

M/S Jumbo Paper Products vs Hansraj Agrofresh Private Limited on 25 October, 2021

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 813 of 2021

IN THE MATTER OF:

Jumbo Paper ProductsAppellant

Versus

Hansraj Agrofresh Pvt. Ltd. Respondent

Present

For Appellant: Ms. Charu Sachdev, Mr. Gulshan Kumar
Sachdev, Advocates

For Respondent: None

ORDER

(Virtual Mode) The appeal was heard on admission on 04.10.2021.

2. The Adjudicating Authority (NCLT, Allahabad Bench) has, through impugned order dated 23.7.2021, dismissed the application filed by the Appellant under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called IBC).

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3. The Learned Counsel for the Appellant-Operational Creditor has argued that Operational Creditor used to provide corrugated paper boxes/cartons to the Corporate Debtor and he has claimed that the Corporate Debtor never raised any dispute about quality or quantity of the supplied goods when he was supplying them. Since some payment was pending with the Corporate Debtor, the Operational Creditor sent demand notice under section 9 to the Corporate Debtor. In reply to this demand notice, the Corporate Debtor again did not advert to any pre-existing dispute about the quality or

quantity of the goods supplied but only sought time to clear the dues. The Operational Creditor thereafter filed application under section 9 of IBC on 13.9.2020 since there was a debt in default since 27.5.2018 till 23.6.2018.

4. The Adjudicating Authority dismissed the application of the Operational Creditor in view of notification S.O 1205(E) dated 24.3.2020 issued by the Ministry of Corporate Affairs, Government of India on the ground that the alleged debt that is claimed to be payable in application under section 9 is below the threshold limit stipulated in the said notification.

5. The Ld. Counsel for Appellant has also argued that the notification cannot be applied retrospectively, as has been held in the judgment of Company Appeal (AT) (Ins) No. 813 of 2021 NCLAT in Company Appeal (AT) (Insolvency) No. 557 of 2020 dated 12.10. 2020 since the notification of the Ministry of Corporate Affairs issued on 24.3.2020 is prospective in effect. Therefore, it is to be considered that the debt was payable on the date the Section 9 application was filed, on 13.9.2020. Therefore, the Operational Creditor's claim is that though the Section 9 application was filed on 13.9.2020, the debt in default related to the period 27.5.2018 to 23.6.2018. The debt which is of an amount of Rs.13,46,278/- predates the issue of notification on 24.3.2020, hence the application should be admitted.

6. Section 4 of the IBC reads as follows: -

"4. Application of this Part - (1) This part shall apply to matters relating to the Insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees. Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees."

7. The notification No. S.O 1205 (E) dated 24.3.2020 issued by the Ministry of Corporate Affairs is reproduced below:-

Company Appeal (AT) (Ins) No. 813 of 2021 Company Appeal (AT) (Ins) No. 813 of 2021 As can be seen from the notification, the threshold limit of debt has been raised from Rs. 1 lakh to Rs. 1 crore. Accordingly application under section 7 or section 9 will be admissible only if debt in default is more than the threshold amount of Rs. 1 crore.

8. The Appellant has cited the judgment of Hon'ble NCLAT in the matter of Madhusudan Tantia Vs. Amit Choraria & Anr. in CA (AT) (Ins) No. 557 of 2020 to claim that the notification dated 24.3.2020 (supra) has only prospective effect. Hence the ratio of this judgment supports his contention and this Appeal should be admitted. The Ld. Counsel of Appellant has also cited the judgments of Hon'ble Apex Court in Union of India & Ors. Vs M/s. G.S. Chatha Rice Mills & Anr., Civil Appeal No. 3249 of 2020 and Union of India v M.C. Ponnose 2020 SCC online SC

770.

9. A perusal of the judgment in Madhusudan Tantia case (supra) shows that the demand notice under section 8 was issued on 31.7.2019 and the application under section 9 was filed on 5.9.2019. Both these dates are before 24.3.2020, and therefore threshold limit of the debt as per Law at the time the application under section 9 was filed was Rs. 1 lakh. We, therefore, do not think the facts of the instant appeal are same as the facts in the Company Appeal (AT(Ins) No. 557 of 2020. Company Appeal (AT) (Ins) No. 813 of 2021

10. The other judgments cited by learned Counsel for Appellant broadly lay down that 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 dated 24.3.2020 (supra) 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. Since the application under section 9 which is the subject matter of this appeal was filed on 13.9.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case.

11. For the above mentioned reasons, we do not find cogent reason to admit the appeal. It is, therefore, dismissed at the stage of admission.

(Justice Jarat Kumar Jain) Member (Judicial) Dr. Alok Srivastava) Member (Technical) New Delhi
25th October, 2021 /aks/ Company Appeal (AT) (Ins) No. 813 of 2021