of the sick companies Resolution Act during the pendency of the BIFR reference. Thus the matter was adjourned for removal of objection / procedural defect on 28.02.2017.

As per the material available on record the operational creditor / applicant did not remove the procedural defect nor replied to the legal query on limitation as raised by this Court till 28.02.2017. When the matter came up for hearing on 28.02.2017 the counsel for the operational creditor sought further time to clarify its position on prescribed limitation and for removal others defects. Thus the matter stood adjourned for further hearing on 03.03.2017. On 03.03.2017 the respondents / corporate debtor's counsel appeared and sought to file formal objection raising question on maintainability of the present petition as well as defects on the demand notice issued to the corporate debtor which is mandatory. Hence the matter was adjourned to 09.03.2017. Meanwhile on 08.03.2017 a third party, J.K. Mills Mazdoor Morcha filed a Misc. Company Application No. 18 of 2017 to be as intervener in the present matter. Therefore



locus standi of the intervener was expected to be determined first by the Tribunal.

It is matter of record, that being subsequent development in the matter, the workers' Union name J.K. Jute Mazdoor Morcha has preferred another IRP application under the I & B Code bearing C.P. No. (IB) ³⁶~~10~~/ALD/2017. The said application stands disposed of a separate order dated 28.04.2017 of this Tribunal.

In the present matter an order impugned dated 09.03.2017 of this Tribunal was taken in appeal before the Hon'ble NCLAT, New Delhi bearing Company Appeal (AT) No. 09 of 2017 by the aggrieved party. Which has been disposed of by the Hon'ble NCLAT vide its order dated 01.05.2017.

The Hon'ble NCLAT in order in appeal has given such findings holding that the present application was defective and defects having been pointed out on 16.02.2017 have not been taken care by the operational creditor. Therefore Their Lordship was pleased to held such the present petition filed under section 9 of the I & B Code by the operational creditor being incomplete, was fit to be rejected. The Hon'ble NCLAT also pleased to issue further direction to this Tribunal to reject and closed the petition preferred by the respondent (herein applicant / operational creditor). For the sake of convenience of the relevant portion of the para nos. 44,51, 52 & 53 of Hon'ble NCLAT's order is reproduced hereinbelow:

.....44. However, the 7 days period for the rectification of defects as stipulated under proviso to the relevant provisions as noticed above is required to be complied with by the corporate debtor whose application, otherwise, being incomplete is fit to be rejected. In this background we hold that the proviso to sub-section (5) of section 7 or proviso to sub-section (5) of section 9 or proviso to sub-section (4) of section 10 to remove the defect within 7 days are mandatory, and on failure applications are fit to be rejected.

51. Further, we find that the application was defective, and for the said reason the application was not admitted within the specified time. Even, if it is presumed that 7 days additional days' time was to be granted to the operational creditor, the defects having pointed out on 16th February, 2017 and having not taken care within time, we hold that the petition under section 9 filed by the respondent / operational creditor being incomplete was fit to be rejected.

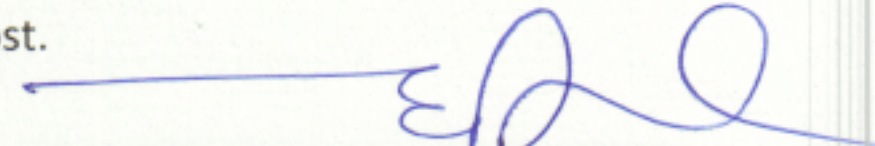
52. For the reason aforesaid, we direct the Adjudicating Authority to reject and close the Petition preferred by respondents. After we reserved the judgment if any order has been passed by the Adjudicating Authority, except order of dismissal, if any, are also declared illegal.

53. the appeal is allowed. However, there shall be no order as to cost.

Keeping in view of the above stated findings and direction issued by the Hon'ble Appellate Tribunal in the above mentioned appeal the present application filed by the operational creditor / applicant is rejected, the interim order dated 09.03.2017 of this Tribunal for direction maintaining for the status quo on immovable properties and fixed assets of the corporate debtor company be deemed to be vacated as this order stands merged with the order dated 01.05.2017 passed by the Hon'ble NCLAT.

Consequently, the present application / petition is rejected and stand closed.

However, there is no order as to cost.



(H.P. CHATURVEDI, MEMBER (Judicial))

Sharad

Order Date : 03/05/2017