

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 804 of 2018

IN THE MATTER OF:

Dilip Chhabria

...Appellant

Vs.

Minda Capital Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Rajiv Ranjan, Senior Advocate with Mr. Nishant Gautam, Mr. Vardhman Kaushik and Mr. Ravi Singh, Advocates.

For Respondent:- Mr. G P Madaan, Ms. Payal Juneja and Mr. Utkarsh Mishra, Advocates.

ORDER

07.01.2019— Mr. Dilip Chhabria, Shareholder and Director of 'Dilip Chhabria Design Pvt. Ltd.' has challenged the order dated 14th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by 'Minda Capital Private Limited'- ('Financial Creditor') has been admitted.

2. The main plea taken by the learned counsel for the Respondent is that the Adjudicating Authority had not issued any notice prior to admission of the application under Section 7 of the 'I&B Code'.

3. Learned counsel for the Respondent submits that notice was issued by the 'Financial Creditor' and an affidavit of proof of service of notice

Contd/-.....

relating to filing of the case has been enclosed. However, it has not been disputed that the Adjudicating Authority had not issued any notice nor there is any record to suggest that notice was served on the 'Corporate Debtor'.

4. Learned counsel for the parties submits that the matter has already been settled and 'Terms of Settlement' dated 3rd January, 2019 has been filed.

5. In "***M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr. –Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017***", this Appellate Tribunal referring to Section 424 of the Companies Act, which has adopted by XIth Schedule of the 'I&B Code' held that the Adjudicating Authority is required to issue limited notice to the 'Corporate Debtor' before admission of an application.

6. In the present case, as we find that the aforesaid procedure has not been followed and the Adjudicating Authority has violated rules of natural justice by not issuing any notice to the 'Corporate Debtor' about the date of admission, we have no other option but to set aside the impugned order dated 14th December, 2018. It is accordingly set aside.

7. The matter having already settled between the parties, we are not remitting the matter back to the Adjudicating Authority.

8. 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 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 7 of the 'I&B Code' is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Dilip Chhabria Design Private Limited'- ('Corporate Debtor') is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

9. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and 'Dilip Chhabria Design Private Limited'- ('Corporate Debtor') will pay the fees of the 'Interim Resolution Professional', for the period he has functioned. 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 Bansilal Bhat)
Member(Judicial)

Ar/g