
(2022) 11 NCLT CK 0039

In the National Company Law Tribunal

Case No : IA 2690 Of 2022 In C.P. No. 362/IBC/MB/2021

Agarvanshi Aluminium & Infra Limited

APPELLANT

Vs

True Wall Specialities Private Limited

RESPONDENT

Date of Decision : 10-11-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9

Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016 — Rule 6

Citation : (2022) 11 NCLT CK 0039

Hon'ble Judges : H.V. Subba Rao, Member (J); Satya Ranjan Prasad, Member (T)

Bench : Division Bench

Advocate : Prachi Wazalwar, Jugal Haria

Final Decision : Disposed Of

Judgement

H.V. Subba Rao, Member (Judicial)

1. The above application is filed by M/s True Wall Specialities Pvt. Ltd. who is the Corporate Debtor in the above CP for dismissal of the above CP bearing No. 362 of 2021 on the ground that the above Company Petition does not meet the threshold limit of Rs 1 crore as per the notification dated 24th March, 2020 issued by the Ministry of Corporate Affairs increasing the threshold limit from Rs1 lakh to Rs 1 crore.

2. Heard both sides and perused the record. As stated above, the above IA is filed challenging the maintainability for want of the minimum threshold limit for filing the main Company Petition. It is an admitted fact that the above Company Petition was filed by the Operational Creditor on 16th March 2021 long after the notification issued by the MCA. The petitioner/Corporate Debtor herein is praying for dismissal of the above Company Petition basing on the judgment of the Hon'ble NCLAT in Jumbo Paper Products Vs. Hansraj Agro Fresh Private Limited.

3. The Operational Creditor is objecting the dismissal of the above Company Petition on the ground that the Hon'ble NCLAT subsequent to the order of Jumbo

Paper Products in Madhusudan Tania Vs. Amit Choraria and another held that the threshold amount has to be considered on the date of default and the order of Madhusudan Tania being rendered by a larger Bench comprising of 3 Members is binding. The Operational Creditor further contends that the notification issued by the MCA is in exercise of powers conferred by IBC which is in the nature of delegated legislation which cannot apply retrospectively.

4. The alternative prayer of the Operational Creditor without prejudice is that the above CP may be disposed of granting liberty to restore the CP in case the Hon'ble Supreme Court set aside the order passed by the Hon'ble NCLAT in Jumbo Paper Products which is challenged before the Hon'ble Supreme Court.

5. Disregarding the contention of the Operational Creditor in this case, it is appropriate to mention here that this Tribunal in similar circumstances in number of cases merely disposed of the Company Petition by granting liberty to the Operational Creditor to file an application for revival of CP in case the Hon'ble Supreme Court set aside the order of the Jumbo Paper

Products and similar order can be passed in this case also since the issue is subjudice before the Hon'ble Supreme Court.

6. Accordingly, the above IA 2690 of 2022 is allowed and disposed of with the above observation. Consequently the above CP is also disposed of granting liberty to the Respondent-Operational Creditor to file appropriate application for restoration of the CP in case the order passed by Hon'ble NCLAT in Jumbo Paper Products is set aside by the Hon'ble Supreme Court.