

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 727 of 2019

IN THE MATTER OF:

Jafer Ali

...Appellant

Versus

Mr. Amit Naidu & Anr.

...Respondents

Present:

For Appellant : **Mr. Rohit Sharma, Mr. Chirag Jain and Mr. Nishanth Patil, Advocate**

For Respondents : **Mr. Salim A. Inamdar and Mr. Ravi Sehgal, Advocates for 1st Respondent**

Mr. S. Visvanathan, R.P.

ORDER

09.09.2019 ‘Mr. Amit Naidu’ (Operational Creditor), an ex-employee of ‘M/s. PropUrban Advisory Services Private Limited’ (formerly known as ‘Bluering Realtech Private Limited’), claimed that Rs. 19,50,000/- is outstanding towards the salary from August, 2017 to May, 2018. The said ex-employee (original Operational Creditor) filed an application under Section 9 of the ‘Insolvency and Bankruptcy Code, 2016’ (for short, ‘the **I&B Code**’) for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘M/s. PropUrban Advisory Services Private Limited’ (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by impugned order dated 24th June,

2019 having admitted the same, the present appeal has been preferred by the Director/Shareholder of the 'Corporate Debtor'.

2. Earlier, when the matter was taken up, learned counsel for the Appellant submitted that the Demand Notice under Section 8(1) issued by Respondent on 12th June, 2018 as Vice President had not at all mentioned the name of the 'Corporate Debtor' and the address shown was the residential address and not the official address of the 'Branch Office'. Thus, no notice under Section 8(1) was served on the 'Corporate Debtor'.

3. It was further submitted that the services of the Respondent stood terminated with effect from 16th November, 2017 and the Appellant had closed its operation at Pune w.e.f. December, 2017 and in that view of the matter, it is improbable for the Appellant to pay future salary with regard to the period of March, 2018 to May, 2018 obligation in respect whereof did not arise.

4. It was further informed by the learned counsel for the Appellant that the Respondent - 'ex-employee' has given resignation on 18th July, 2018 after termination on 16th November, 2017.

5. However, on behalf of the Appellant, it was informed that though Demand Notice under Section 8(1) was not served on the 'Corporate Debtor' by mentioning the name of the company and that the address shown was as the residential address, the Appellant has agreed to settle whatever the claim of the Respondent.

6. It is informed that the Appellant has settled the matter with the Respondent. Mr. Salim A. Inamdar, learned counsel appearing on behalf of 1st Respondent ('Mr. Amit Naidu') submits that the parties have reached settlement and now there is no grievance.

7. Taking into consideration the stand taken by the parties and the fact that the Demand Notice under Section 8(1) was not properly served on the office of the 'Corporate Debtor', we set aside the impugned order dated 24th June, 2019 as the application under Section 9 was not maintainable. However, in view of the settlement reached by the parties, we direct the Appellant to pay the amount of Rupees Seven Lakhs on or before 20th September, 2019 and further a sum of Rupees Seven Lakhs on or before 31st October, 2019. A sum of Rs. 1.5 Lakhs has been paid by Mr. Amit Naidu to the 'Interim Resolution Professional'

8. In effect, order(s), if any, passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional' and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The appellant company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

9. As a sum of Rs. 1.5 Lakhs has already been paid by Mr. Amit Naidu to the 'Interim Resolution Professional'. The Adjudicating Authority will now fix the fee and cost of resolution process after excluding a sum of Rs. 1.5 Lakhs, as already paid to the 'IRP' by Mr. Amit Naidu. The 'Corporate Debtor' will pay the fees of the Interim Resolution Professional, for the period he has functioned as may be determined by the Adjudicating Authority. The appeal

is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/nn/