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The National Company Law Appellate Tribunal, Delhi ("NCLAT") vide its judgment dated July 17, 2019 in the matter of *NUI Pulp and Paper Industries Pvt. Ltd. Vs. Ms. Roxcel Trading GMBH* bearing Company Appeal (AT) (Insolvency) No. 664 of 2019 held that a National Company Law Tribunal (NCLT) is empowered to pass the ad-interim order under Rule 11 of the National Company Law Tribunal Rules, 2016 ["NCLT Rules, 2016"] before admitting any application filed under sections 7, 9 or 10 of the Insolvency and Bankruptcy Code, 2016 ("IB Code, 2016"). Rule 11 of NCLT Rules, 2016, authorize an NCLT to pass any such orders as may be necessary for meeting the ends of justice. Rule 11 of the National Company Law Tribunal Rules, 2016 is concerned with the 'inherent powers' of the National Company Law Tribunal and reads thus:

"11.

Inherent Powers- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."

Facts of the
Case

- An insolvency petition under section 9 of IB Code, 2016 was filed by M/s. Roxcel Trading GMBH [Operational Creditor]. It claimed an amount of INR 7,64,54,285.20 against the Corporate Debtor i.e. NUI Pulp and Paper Industries Private Limited before the bench of Chennai NCLT. On the submission of the counsel of Corporate Debtor that there is an existing dispute between the parties, Hon'ble NCLT allowed the Corporate Debtor to file the reply.
- A Misc. Application under section 60(5)(c) of IB Code, 2016 seeking the interim relief was also filed by M/s. Roxcel Trading by stating that they reliably understand that the Corporate Debtor is intending to sell the assets of the Company in order to defeat the purpose of Insolvency and Bankruptcy Code and which will engender unjust losses to all the creditors including the Operational Creditor.
- An objection on the Misc. Application was made by the Corporate Debtor with respect to the maintainability of the Application Under Section 60(5)(c) of IBC, 2016 which was also appreciated by the NCLT. However, NCLT stated that the assets of the Company need to be maintained, till the time of either admission or rejection of the Application.
- The interim order to restrain the directors of Corporate Debtor from alienating, encumbering or creating any third-party interest on the assets of Corporate Debtor was challenged by the Corporate Debtor who filed an appeal

before the National Company Law Appellate Tribunal, New Delhi.

Interim Order of National Company Law Tribunal (NCLT)

Application under section

60(5)(c) of the IB Code, 2016 is only maintainable in the situation when CIRP is initiated against the Company or the Company is under liquidation and since

the Miscellaneous Application filed by the Operational Creditor was under section 60(5)(c) of the IB Code, 2016, therefore Hon'ble NCLT did not entertain

the Miscellaneous Application filed under section 60(5)(c).

However, Hon'ble NCLT

considered the apprehension of the Operational Creditor with respect to the isolation of the assets of the Company and passed an ad-interim order under the

power conferred under Rule 11 of NCLT Rules, 2016 restraining the Corporate Debtor and its directors from alienating, encumbering or creating any third party interest on the assets of the Company till further orders.

Appeal to the NCLAT

NUI Pulp and Paper Industries

Pvt. Ltd. challenged said ad-interim order by filing an appeal before the NCLAT, Delhi. Said appeal was filed on the ground that before admission of an application under section 7 or 9, the NCLT has no jurisdiction to restrain the

'Corporate Debtor' and its directors from alienating, encumbering or creating any third party interest of the assets of the Corporate Debtor as the same corresponds to the arising of a situation when an application filed under section 7 or 9 gets admitted and CIRP is initiated.

It was also argued on behalf of

Corporate Debtor i.e. Appellant that:

"Inherent power under Rule 11

of NCLT Rules, 2016 can be exercised by the NCLT, if it comes to the knowledge

on receipt of reply that the "Corporate Debtor" is trying to get adjournment or

to alienate the matter after filing of the Application under section 7 or 9 of

IB Code, 2016."

However, during the hearing

Hon'ble NCLAT observed that Counsel of Corporate Debtor i.e. Appellant submitted that Corporate Debtor cannot give any assurance that they are not intending to sell or alienate or transfer or create any third party interest on

the assets of the Corporate Debtor as it will act taking into consideration the

necessity of the Corporate Debtor for its day to day functioning.

Finally, Hon'ble NCLAT observed

in para-9 of the Judgment that:

"From the aforesaid Rule 11, it is clear that the

Tribunal (Adjudicating Authority herein) can make any such order as may be necessary for meeting the ends of justice or to prevent abuse of the process of

the Tribunal."

Observations

It is thus clear that NCLT holds

the power to pass the ad-interim order and can direct the Corporate Debtor and

its director to maintain the accounts of the Corporate Debtor on dated except withdrawal of the legitimate expenses required for carrying on the day to day expenses, before admission or rejection of any application filed under sections

7 or 9 of the Insolvency and Bankruptcy Code 2016.

This can be labelled as a good

initiative for restraining the Corporate Debtor during the adjudication of Application for admission or rejection because nowadays and in some cases the process of admission of Application has taken a year, whereas the intention of

the lawmakers was 14 days only.

Said judgment can be treated as

Path-breaking judgment of 'moratorium' before initiation of insolvency and the

same has kicked a new era. I think this is the first time when NCLT is using its inherent power given under rule 11 of NCLT Rule, 2016 to restrain the company from alienating its assets. However, we still need to see the judicial

view of the Hon'ble Apex Court on the same. But the way judiciary has supported

IBC till date, it appears to be a welcome go-ahead for Insolvency.

Now after the said judgment of National Company Law Tribunal (NCLT), a question may arise "whether an adjudicating authority can use the inherent powers given in rule 11 of NCLT Rules, 2016 for the insolvency and bankruptcy proceedings". However, I remember that Hon'ble Apex Court had affirmed recently in *Swiss Ribbons (P.) Ltd. v. Union of India* [2019] that National Company Law Tribunal (NCLT) can invoke Rule 11 of NCLT Rules, 2016 in IBC proceedings which is a contrary observation of the Hon'ble Apex Court in accordance with its previous judgment in the matter of *Uttara Foods & Feeds (P.) Ltd. Vs. Mona Pharmachem* [2018]. Though these judgments were in respect of settlement but the question was of applicability of NCLT rules in insolvency proceedings.

Contributed By - Mirza Aslam Beg

Designation - Partner

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[The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.]