

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 139 of 2017

IN THE MATTER OF :

M/s. Kee Projects Ltd.

... Appellant

Versus

Sharda Rawat

... Respondent

Present: For Appellant : Dr. Anurag Kumar Agarwal and Shri Umesh Mishra, Advocates

For Respondent: Shri Rakesh Mukhija, Advocate

ORDER

01.09.2017 The appellant has preferred this appeal against judgement dated 6th July, 2017 passed by the Learned Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi (hereinafter referred to as 'Adjudicating Authority') in CO.PET. No.662/2016. By the impugned order, learned Adjudicating Authority, on a transfer petition of winding-up under Section 439 read with Section 443 read with Section 433(e) read with Section 434 of the Companies Act, 1956, treated the application preferred by the respondent as an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') pursuant to the Central Government Notification No. G.S.R. 1119(E) dated 7th December, 2016 and admitted the application.

2. The main grievance of the appellant is that the impugned order has been passed in violation of the rules of natural justice without notice to the appellant. Learned counsel for the appellant further submits that the matter has also been settled with the respondent-‘Operational Creditor’ (Sharda Rawat) and part payment of Rs.9,21,619/- (Rupees Nine Lakhs Twenty One Thousand Six Hundred and Nineteen only) has been made by a draft bearing No. 020489 dated 19th August, 2017 drawn on HDFC Bank, Meera Bagh, Outer Ring Road Branch, New Delhi.

3. Shri Rakesh Mukhija, learned counsel appearing for the respondent accepts that the impugned order was passed without notice to the appellant-‘Corporate Debtor’. From the judgement also, while we find that the names of the advocates appearing on behalf of ‘Operational Creditor’ have been recorded, no appearance has been shown on behalf of the ‘Corporate Debtor’.

4. In **“Innoventive Industries Ltd. Vs. ICICI Bank & Anr.”**- [Company Appeal (AT) (Insolvency) Nos. 1 & 2 of 2017], the Appellate Tribunal by judgement dated 15th May, 2017 held :

“53. In view of the discussion above, we are of the view and hold that the Adjudicating Authority is bound to issue a limited notice to the corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by

the corporate debtor and to find out whether the application is complete and or there is any other defect required to be removed. Adherence to Principles of natural justice would not mean that in every situation the adjudicating authority is required to afford reasonable opportunity of hearing to the Corporate debtor before passing its order.”

5. In the circumstances, as the case of the appellant is covered by the decision in “**Innoventive Industries Ltd. Vs. ICICI Bank & Anr.**” and the impugned order has been passed in violation of rules of natural justice, we set aside the impugned order.

6. The case is remitted to the learned Adjudicating Authority, Principal Bench, New Delhi to decide the professional fee of Interim Resolution Professional, if appointed, and if any amount is payable, will direct the appellant to pay the same and will close the case in view of the settlement.

The appeal is allowed with the above observations. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)

/ng/

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 139 of 2017

IN THE MATTER OF :

M/s. Kee Projects Ltd.

... Appellant

Versus

Sharda Rawat

... Respondent

**Present:
Umesh**

**For Appellant : Dr. Anurag Kumar Agarwal and Shri
Mishra, Advocates**

For Respondent: Shri Rakesh Mukhija, Advocate

ORDER

01.09.2017 The appellant has preferred this appeal against judgement dated 6th July, 2017 passed by the Learned Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi (hereinafter referred to as 'Adjudicating Authority') in CO.PET. No.662/2016. By the impugned order, learned Adjudicating Authority, on a transfer petition of winding-up under Section 439 read with Section 443 read with Section 433(e) read with Section 434 of the Companies Act, 1956, treated the application preferred by the respondent as an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') pursuant to the Central Government Notification No. G.S.R. 1119(E) dated 7th December, 2016 and admitted the application.

2. The main grievance of the appellant is that the impugned order has been passed in violation of the rules of natural justice without notice to the appellant. Learned counsel for the appellant further submits that the matter has also been settled with the respondent-‘Operational Creditor’ (Sharda Rawat) and part payment of Rs.9,21,619/- (Rupees Nine Lakhs Twenty One Thousand Six Hundred and Nineteen only) has been made by a draft bearing No. 020489 dated 19th August, 2017 drawn on HDFC Bank, Meera Bagh, Outer Ring Road Branch, New Delhi.

3. Shri Rakesh Mukhija, learned counsel appearing for the respondent accepts that the impugned order was passed without notice to the appellant-‘Corporate Debtor’. From the judgement also, while we find that the names of the advocates appearing on behalf of ‘Operational Creditor’ have been recorded, no appearance has been shown on behalf of the ‘Corporate Debtor’.

4. In **“Innoventive Industries Ltd. Vs. ICICI Bank & Anr.”**- [Company Appeal (AT) (Insolvency) Nos. 1 & 2 of 2017], the Appellate Tribunal by judgement dated 15th May, 2017 held :

“53. In view of the discussion above, we are of the view and hold that the Adjudicating Authority is bound to issue a limited notice to the corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by

the corporate debtor and to find out whether the application is complete and or there is any other defect required to be removed. Adherence to Principles of natural justice would not mean that in every situation the adjudicating authority is required to afford reasonable opportunity of hearing to the Corporate debtor before passing its order.”

5. In the circumstances, as the case of the appellant is covered by the decision in **“Innoventive Industries Ltd. Vs. ICICI Bank & Anr.”** and the impugned order has been passed in violation of rules of natural justice, we set aside the impugned order.

6. The case is remitted to the learned Adjudicating Authority, Principal Bench, New Delhi to decide the professional fee of Interim Resolution Professional, if appointed, and if any amount is payable, will direct the appellant to pay the same and will close the case in view of the settlement.

The appeal is allowed with the above observations. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)

/ng/