

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**NEW DELHI**

**COMPANY APPEAL (AT)(Ins) NO. 57 OF 2017**

**In the matter of:**

**Agroh Infrastructure Developers Pvt Ltd Appellant**

**Vs**

**Narmada Construction (Indore) P Ltd Respondents**

**Present: Mr. Alok Krishna Agarwal with Mr. Mayank Bughani, Mr Swapnesh Garg, Advocates for the appellant.  
Mr. Aditya Mewar, Advocate for the Respondent.**

**ORDER**

**02.06.2017**- This appeal has been preferred by the appellant, corporate debtor against the order dated 18<sup>th</sup> May, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad whereby and whereunder the application preferred by the respondent, operational creditor, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as I&B Code) read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been admitted and following order has been passed:-

*“18(a) In view of the above discussions, the petition is admitted.*

*(b) This Adjudicating Authority hereby order reference to Insolvency and Bankruptcy Board of India to recommend the name of Insolvency Professional against whom no disciplinary proceedings are pending to this Authority within 10(Ten) days from the date of receipt of reference to function as Interim Resolution Professional.*

(c ) This Adjudicating Authority hereby declares moratorium under Section 13(1)(a) prohibiting the following as laid down in Section 14 of the Code:

- (i) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.
- (iii) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 3002 (54 of 2002).
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(d) However, the supply of goods and essential services to the corporate debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.”

The appellant has challenged the impugned order on the following grounds:-

- i) the 'operational creditor' had not issued any notice under Section 8 the I&B Code.
- ii) The operational creditor had issued notice under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 but it was served on appellant one day after date of hearing.
- iii) Adjudicating Authority admitted the application without notice to appellant in violation of rules of natural justice.

Learned counsel appearing on behalf of the appellant contended that notice under Section 8 of I&B Code was not served on him. However, we are not inclined to accept such submission as the adjudicating authority in the impugned order

noticed that the demand notice under Section 8 of I&B Code was issued by the operational creditor on 4<sup>th</sup> April, 2017 and the track record of Postal Department shows that the said demand notice was served on the appellant, corporate debtor on 8<sup>th</sup> April, 2017.

Suggestion made by the learned counsel for the appellant that the track report is incorrect cannot be accepted, having been issued from Postal Department of Government of India.

The other point taken is that the Adjudicating Authority before taking the adjudicating application has not given any notice to the appellant corporate debtor and admitted the application in violation of rules of natural justice. In this regard we find that the respondent has not disputed the fact that no notice was issued by the adjudicating authority to the appellant before admitting the application and passed the impugned order in violation of principles of natural justice.

We also heard the parties as to whether remand of the case after setting aside the impugned order will be futile or not if otherwise the application is complete. In this regard the learned counsel for the parties submitted that they have settled the dispute and if the impugned order is set aside on the ground violation of principle of natural justice the respondent will withdraw the application. In view of such suggestions made on behalf of the parties and that the impugned order dated 18.5.2017 was passed in violation of principles of natural justice we set aside the impugned order and give liberty to the respondent to withdraw the application filed under Section 9 of I&B Code.

In the result, the appointment of Interim Resolution Professional, order declaring moratorium, freezing of account and all other order passed by Adjudicating Authority pursuant to impugned order and action taken by the Interim Resolution Professional including the advertisement published in the

newspaper calling for applications are declared illegal. The Adjudicating Authority may allow the operational creditor to withdraw the application and close the proceeding. The appellant is released from the rigour of law and allow the appellant company to function independently through its Board of Directors.

The appeal stands disposed of with the aforesaid observations.

The Adjudicating Authority will fix the fee of Interim Resolution Professional and the operational creditor will pay the fees of the Interim Resolution Professional for the period he has worked.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member (Technical)