

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 248 of 2018

IN THE MATTER OF:

Aditya Raheja

...Appellant

Vs

Heritage Marble Pvt. Ltd. & Anr.

....Respondents

Present:

**For Appellant: Mr. Balaji Srinivasan and Ms. Pratiksha Mishra,
Advocates.**

For Respondent: Ms. Shagun Bhargava, Advocate for R-1.

O R D E R

29.05.2018: This appeal has been preferred by Mr. Aditya Raheja, Director of 'M/s GStaad Hotels Private Limited' (Corporate Debtor) against order dated 26th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in C.P. No. 1693/IB/NCLT/MAH/2017 whereby and whereunder an application under Section 9 of Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'I&B Code') preferred by the Respondent- 'Heritage Marble Private Limited' (Operational Creditor) has been admitted.

2. On 25th May, 2018, the case was taken up. Learned counsel for the Appellant submitted that one of the ground is that the claim has been made by the Respondent on the basis of disputed documents, on the basis of which demand notice was issued under Section 8(1). So when the matter was taken up, learned counsel for the Respondent referred to page 102 to show purported invoice no. 568 dated 12.02.2013 which was for Rs.21,00,003/- and was purported to have issued to 'M/s GStaad Hotels Private Limited' (Corporate Debtor). But the other invoice at page 112 shows that the original invoice notice no.568 dated 12.02.2013 for same amount of Rs.21,00,003/- was issued to one 'M/s Pebble Bay Developers Pvt. Ltd.'.

3. Thereby there is a dispute about invoice on the basis of which notice under Section 8(1) was issued and application Section 9 was filed.

4. Mr. Shagun Bhargava, learned counsel appearing on behalf of the Respondent (Operational Creditor) submits that now the matter has been settled between the parties. However, Respondent have not made clear as to how same invoice no.568 dated 12.02.2013 was shown to have been issued two different companies.

5. In view of the fact that there is a dispute about invoices issued by the Operational Creditor, one to the Appellant (Corporate Debtor) and another to one 'M/s Pebble Bay Developers Pvt. Ltd.', which is sister concern of the Corporate Debtor, we are of the view that application under Section 9 was not maintainable. For the said reason we set aside the impugned order dated 26th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in C.P. No. 1693/IB/NCLT/MAH/2017, but we do not remit the case back to the Adjudicating Authority as settlement has been reached between the parties.

6. In effect, order(s) passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed by 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' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', and the 'Corporate Debtor' will pay the fees of the Interim Resolution Professional, and other cost incurred by him. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc