

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 489 of 2018

IN THE MATTER OF:

Ashok Advani

...Appellant

Versus

S. H. Khatod Trust

...Respondent

Present:

For Appellant : **Mr. Tishampati Sen, Mr. Mayur Shetty, Ms. Riddhi Sancheti and Ms. Mehak Huria, Advocates**

O R D E R

20.09.2018 This appeal has been preferred by the appellant 'Ashok Advani', shareholder of 'M/s. Business India Publications Limited' (Corporate Debtor) against the order dated 9th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench whereby an application under 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') preferred by respondent 'S.H. Khatod Trust' (Financial Creditor) has been admitted.

Learned counsel appearing on behalf of the appellant submits that an application under Section 7 of the I&B Code filed on 29th December, 2017 by the 'Financial Creditor' which was admitted after about seven months of its filing on 9th July, 2018. Before admission of the application on 9th July, 2018, the parties had already settled the matter as back as on 30th June, 2018, which was not

brought to the notice of the Adjudicating Authority. Therefore, according to him, the application under Section 7 of the I&B Code as on the date of admission was not maintainable in absence of any default.

Learned counsel appearing on behalf of the 'Financial Creditor' accepts that the parties have already settled the matter on 30th June, 2018. However, the respondent (Financial Creditor) had not brought this fact to the notice of the Adjudicating Authority on the date of admission

In the present case as we find that before admission of the application under Section 7 of the I&B Code i.e. 9th July, 2018, the parties had already settled the matter on 30th June, 2018, we hold that the application under Section 7 of the I&B Code was not maintainable as on the date of admission of the application. The impugned order dated 9th July, 2018 is accordingly set aside.

In effect, order (s) passed by Ld. Adjudicating Authority appointing '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 '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 the Respondent under Section 7 of the I&B Code is dismissed. The 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.

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

/ns/gc/