
(2022) 11 NCLT CK 0050
In the National Company Law Tribunal
Case No : C.P. No. 430/IBC/MB/2021

?Mrs. Jigisha Satishkumar Mehta

APPELLANT

Vs

Miltech Industries 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 0050

Hon'ble Judges : H.V. Subba Rao, Member (J); Anuradha Sanjay Bhatia, Member (T)

Bench : Division Bench

Advocate : Jugal Haria, Neeta Solanki, Fatima Barodawalla

Final Decision : Disposed Of

Judgement

H.V. Subba Rao, Member (Judicial)

1. The above CP is filed by an Operational Creditor praying for initiation of CIRP process against the Corporate Debtor for an unresolved operational debt of Rs. 46,27,960/- payable by the Corporate Debtor towards the cost of the material supplied by the Operational Creditor to the Corporate Debtor.

2. Since the amount claimed in the above CP is less than Rs. 1 Crore and is filed subsequent to the notification dated 24th March 2020 of the MCA raising the threshold limit from Rs. 1 lakh to Rs. 1 Crore, the Corporate Debtor insisted for dismissal of the Company Petition for want of the threshold limit. Hence, arguments were heard on both sides on the limited point of maintainability of the above Company Petition. The learned Counsel appearing for the Corporate Debtor sought dismissal of the above CP by relying 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 asides 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 asides 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 CP is disposed of granting liberty to the 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