

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 149 of 2019**

**IN THE MATTER OF:**

**Tanya Bhatnagar**

**...Appellant**

**Vs.**

**Mohamed Hesham Amin Basha  
Mashaa'l & Anr.**

**...Respondents**

**Present: For Appellant: - Mr. Deepender Hooda, Ms. Jyoti Hooda  
and Mr. C.P. Malik, Advocates.**

**For Respondents: - Mr. Mohinder Singh, RP.**

**O R D E R**

**31.07.2019—** This appeal has been preferred by the Director of 'M/s. Global Energy Talent Private Limited' ('Corporate Debtor') against the order dated 19<sup>th</sup> December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench-III, whereby application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) filed by Mr. Mohamed Hesham Mohamed Amin Basha Mashaa'l, who claimed to be 'Operational Creditor' has been admitted.

2. Learned counsel appearing on behalf of the Appellant submitted that the Respondent- Mr. Mohamed Hesham Mohamed Amin Basha Mashaa'l had arrangement with one 'Global Energy Talent, Mauritius' and not with 'M/s. Global Energy Talent Private Limited', an Indian

Contd/-.....

Company, but Demand Notice under Section 8(1) was issued to 'M/s. Global Energy Talent Private Limited'- ('Corporate Debtor').

3. It was brought to our notice that no agreement or arrangement was made between 'M/s. Global Energy Talent Private Limited' and the 1<sup>st</sup> Respondent and, therefore, no application under Section 9 of the 'I&B Code' was maintainable.

4. On notice, the 1<sup>st</sup> Respondent had appeared through their counsel and on 24<sup>th</sup> April, 2019, it was informed that the parties were negotiating the matter and one Mr. Sameer Rastogi, Advocate for Intervener appeared on behalf of 'M/s. Global Energy Talent, Mauritius'.

5. On 29<sup>th</sup> July, 2019, when the matter was taken up, Mr. Mohinder Singh, 'Resolution Professional' appeared and one Mr. Susheel Sharma, Advocate appeared on behalf of one of the Creditors. However, no appearance was given on behalf of 1<sup>st</sup> Respondent- Mr. Mohamed Hesham Mohamed Amin Basha Mashaa<sup>1</sup>, nor the counsel for 'M/s. Global Energy Talent, Mauritius' appeared. It was informed that the parties have settled the matter and, therefore, there is no need for appearance on their behalf.

6. Mr. Mohinder Singh, the 'Resolution Professional' submitted that he has worked for about five months and incurred cost total of which comes to roughly Rs. 6 lakhs.

7. Learned counsel for the Appellant submits that 'M/s. Global Energy Talent Private Limited' is not liable to pay but in case it is to be allowed, then the 'Resolution Professional' can withdraw the amount from the account of 'M/s. Global Energy Talent Private Limited', as he is the custodian of the said Company, alleged 'Corporate Debtor'.

8. Taking into consideration the fact that 1<sup>st</sup> Respondent has not disputed that it had no arrangement or agreement with 'M/s. Global Energy Talent Private Limited', an Indian entity shown as 'Corporate Debtor' and had settled the matter with 'M/s. Global Energy Talent, Mauritius', it appears to us that the application under Section 9 was filed by 1<sup>st</sup> Respondent with malicious intention for purpose other than for the resolution of insolvency, or liquidation of 'M/s. Global Energy Talent Private Limited', as liable for action under Section 65 of the 'I&B Code'. This apart, as in absence of any relationship of the 'Operational Creditor' and the 'Corporate Debtor' between Mr. Mohamed Hesham Mohamed Amin Basha Mashaa'1 and 'M/s. Global Energy Talent Private Limited', an Indian entity, we hold that the application under Section 9 was not maintainable.

9. For the reasons aforesaid, we set aside the impugned order dated 19<sup>th</sup> December, 2018.

10. In effect, order (s), passed by the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium,

freezing of account, 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 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' 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.

11. Though to ensure that the 'Interim Resolution Professional' does not suffer, we direct 'M/s. Global Energy Talent Private Limited' to pay a sum of Rs.6 Lakhs after adjusting the amount of Rs. 2 lakhs as has been paid by 'M/s. Global Energy Talent, Mauritius' within a period of three weeks. However, it will be open to 'M/s. Global Energy Talent Private Limited' to recover the amount from Mr. Mohamed Hesham Mohamed Amin Basha Mashaa'l. The matter is also remitted to the Adjudicating Authority to decide whether any order is required to be passed against Mr. Mohamed Hesham Mohamed Amin Basha Mashaa'l under Section 65 of the 'I&B Code' on the ground that the application was filed by him fraudulently with malicious intention for purpose other than for the resolution of insolvency, or liquidation. Before deciding

such issue, the Adjudicating Authority will have to give notice to Mr. Mohamed Hesham Mohamed Amin Basha Mashaa'1 and after hearing pass any order under Section 65.

12. This order will not come in the way of other creditors who may move before appropriate forum for appropriate relief. The appeal is allowed 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 A.I.S. Cheema)  
Member(Judicial)

(Kanthi Narahari)  
Member(Technical)

Ar/g