

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 103 & 108 of 2017

(arising out of Order dated 11.07.2017 passed by the National Company Law Tribunal, Chandigarh Bench in CP (IB) No. 31/CHD/HP/2017)

IN THE MATTER OF:

Inox Wind Ltd.

.....Appellant

Vs.

Jeena & Co.

...Respondent

Present: For Appellant:- Mr. Amit Sibal, Senior Advocate assisted by Mr. Sudhir Kumar, Mr. Anand Shankar Jha and Mr. Pulkit Srivastva, Advocates

For Respondent:- Mr. Saurabh Prakash, Advocate

J U D G E M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

These two appeals have been preferred by the common appellants impleading the same very respondent against orders dated 5th July 2017 and 11th July 2017 passed by Learned Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh in CP (IB) No. 31/Chd/HP/2017.

2. By first order (dated 5th July 2017), the application preferred by Respondent - 'Operational Creditor' under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I & B Code') was admitted with following observations and directions: -

“23. In view of the aforesaid discussion, the instant petition deserves to be admitted. The petition is, therefore, admitted declaring the moratorium with the following directions: -

- i) That the Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the ‘Corporate Debtor’ including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of financial Assets and Enforcement of Security interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*
- ii) That the supply of essential goods or services to the ‘Corporate Debtor’, if continuing, shall not be terminated or suspended or interrupted during moratorium period.*
- iii) That the order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of*

Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.”

By the subsequent order dated 11th July 2017 the ‘Interim Resolution Professional’ has been appointed.

2. Learned counsel appearing on behalf of the appellant, corporate debtor, submitted that the impugned order has been passed by the Adjudicating Authority in violation of principle of natural justice i.e. without giving any notice to the corporate debtor prior to admission of the application. Reliance was placed on the decision of the Appellate Tribunal in **“Innoventive Industries Ltd Vs ICICI Bank and Another, Company Appeal (AT)(Insolvency) No.1 and 2 of 2017”**. In the said case the Appellate Tribunal vide judgement dated 15th May, 2017 taking into consideration the decision of Hon’ble Supreme Court and provisions of I&B Code and rules framed thereunder held

“As amended Section 424 of the Companies Act, 2013 is applicable to the proceeding under the MB Code, 2016, it is mandatory for the adjudicating authority to follow the Principles of rules of natural justice while passing an order under I&B Code, 2016. Further, as Section 424 mandates the Tribunal and Appellate Tribunal, to dispose of cases or/appeal before it subject to other provisions of the Companies Act, 2013 or MB Code 2016 such as, Section 420 of the Companies Act, 2013 was applicable and to be followed by the Adjudicating Authority.”

3. Learned counsel appearing on behalf of the appellant further contended that the appellant is a solvent company and is in a position to pay the dues. It was also submitted that the amount due to the respondent - 'Financial Creditor' has already been paid.

4. Learned counsel appearing on behalf of the respondent-financial creditor while accepted that no notice was issued by the Adjudicating Authority before admitting the application under Section 9 of I&B Code, it is also accepted that the amount due to the respondent has been paid by the appellant.

5. When the hearing was going on, one Mr. Shailendra Puri an Ex-employee of the 'Corporate Debtor' who worked as AVP (Marketing) w.e.f. 4th June 2013 till 21st April 2016 submitted that the appellant company has not paid his salary. Such statement was made without filing any application for intervention, just orally. Therefore, he was allowed to state his claim in writing. On the next date Mr. Shailendra Puri appeared in person, signed one synopsis dated 25th July 2017 and informed that after the hearing on 24th July 2017, the officers of the Appellant Company held a meeting with him and resolved the matter by paying the claimed amount, to his utmost satisfaction. He has no more claim and has no objection if the insolvency resolution process pending against the Appellant Company is set aside.

6. In the present, as we find that the impugned order dated 5th July, 2017 passed by Adjudicating Authority in Company Petition No.(IB)No.31/CHD./HP/2017 have been passed in violation of rules of natural justice and against the decision of the Appellate Tribunal in **Innoventive Industries Ltd case**,

no other option is left to us except to set aside both the impugned order(s) dated 5th July 2017 and 11th July 2017.

7. 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 is directed to 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 with immediately effect.

8. Learned Adjudicating Authority will now determine the fee of Interim Resolution Professional and the appellant will pay the fees of the Interim Resolution Professional for the period he has worked.

9. Both the appeals stand disposed of with the aforesaid observations. However, in the facts and circumstances of the case, there shall be no order as to cost.

Sd/-

(Justice S.J. Mukhopadhaya)
Chairperson

Sd/-

(Mr. Balvinder Singh)
Member(Technical)

New Delhi

28th July 2017

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