

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 733 of 2018**

**IN THE MATTER OF:**

**Gursimran Singh, Director of  
M/s Downtown Temptations Pvt. Ltd.**

**...Appellant**

**Vs**

**Indiabulls Housing Finance Ltd.**

**....Respondent**

**Present:**

**For Appellant: Mr. Mohit Chaudhary and Ms. Garima Sharma,  
Advocates.**

**For Respondent: Mr. Sumesh Dhawan and Ms. Geetika Sharma,  
Advocates.**

**O R D E R**

**20.12.2018:** This appeal has been preferred by 'Gursimran Singh', Director of 'M/s Downtown Temptations Pvt. Ltd.' (Corporate Debtor) against order dated 28<sup>th</sup> September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata bench, Kolkata, whereby and whereunder the application under Section 7 preferred by 'Indiabulls Housing Finance Ltd.' (Financial Creditor) has been admitted.

2. Ms. Garima Sharma, learned counsel appearing on behalf of the Appellant submits that no notice was issued by the Adjudicating Authority nor any notice on behalf of the Adjudicating Authority was served on the Appellant. She further submits that in the meantime parties have entered a settlement by Settlement Letter dated 28<sup>th</sup> November, 2018 and part payment has also been made.

3. Mr. Sumesh Dhawan, learned counsel appearing on behalf of the Financial Creditor referred to paragraph 4 of the impugned order to suggest that notice for admission was served upon the Corporate Debtor and to that extent the Financial Creditor has filed an affidavit of service providing service of notice.

4. However, we find that no notice was issued by the Adjudicating Authority nor any notice issued by the Adjudicating Authority was served on the Corporate Debtor.

5. As per NCLT Rules 2017 r/w Section 424 of the Companies Act, 2013, which is also applicable for Insolvency and Bankruptcy Code, 2016, and in view of decision of this Appellate Tribunal in '*Innoventive Industries Ltd. Vs. ICICI Bank & Anr.*' *Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017 pronounced on 15<sup>th</sup> May, 2017*, a limited notice should have been issued by the Adjudicating Authority and on hearing the parties order of admission or rejection should have been passed. Admittedly, in this case, such procedure was not followed by the Adjudicating Authority and for said reason, the impugned order dated 28<sup>th</sup> September, 2018 being violative of principle of natural justice, we set aside the said impugned order. In view of the Letter of Settlement, we are not remitting the matter to the Adjudicating Authority. However, on failure to act as per settlement, it will be open to the Financial Creditor to reinitiate the Insolvency Resolution Process under Section 7 against the Corporate Debtor.

6. In the result, order(s) passed by 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, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications and all such orders and actions are declared illegal and are set aside. The application preferred by Respondent is dismissed. Learned Adjudicating Authority will 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.

7. The Adjudicating Authority will decide the fee of 'Interim Resolution Professional' and the actual expenditure to which he is entitled and the 'Corporate Debtor' will pay the same.

8. The appeal is allowed with aforesaid observations. 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)

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