

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 49 of 2017

IN THE MATTER OF:

Creative Solutions

... Appellant

Versus

AMR Infrastructure Ltd.

... Respondent

Present: For Appellants : Shri Rohit K. Aggarwal, Advocate

**For Respondents : Shri Shivam K., Authorised
Representative of the Respondent.**

ORDER

26.07.2017 This appeal has been preferred by the appellant against order dated 25th April, 2017 passed by the Learned Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi (hereinafter referred to as 'Adjudicating Authority') in Company Application No. (I.B.)/PB/2017. By the impugned order, learned Adjudicating Authority rejected the application preferred by the appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) on the ground that the appellant is not an 'Operational Creditor'.

2. The case of the appellant is that the appellant, who is in the business of architecture and interior designing, was approached by

the respondent-‘Corporate Debtor’ for rendering services relating to designing and development of the Project “Kessel I-Valley” at Greater Noida, which, *inter alia*, included masonry work, wood work and other ancillary work in 2012 till 2015. As per the industrial practice, the appellant from time to time raised various bills/invoices towards the work for inspection/verification which were acknowledged by the respondent. The respondent made part payment and an amount of Rs. 1,08,99,705/- is still due and outstanding.

3. Despite repeated requests and reminders, no response having received by the respondent, the appellant sent a notice on 30th January, 2017 under Section 8 of the I&B Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Even after service of notice, as the respondent neither made any payment nor filed any reply to the said demand notice, the applicant/petitioner preferred the company application before the Learned Adjudicating Authority as mentioned above.

4. According to the respondent-‘Corporate Debtor’, the invoices/bills raised by the appellant were bogus and do not contain the name of the party against whom they were raised, and there is no date shown on them. It is further stated that there was no registration number with regard to service tax or sales tax or any other fiscal statute printed on the face of bills/invoices raised. As regards the

acknowledgement of notice, learned counsel for the respondent submitted that one Mr. Vijay Yadav who had acknowledged the bills/invoices was in employment of the respondent company prior to 2014 and he had no authority to acknowledge the bills or invoices. It is also pointed out that no statement of accounts detailing the transactions between the appellant and the respondent company has been produced for the relevant period. Denying the claim of the appellant, the respondent claimed that actually a sum of Rs.45,00,000/- has already been paid for the work done.

5. Learned counsel for the appellant submitted that the appellant is a service provider and come within the meaning of 'Operational Creditor'. According to him, in absence of any dispute raised by the respondent-'Corporate Debtor' prior to issuance of notice under Section 8, it cannot be held that any dispute was in existence.

6. We have heard the learned counsel for the parties but in view of the development as taken in place in the meantime. It is not necessary to decide the claim as made by respective parties.

7. One 'Nikhil Mehta and Sons' claimed to be 'Financial Creditor' and filed an application under Section 7 of the I&B Code before the Learned Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi against the Respondent-AMR Infrastructure Ltd. The said application was dismissed on the ground that they are not

'Financial Creditors'. Being aggrieved 'Nikhil Mehta and Sons' preferred Company Appeal (AT) (Insolvency) No. 07 of 2017 challenging the order passed by Learned Adjudicating Authority. This Appellate Tribunal, after considering the case of 'Nikhil Mehta and sons', held them to be the 'Financial Creditors' of AMR Infrastructure Ltd. ('Corporate Debtor') and by judgement dated 21.07.2017, passed the following order:

"27. For the reasons aforesaid, we set aside the impugned judgement dated 23rd January 2017 passed by the learned Adjudicating Authority in C.P. No. (ISB)-03(PB)/2017 and remit the matter to Adjudicating Authority to admit the application preferred by appellants and pass appropriate order, if the application under Section 7 of the 'I & B Code' is otherwise complete. In case it is found to be not complete, the appellants should be given seven days' time to complete the application as per proviso to Section 7 of the 'I & B Code'.

28. The appeal is allowed with aforesaid observations and directions. However, in the facts and circumstances, there shall be no order as to cost."

8. As pursuant to this Appellate Tribunal's order, the application preferred by Nikhil Mehta & Sons is to be admitted, and Resolution Process will be initiated, the question of initiation of further proceeding against some 'Corporate Debtor' under any of the provisions of I&B Code (Sections 7, 9 or 10) does not arise. The appellant herein, whether it is 'Operational Creditor' or not, claim to be creditor is now entitled to file its claim before the 'Interim Resolution Professional', as may be appointed and the advertisement as may be published in the newspaper calling of such application with regard to resolution of 'Corporate Debtor'-AMR Infrastructure Ltd. In such case, their claim should be considered by the Interim Resolution Professional (IRP) and the Committee of Creditors, in accordance with the provisions of the 'I&B Code'. Therefore, no further order is required to be passed in this appeal.

9. However, in case the application preferred by 'Nikhil Mehta and sons' under Section 7 of I&B Code is not found to be complete or if they fail to complete the defect, if any, as per proviso to Section 7 of I&B Code and in case the said application of 'Nikhil Mehta and Sons' is dismissed on such ground, in such case, as the appellant cannot prefer any application before the Interim Resolution Professional, we give liberty to the appellant to file 'interlocutory applications' in the present appeal for recall of this order for the decision on merit.

10. The appeal stands disposed of with the aforesaid observations. However, in the facts and circumstances of the cases, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)

/ng/