

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insol) No. 17, 18 and 19 of 2017

J.R. Agro Industries (P) Ltd. Appellant

Company Appeal (AT) (Insol) No. 20 and 21 of 2017

Abhi Agro Pvt. Ltd. Appellant

Company Appeal (AT) (Insol) No. 22 and 23 of 2017

Jai Lakshmi Solvents (P) Ltd. Appellant

Company Appeal (AT) (Insol) No. 24 and 25 of 2017

Rungta Industries (P) Ltd. Appellant

Company Appeal (AT) (Insol) No. 26 and 27 of 2017

Arohul Foods Pvt. Ltd. Appellant

Vs.

Swadisht Oils Pvt. Ltd.Respondent

Present: For Appellants:

In Company Appeal (AT) (Insol) No. 17, 18 and 19 of 2017

**Mr. Virender Ganda, Sr. Advocate, Mr. Arvind Kumar,
Advocate & Ms. Henna George, Advocate**

**In Company Appeal (AT) (Insol) No. 20, 21, 22 and 23 of
2017**

**Ms. Purti Marwaha Gupta, Advocate & Mr. C.S. Chauhan,
Advocate.**

In Company Appeal (AT) (Insol) No. 24 and 25 of 2017

**Ms. Henna George, Advocate & Mr. Purti Marwaha Gupta,
Advocate**

In Company Appeal (AT) (Insol) No. 26 and 27 of 2017

Ms. Purti Marwaha Gupta, Advocate

For Respondent: Mr. Amit Gupta, Company Secretary

ORDER

10.04.2017

The Appellants/Operational Creditors has preferred these appeals against different orders dated 3rd March, 2017, 8th March, 2017 etc. passed by 'Adjudicating Authority' (National Company Law Tribunal) Allahabad Bench in different petitions filed by Appellants under section 9 of the Insolvency & Bankruptcy Code 2016 ("IB Code" for Short). One of the impugned order dated 3rd March, 2017 reads as follows:

"Mr. Arvind Kumar Gupta represent the operational creditor. Registry is directed to make scrutiny of the IBC, 2016 application and put up on Board for further hearing on 08.03.2017. The matter be listed on 08.03.2017."

2. Sub-section (5) of Section 9 of I.B. Code reads as follows:

"The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, —

- (a) *the application made under sub-section (2) is complete;*
 - (b) *there is no repayment of the unpaid operational debt*
 - (c) *the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*
 - (d) *no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*
 - (e) *there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.*
- (ii) *reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*
- (a) *the application made under sub-section (2) is incomplete;*
 - (b) *there has been repayment of the unpaid operational debt*
 - (c) *the creditor has not delivered the invoice or notice for payment to the corporate debtor*
 - (d) *notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*
 - (e) *any disciplinary proceeding is pending against any proposed resolution professional:*

PROVIDED that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice

to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.”

From the aforesaid provision, it is clear that the ‘Adjudicating Authority’ within 14 days of receipt of application under section 9 is required to either admit the petition, if the application is complete and in order or to reject the petition, if not in order/incomplete. However, before rejecting such applications, the ‘Adjudicating Authority’ is required to give notice to the applicant to rectify the defects within 7 days. From Sub-section (5) of Section 9 is clear that the Adjudicating Authority is required to be satisfied himself that the application under section 9 is complete or incomplete. The Law does not permit the Adjudicating Authority to delegate the power to the Registry, though it is always open to the Adjudicating Authority to take help of the Registry or any officer to determine whether the application is complete or incomplete. Prima facie we feel that the ‘Adjudicating Authority’ while deciding the question as to whether the applications are in order or not, such power is ‘administrative in nature’ but while admitting or rejecting the application, exercises its judicial power and discretion.

Further, we find that in all cases the statutory time period 14 days prescribed has elapsed, which may make the case redundant, as one can argue that the Adjudicating Authority has become *functus officio* on completion of such period.

Let Notice be issued on respondents.

Mr. Amit Gupta, Company Secretary, appears on behalf of Respondents in all cases, therefore, no separate notice need to be issued.

Post the matter on 21st April, 2017.

In the meantime, the respondent(s) will not withdraw or divert any amount from the Bank Accounts of the Company, except for its day to day expenses.

(Justice S.J.Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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