

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 318 of 2018

IN THE MATTER OF:

Mr. Dinesh Kumar Bhasin

...Appellant

Vs.

Batliboi Impex Limited & Anr.

...Respondents

**Present: For Appellant:- Ms. Charu Sanswan, Mr. Himanshu Dubey and Mr. Namit Suri, Advocates.
Mr. Jansid and Mr. Ritesh Kumar Tiwari, Company Secretary.**

For Respondents:- Mr. Akshay Ringe, Advocate.

O R D E R

29.06.2018- The Respondent- 'Batliboi Impex Limited'- ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") for initiation of 'Corporate Insolvency Resolution Process' against 'Tiger Steel Engineering (India) Private Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, by impugned order dated 18th May, 2018 in C.P. (IB)-146/MB/2018, admitted the application, passed order of 'Moratorium' and pursuant to proceeding, an 'Interim Resolution Professional' was appointed.

Contd/-.....

2. The Appellant- Mr. Dinesh Kumar Bhasin, a Shareholder of the 'Corporate Debtor' has challenged the order dated 18th May, 2018 on two counts namely—

- i. The impugned order of admission was passed without hearing the 'Corporate Debtor' in violation of principle of natural justice and against the decision of this Appellate Tribunal in ***"Innoventive Industries Limited V/s. ICICI Bank- Company Appeals (AT) (Insolvency) Nos. 1 & 2 of 2017"*** as affirmed by the Hon'ble Supreme Court.
- ii. If the hearing would have been given, the 'Corporate Debtor' could have pointed out the grounds for rejection and in case of non-acceptance, the 'Corporate Debtor' could have settled the dispute.

3. It is further submitted that the parties have already reached the settlement and a sum of Rs. 28.68 lakhs has been paid by two demand drafts which has been taken note by this Appellate Tribunal by its order dated 25th June, 2018.

4. On the earlier date, Mr. Arvind Kumar Gupta, learned counsel for the Respondent submitted that the total amount of Rs. 33 lakhs is payable and out of which they had handed over two demand drafts amounting to Rs. 28.68 lakhs. Today, it is informed that rest of the amount of Rs. 4,32,000/- has been paid as full and final payment and thereby total amount of Rs. 33 lakhs have been paid.

5. He further submits that another sum of Rs. 3,01,678/- has been paid by the Appellant on behalf of the 'Corporate Debtor' in favour of Respondent towards legal dues of the Appellant and the cost of the 'Resolution Professional' who has worked for a period which is less than one month.

6. Having heard learned counsel for the parties and taking into consideration the fact that the impugned order dated 18th May, 2018 was passed by the Adjudicating Authority without hearing the 'Corporate Debtor' in violation of rules of natural justice and all the time the 'Corporate Debtor' was ready to settle the matter, we have no other option but to set aside the impugned order dated 18th May, 2018, However, taking into consideration the fact that the parties are ready to settle the dispute, the case is not remanded to the Adjudicating Authority.

7. 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 '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.

8. As agreed by the parties, the Respondent will now pay a sum of Rs. 1.5 lakhs (Rupees One lakh five thousand only) to the 'Interim Resolution Professional', for the period he has functioned and towards the resolution cost. 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)

Ar/uk