

**In the National Company Law Tribunal  
Single Bench, Chennai**

**TCP/62/(IB)/CB/2017**

Under Section 9 of the IBC, 2016

**In the matter of**

Agarwal Coal Corporation Private Limited

V/s

Sun Paper Mill limited

Order delivered on: 01.09.2017

For the Petitioner/OC: Shri A. Abdul Hameed, Advocate

For the Respondent/CD: Shri K.K. Muralitharan, Advocate

**Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)**

**ORDER**

1. Under Consideration is a Company Petition filed by Agarwal Coal Corporation Private Limited (in short, 'Petitioner/Operational Creditor') against Sun Paper Mill limited (in short, 'Respondent/Corporate Debtor') under section 433 (e) and (f), 434 (i) (a) and 439 (i) (b) of the Companies Act, 1956 before the Hon'ble Madras High Court which has been transferred to this tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016. Now, pursuant to the Central Government notification number GSR 119(E) dated 07.12.2017, this petition needs determination as per the provisions of the Insolvency and Bankruptcy Code 2016 (In short, 'IB Code 2016').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. Shri A. Abdul Hameed, the learned counsel appearing on behalf of the petitioner/OC submitted that the Petitioner is in the business of supplying coal whereas the Respondent/CD is engaged in the business of manufacturing paper, pulp, board, cellulose products and other products incidental to its activities. It is submitted that the Respondent supplied non cooking coal to the Petitioner by two High seas sale agreements both dated 04.11.2013.
4. It is further submitted that after taking into account the total value of the products supplied by the petitioner and the total amounts paid by the respondent, the respondent is still liable to pay to the petitioner a balance sum of Rs. 2,59,33,935/- as per the contract.
5. It is further submitted that the petitioner, after making several requests to settle his dues and having waited for a long period of time for his legitimate dues, issued a statutory notice dated 03.07.2014 under section 434 of the Companies Act, 1956, demanding the payment of Rs. 2,59,33,935/- and thus now claimed to be an Operational Creditor under the provisions of

the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD. It is further submitted that the respondent has admitted the liability by not replying the statutory notice dated 03.07.2014.

6. Shri K.K. Muralitharan, the learned counsel appearing on behalf of the respondent/CD vehemently opposed the contentions of Petitioner/OC and submitted that the instant petition is false, vexatious and not maintainable. He further submitted that he does not want to go into merits of this case but wants to oppose the same on technical aspect in view of the MCA notification dated 29.06.2017.
7. The learned counsel for the Respondent has drawn the attention of this Adjudicating Authority to the MCA notification no. GSR 732(E) dated 29.06.2017 whereby proviso to Rule 5 of the Companies (Transfer of Pending Proceedings) Amendment Rules, 2017 stipulates that requirements like filing of Affidavit and Bank Statement under Section 9 (3) (b) and (c) of the IB Code, 2016 are to be done on or before 15<sup>th</sup> July, 2017 else the petition shall stand ABATED. It is further submitted that the said notification is law of the land and is to be abided by the petitioner in true spirit.

8. It is further submitted that the respondent/CD has miserably failed to comply with the mandatory provisions as specified in the said notification within the time prescribed i.e. 15.07.2017 as he has filed the affidavit and bank statement as stipulated u/s 9 (3)(b) & (c) of the IB Code 2016 on 18.07.2017.
9. The learned counsel for the respondent also placed his reliance on two judgements passed by the single bench of this tribunal in *TCP/380/(IB)/2017* and *TCP/350A/(IB)/2017* wherein the transferred petitions were abated due to non-compliance of the provisions of IB Code 2016 in view of MCA notification dated 29.06.2017.
10. The learned counsel for the petitioner has relied on a judgement passed by the single Bench of this Tribunal in *TCP/198/(IB)/CB/2017 Mechano Engineering Works Vs. Propel valves* wherein an application was admitted. He also relied on a judgement passed by the Hon'ble NCLAT in *Unimark Remedies Limited Vs. Ashok Alco Chem Limited* and another judgement passed by the Hon'ble NCLT, Guwahati Bench wherein the validity of the said notification was in question.

11. Before concluding this matter, I feel that this case does not warrant to go deep into merits of the case in view of the contentions raised before this bench by the respondent.
12. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, it is clear that the petitioner has filed the affidavit and bank statement on 17.07.2017 and 18.07.2017 respectively.
13. With regard to the above judgements relied by the counsel for petitioner, I am of the opinion that the above referred judgement is not applicable in support of the contentions of the petitioner as the facts and circumstances of this present case are otherwise and also, the said notification is still valid and holds good in eyes of law.
14. Therefore, the instant petition stands **ABATED** for non-compliance of the provisions in view of the MCA notification dated 29.06.2017.
15. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.



**K. ANANTHA PADMANABHA SWAMY**  
**Member (J)**

RLS