

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 743 of 2017

IN

Company Appeal (AT) (Insolvency) No. 228 of 2017

IN THE MATTER OF:

Sandeep Reddy & Anr.

...Appellants

Vs.

Jaycon Infrastructure Ltd.

...Respondent

Present: For Appellants: - Mr. Arun Kathpalia, Senior Advocate with Mr. Swapnil Gupta, Mr. Angad Mehta and Ms. Ankita Mrs. Shivambika Sinha, Advocates.

For Respondent: - Mr. R.K.Gupta and Mr. Achin Goel, Advocates.

ORDER

26.10.2017- An Interlocutory Application has been filed in this appeal for praying to pass such interim order. However, as Respondent-‘Operational Creditor’ has appeared through learned counsel, on the suggestion of learned counsel for both the parties, the appeal is taken up for hearing and final disposal at this stage.

2. This appeal has been preferred by the appellants against order dated 10th October, 2017 passed by Adjudicating Authority (National Company Law Tribunal) Hyderabad Bench, Hyderabad, whereby and whereunder, the application preferred by Respondent-‘Operational Creditor’ under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) has been admitted, order for

public announcement of initiation of 'Corporate Insolvency Resolution Process' has been ordered, 'Interim Resolution Professional' has been appointed who has been directed to constitute a Committee of Creditors, after collection of all claims received against the 'Corporate Debtor' and passed other orders in terms of 'I&B Code'.

3. On 18th October 2017, it was argued by learned senior counsel for the appellant that there is a dispute in existence prior to issuance of notice of demand under sub-section (1) of Section 8 of the 'I&B Code'. It was further submitted that the Adjudicating Authority without calling for name of any 'Interim Resolution Professional' from the Insolvency and Bankruptcy Board of India (hereinafter referred to as "Board") appointed one Dr. K. Lakshmi Narasimha, Ph.D as 'Interim Resolution Professional', without any such suggestion from the 'Operational Creditor' or the Board. Taking into consideration the aforesaid submissions, notices were issued on the respondent, particularly to decide whether the Adjudicating Authority of his own has jurisdiction to appoint an 'Interim Resolution Professional'/ 'Resolution Professional', if no such powers is specifically vested under the 'I&B Code'.

4. On notice, the respondent has appeared and accepted that the 'Interim Resolution Professional' was not appointed on the suggestion made by the 'Operational Creditor'. He further submits that parties have reached the settlement in writing which is binding on the parties.

5. From the record we find that a sub-contract works agreement was reached between the parties. The scheduled completion date in relation to works of agreement dated 19th April, 2011 was 31st December, 2012. According to appellant, the respondent/applicant failed and ignored to complete the agreement works by that date. The respondent/applicant continued the works till May, 2014 and executed only 78% of the agreement value of works and had wilfully abandoned the works w.e.f May, 2014.

6. From the aforesaid fact not disputed by respondent, it is clear that there was a dispute in existence prior to issuance of demand notice under sib-section (1) of Section 8 of the 'I&B Code' and for that the application under Section 9 of the 'I&B Code' was not maintainable.

7. Prima facie, we are of the opinion that as the 'I&B Code' do not empower the Adjudicating Authority to suggest any name or appoint any 'Interim Resolution Professional'/Resolution Professional of its own choice. However, as we find that the parties have settled the dispute and initiation of Resolution process under section 9 of the 'I&B Code' was not maintainable, in view of existence of dispute, we leave the question open as to whether the Adjudicating Authority has power to appoint any person of its own choice or not which will be decided in an appropriate case.

8. We have already held that application under Section 9 was not maintainable, in view of existence of dispute and that parties have already reached the settlement, for the reasons aforesaid, we set aside the impugned order dated 10th October, 2017 passed by Adjudicating Authority, Hyderabad Bench in Company Petition (IB) No/45/09/HDB/2017.

9. In effect, order (s), passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action, if any, including the advertisement, if any, published in the newspaper calling for applications and 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.

10. As Dr. K Lakshmi Narasimha, Ph.D was appointed as 'Interim Resolution Professional' could not function in view of the interim order of stay passed by this Appellate Tribunal on 18th October, 2017, therefore, the question of payment to the 'Interim Resolution Professional' does not arise. The appeal is allowed and I.A also stands

disposed of 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)

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