

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 307 of 2017

IN THE MATTER OF:

**Chand Khan,
Managing Director
CK Infrastructures Ltd.**

...Appellant

Vs.

RCI Industries & Technologies Ltd.

...Respondent

Present: For Appellant:- Mr. Sanjay Bhatt, Advocate.

For Respondent:- Mr. Shobhit Nanda, Advocate.

ORDER

03.01.2018— This appeal has been preferred by Mr. Chand Khan, Managing Director of CK Infrastructures Ltd. ('Corporate Debtor') against order dated 3rd November, 2017 passed by Adjudicating Authority (National Company Law Tribunal), Bench-III, New Delhi in Company Petition No. IB-276/ND/2017, whereby and whereunder the application preferred by Respondent- RCI Industries and Technologies Ltd. ('Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted, order of moratorium has been passed and 'Interim Resolution Professional' has been appointed with certain directions as mentioned therein.

2. Learned counsel appearing on behalf of the Appellant referring to

Contd/-.....

the pleadings submitted that before admission of the application under Section 7 of the 'I&B Code', the Adjudicating Authority had not issued any notice to M/s. CK Infrastructures Ltd. ('Corporate Debtor') and the impugned order has been passed in violation of rules of natural justice. He has also submitted that the parties have settled the dispute.

3. Learned counsel appearing on behalf of the Respondent-'Financial Creditor' submitted that the Adjudicating Authority directed the 'Financial Creditor' to issue notice on the 'Corporate Debtor', but accepted that no direct notice was issued by the Adjudicating Authority to the 'Corporate Debtor'.

4. In view of the fact that no notice was issued by the Adjudicating Authority as required to be issued in view of the decision of this Appellate Tribunal in "***M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr. – Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017***", we have no other option but to set aside the impugned order dated 3rd November, 2017 passed in Company Petition No. IB-276/ND/2017.

5. As the matter has been settled between the parties which is accepted by the learned counsel for the Respondent, we find no ground to remit the case to the Adjudicating Authority.

6. In effect, order (s), passed by the Adjudicating Authority appointing any '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, if any, 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, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The appellant '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.

7. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed, and the '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

Ar/g