

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 8 of 2017

IN THE MATTER OF:

Rubina Chadha & Anr. ... Appellants

Versus

AMR Infrastructure Ltd. ... Respondent

WITH

Company Appeal (AT) (Insolvency) No. 12 of 2017

IN THE MATTER OF:

Sajive Kanwar ... Appellant

Versus

AMR Infrastructure Ltd. ... Respondent

**Present: For Appellants : Shri Swapnil Gupta, Shri Angad Mehta
and Ms. Shabdita Singh, Advocates**

**For Union of India : Shri Sanjay Shorey, Joint Director
(Legal), Ministry of Corporate
Affairs, New Delhi.**

AND

Company Appeal (AT) (Insolvency) No. 50 of 2017

IN THE MATTER OF:

Mukesh Kumar & Anr. ... Appellants

Versus

AMR Infrastructures Ltd. ... Respondent

**Present: For Appellants : Shri Krishnamaohan K. Menon and
Shri Chetan Priyadarsh, Advocates**

**For Union of India : Shri Sanjay Shorey, Joint Director
(Legal), Ministry of Corporate
Affairs, New Delhi.**

ORDER

21.07.2017 These appeals have been preferred by the appellants against common Respondent, AMR Infrastructure Ltd.

2. Rubin Chadha and Another [Appellants in Company Appeal (AT) (Insolvency) No. 8 of 2017] initially preferred a petition under Section 433(e) of the Companies Act, 1956 before the Delhi High Court. The said petition was transferred pursuant to Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 notified on 7th December, 2016 under sub-sections (1) and (2) of Section 434 of the Companies Act, 2013 read with sub-section (1) of Section 239 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code').

3. On 24th March, 2017, the Appellate Tribunal doubted the power of Central Government to frame rule under Section 239 of the I&B Code for the purpose of exercising power under Section 434 of the Companies Act, 2013 and referred the matter to the Secretary, Ministry of Corporate Affairs, Government of India, New Delhi.

4. Shri Sanjay Shorey, Joint Director (Legal), Ministry of Corporate Affairs, New Delhi, appeared and filed an amended Rule 5 notified by the Central Government on 29th June, 2017 in exercise of powers conferred by sub-sections (1) and (2) of Section 434 of the Companies Act, 2013 read with sub-section (1) of Section 239 of the I&B Code. Vide this Notification, earlier Rule 5 has been substituted, and pursuant to which all petitions under Clause (e) of Section 433 of the Companies Act, 1956, which are pending before a High Court, and where petition has not been served on the respondent as required under Rule 26 of the Companies (Court) Rules, 1959 has been transferred to the Bench of the Tribunal having territorial jurisdiction to be dealt with in accordance with Part-II of the I&B Code. The first proviso stipulates that such transfer is subject to submission of all information by Petitioner, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under Sections 7 or 8 or 9 of the I&B Code, as the case may be, upto 15th July, 2017, failing which, the petition shall stand abated.

5. What happened in the case of 'Rubina Chadha and Another' that they filed a petition under Section 433(e) of the Companies Act, 1956 before the Delhi High Court, which was transferred to the Tribunal but they could not satisfy the Learned Adjudicating Authority that they come within the meaning of 'Financial Creditor' or 'Operational

Creditor'. The petition was accordingly, dismissed giving rise to the appeal.

6. It has not been disputed that "Rubina Chadha and Another" claimed to be the creditors of the respondent- AMR Instructure Ltd. and we were required to decide as to whether the impugned order passed by the learned Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi is proper or not ?

7. In one of the two other appeals, Sajive Kanwar [Appellant in Company Appeal (AT) (Insolvency) No. 12 of 2017] claimed to be 'Financial Creditor'. However by the impugned order, the Learned Adjudicating Authority has not accepted such claim and held that the appellant is not a 'Financial Creditor' and dismissed the application.

8. On the other hand, in the case of 'Mukesh Kumar and Another' [Appellants in Company Appeal (AT) (Insolvency) No. 50 of 2017], they claimed to be 'Operational Creditor'. Their claim was also not accepted by the learned Adjudicating Authority who dismissed the application giving rise to the aforesaid two appeals.

9. The claim of the appellants in two appeals, 'Sanjiv Kumar' and 'Mukesh Kumar and another', is that they are the creditors of Respondent-AMR Infrastructure Ltd. The respondent has not filed any affidavit disputing the same.

10. In these appeals, we were required to determine the question as to whether one or other appellant are the 'Financial Creditor' or 'Operational Creditor' or not, but such questions are not required to be determined in these appeals in view of the development as taken place during the pendency of the appeals.

11. 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."

12. 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 under any of the provisions of I&B Code (Sections 7, 9 or 10) does not arise. The appellants herein, whether they are 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor', as claim to be creditors are now entitled to file their respective claims before the 'Interim Resolution Professional', as may be appointed and the advertisement as may be published in the newspaper calling of such application(s) 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 these appeals.

13. 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 appellants cannot prefer any application before the Interim Resolution Professional, we give liberty to the appellants to file 'interlocutory applications' in these present appeals for recall of this order for their decision on merit.

14. All the three appeals stand 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)

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