

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 316 of 2019

IN THE MATTER OF:

Mr. Abhishek Jaiswal

.... Appellant

Vs

M/s Raj Process Equipments &
Systems Pvt. Ltd. & Anr.

.... Respondents

Present:

**For Appellant: Mr. Francesca Kapur and Mr. Dhruv Gupta,
Advocates.**

**For Respondents: Ms. Pratiksha Sharma, Mr. Gautam Singh and
Mr. Kunal Kanungo, Advocates.**

ORDER

02.08.2019 The Appellant, Mr. Abhishek Jaiswal, Shareholder of M/s Welcome Distilleries Private Limited – ('Corporate Debtor') has challenged the order dated 6th March, 2019, whereby the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench admitted the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) preferred by Raj Process Equipments and Systems Pvt. Ltd. ('Operational Creditor').

2. Earlier, when the matter was taken up, it was submitted that the impugned order was passed by the Adjudicating Authority without issuing and serving of any notice on the 'Corporate Debtor'.

3. On 2nd May, 2019, the Counsel for the Respondent appeared and submitted that the Appellant agreed to handover the Draft to the Respondent.

4. Today, it is informed that the parties have reached settlement and the Settlement Deed dated 10th July, 2019 is on record.

5. It is noticed that the 'Resolution Professional' has not appeared.

6. The Respondent – 'Corporate Debtor' has also not disputed that no notice was issued or served by 'Operational Creditor' or the Adjudicating Authority before admission of the application under Section 9. The impugned order also shows that the *ex-parte* order was passed by the Adjudicating Authority.

7. In the circumstances, as the impugned order dated 6th March, 2019 has been passed in violation of the rules of 'natural justice', we set-aside the order. However, the matter is not remitted to the Adjudicating Authority as in the meantime the Appellant has settled the matter with the Respondent. However, this will not come in the way of the other creditors to move before appropriate Forum, if any amount is due from the 'Corporate Debtor'.

8. In the result, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional' are set aside. The application preferred by the Respondent - M/s Raj Process Equipments & Systems Pvt. Ltd. under Section 9 of the I&B Code is disposed of as withdrawn. The 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.

9. So far as the fee and cost of the 'Resolution Professional' is concerned, the Adjudicating Authority will decide the fee and cost incurred by the

‘Resolution Professional’, which will be paid by the ‘Corporate Debtor’ within two weeks from the date of the decision.

10. The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[KanthiNarahari]
Member (Technical)

Ash/GC