

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 291 of 2019

IN

Company Appeal (AT) (Insolvency) No. 67 of 2019

IN THE MATTER OF:

Mr. Ashish Garodia

...Appellant

Vs.

Impact Event Management & Anr.

...Respondents

Present: For Appellant: - Mr. Rajshekhar Rao, Mr. Ankit Rajgarhia, Ms. Bonita Singh, Mr. Anandh Venkatramani and Mr. Samerjit Patnayak, Advocates.

For Respondents: - Mr. R.A. Iyer, Advocate for R-1.

ORDER

08.02.2019— This appeal has been preferred by Mr. Ashish Garodia, Director and Shareholder of 'M/s. Garodia Automobiles Pvt. Ltd.'- ('Corporate Debtor') against the order dated 14th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, admitting the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) preferred by the Respondent- 'Impact Event Management'- ('Operational Creditor').

2. Learned counsel for the Appellant referred to letter dated 6th December, 2016 (Pages 87-88) to show that there is a 'pre-existence of dispute'. Therefore, according to him, application under Section 9 was not maintainable.

Contd/-.....

3. Today, it is intimated that the parties have also settled the claim. Mr. R.A. Iyer, learned counsel appearing on behalf of the 'Operational Creditor' accepts that the parties have settled the matter. This apart, the Respondents have also not disputed the fact that pursuant to the notice issued by the 'Operational Creditor', the 'Corporate Debtor' by letter dated 28th December, 2016 intimated that the 'Operational Creditor' has no dues from the 'Corporate Debtor' as the 'Operational Creditor' failed to perform the promotional services successfully, therefore, the 'Corporate Debtor' ordered to stop payment.

4. In spite of service of notice, the 'Interim Resolution Professional' has not appeared but it is informed that the 'Committee of Creditors' has been constituted on 5th February, 2019, i.e. after issuance of the notice to the parties.

5. Having heard learned counsel for the parties and taking into consideration the fact that there is a 'pre-existence of dispute', we hold that that the application under Section 9 was not maintainable. Further, before the constitution of the 'Committee of Creditors', the parties having settled the matter. It is a fit case to accept the settlement. For the reasons aforesaid, we set aside the order dated 14th January, 2019.

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

7. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional', and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned. The appeal is allowed and Interlocutory Applications stand disposed of with aforesaid observation. 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)

Ar/uk