

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal(AT)(Insolvency) No. 617 of 2018

IN THE MATTER OF:

Dr. Syed Sabahat Azim

...Appellant

Vs

M/s Rent A Compter

....Respondent

Present:

For Appellant: Mr. Arun Kathpalia, Senior Advocate with Ms. Misha, Mr. Shantanu Chaturvedi, Ms. Bani Brar and Ms. Jasveen Kaur, Advocates

For Respondent: Appeared but did not sign the Appearance Slip.

ORDER

25.10.2018 The Appellant, Founder Promoter of Global Healthcare Systems Private Limited has preferred this appeal against the order dated 27th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P.(IB) No. 804/KB/2018 whereby the application under Section 9 of Insolvency & Bankruptcy Code, 2016 ('I&B Code' in short) preferred by M/s Rent A Computer ('Operational Creditor') has been admitted.

2. Mr. Arun Kathpalia, learned Senior Counsel appearing on behalf of the Appellant submits that the petition preferred by Respondent No. 9 of I & B Code was not maintainable as there was pre-existing dispute much prior to issuance of notice under Section 8(1) of I & B Code and the Adjudicating Authority failed to consider the same.

3. Today when the matter was taken up, learned Senior Counsel for the Appellant submits that the parties have already settled the dispute and copy of the Settlement of Agreement dated 24th October, 2018 has been enclosed in terms of which a sum of Rs. 31 lakhs is to be paid to M/s Rent A Computer in three instalments within 90 days in terms of the agreement.

4. Learned Advocate appearing on behalf of M/s Rent A Computer accepted that the matter has been settled between the parties and submits that they are expecting that the Appellant will comply with the settlement within the time provided in the agreement.

5. From the records we find that there are certain disputes ongoing between the parties. For example, by e-mail dated 9th August, 2016, one Mr. Piyush Srivastava on behalf of the 'Corporate Debtor' intimated Mr. Sanjay Dixit of the 'Operational Creditor' that they could not receive any service from their side since a long period. There appears to be certain disputes due to termination of contract also issued by 'Corporate Debtor'.

6. Taking into consideration the fact that there was existence of dispute and parties have now settled the matter, we set aside the impugned order dated 27th September, 2018.

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, 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 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. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned.

9. As the parties have filed settlement agreement before this Appellate Tribunal, the said Settlement should be treated to be final and both the parties are bound by the same. On failure, the concerned party may bring the failure to the notice of this Appellate Tribunal for taking necessary action. The appeal is allowed with the aforesaid observations. No Cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Akc/Sk