

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 313 of 2019

IN THE MATTER OF:

Athena Advisory Services Pvt. Ltd. Appellant

Vs

Tanvi Construction Pvt. Ltd. Respondent

Present:

For Appellant: Mr. Kunal Tandon, Mr. Darryl Pereira, Mr. Mayank, Ms. Niti Jain and Ms. Richa Sandilya, Advocates.

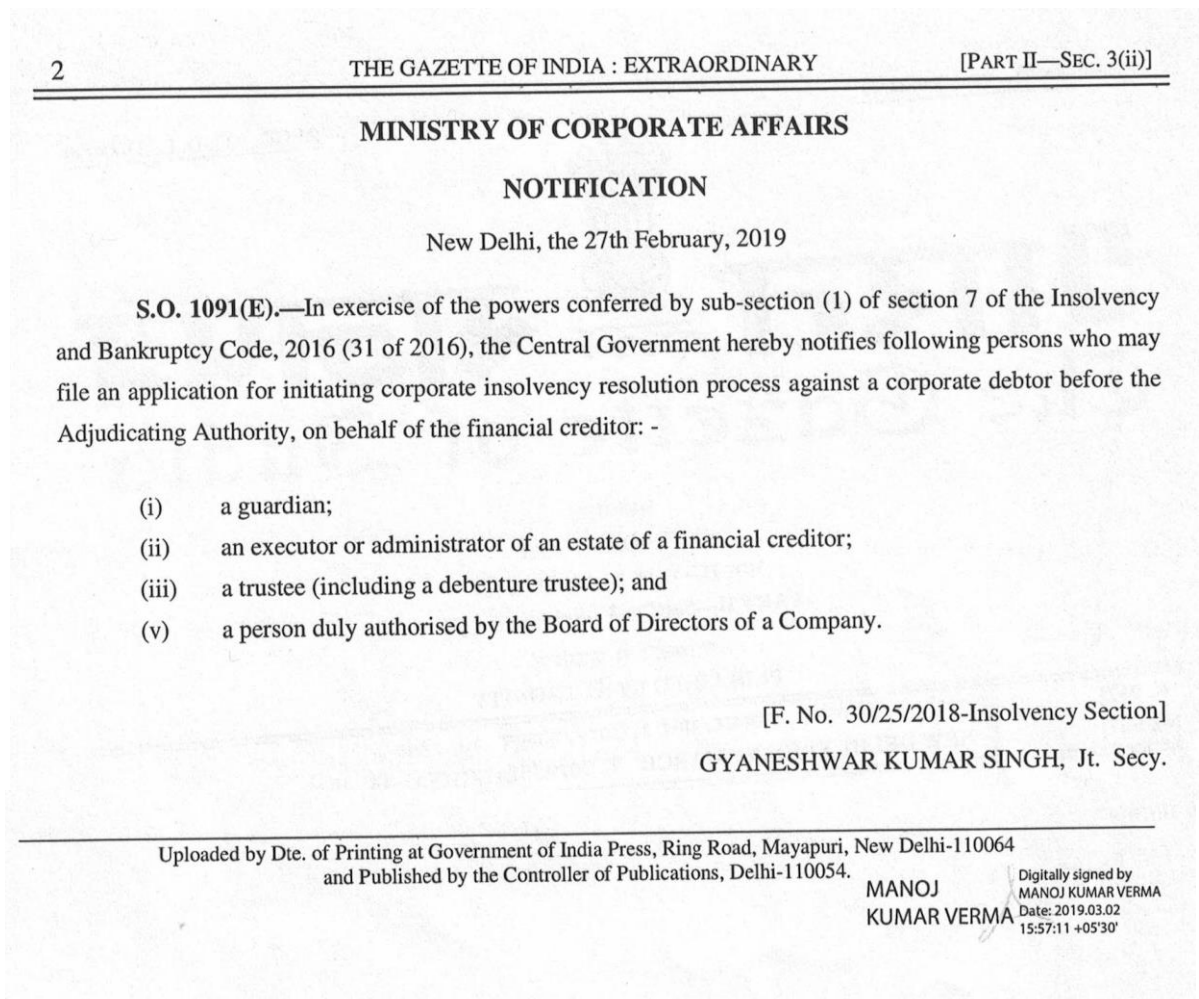
For Respondent: Mr. Armin Wandrewala, Mr. Akshay Vani, Mr. Manan Jaiswal and Mr. Neel Kamal Mishra, Advocates.

ORDER

01.05.2019 The Appellant – Athena Advisory Services Pvt. Ltd. filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code), which having been rejected by order dated 12th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, the present Appeal has been preferred.

2. The application under Section 7 has been rejected on technical ground that the application under Section 7 filed by the Director on the basis of Board's Resolution was not proper, though time was allowed to the Appellant.

3. Learned Counsel appearing on behalf of the Respondent submits that the Appellant was given an opportunity to file the proper Resolution of the meeting of the Board of Directors, but it was not produced within time, but the same was subsequently corrected. However, we are not going to decide such disputed question, but merely on such technicality an application under Section 7 cannot be rejected, particularly in view of Notification dated 27th February, 2019 passed by the Ministry of Corporate Affairs, which reads as follows: -



4. The impugned order dated 12th March, 2019 having been passed after the Notification dated 24th February, 2019, we are of the view that the

Adjudicating Authority should have entertained the application under Section 7 of the I&B Code.

5. For the reasons aforesaid, we set-aside the impugned order dated 12th March, 2019 and remit the case to the Adjudicating Authority for passing appropriate order after notice to the Corporate Debtor without going into such technicality. It will be open to the Corporate Debtor to settle the matter in the meantime.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Ash/GC