
(2022) 05 NCLT CK 0042

In the National Company Law Appellate Tribunal

Case No : ?C.P. (IB) 88 Of 2022

B.P.Packagings Private Limited

APPELLANT

Vs

Multiply Paper Packaging Industriesprivate Limited

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 4, 7, 9

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 5, 6

Citation : (2022) 05 NCLT CK 0042

Hon'ble Judges : Dharminder Singh, Member (J); Sumita Purkayastha, Member (T)

Bench : Division Bench

Advocate : Vinay Kumar Jain

Final Decision : Disposed Of

Judgement

Dharminder Singh, Member (Judicial)

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. The applicant, M/s BP Packagings Pvt. Ltd. has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.

3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

a. The Operational creditor used to supply cardboard boxes to the Corporate Debtor.

b. The Operational Creditor submitted that the Corporate Debtor has placed the order for the Corrugated Boxes for which the Operational Creditor has raised invoices total amounting of Rs. 2, 62,657.00/- out of which the Corporate Debtor has made the payment of Rs. 1,00,000/- as a result the outstanding amount is Rs. 1,62,657.00/-.

c. The Operational Creditor sent a Demand Notice dated 10.07.2021 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

4. The Corporate Debtor has not filed his reply against the said Application.

5. We have heard Ld. Counsel for the Applicant and the matter has been proceeded ex-parte. In the instant Application before examining the said application on merits, it is necessary to examine whether the said petition is maintainable in terms of Section 4 of the IBC, 2016. As the Applicant is claiming Rs. Rs. 1,62,657.00/- from the Corporate Debtor and the same is been filed before this Tribunal on 06.01.2022. With reference to the Judgment of Hon'ble NCLAT in the matter of Jumbo Paper Products V. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins) No. 813 of 2021) wherein it was held that the any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification of MCA dated 24.3.2020 makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.2020 even if debt is of a date earlier than 24.3.2020.

6. Since the application under section 9 which is the subject matter of this Application was filed on 06.01.2022 and even the demand notice was sent on 10.07.2021, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case. Henceforth, for the above-mentioned reasons the said Application is not admitted.

Let copy of the order be served to the parties.

Consign the file to the record room.