

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 45 of 2019

IN THE MATTER OF:

Sh. Ved Prakash

...Appellant

Vs.

M/s. Navkar Traders & Anr.

...Respondents

Present: For Appellant: - Mr. Aditya Sharma, Advocate.

For Respondents: - Mr. Ajay Kumar Jain and Mr. Sourit Arora, Advocates.

ORDER

17.01.2019— Learned counsel for the Appellant submits that the order of admission of application filed by the Respondent- ('Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, on 2nd January, 2019 is not sustainable, in view of the fact that the parties arrived at an amicable settlement qua the dispute in regard to the 'operational debt' on 27th December, 2018 and in pursuance thereof three cheques of the value of Rs. 5,00,000/-; Rs. 5,00,000/- and Rs. 6,10,000/- respectively were issued on the same date i.e. 27th December, 2018 in favour of the Respondent- ('Operational Creditor').

2. Learned counsel for the Appellant has produced the Bank Statements for the period from 27th December, 2018 to 3rd January, 2019

issued by Indian Overseas Bank, wherein one cheque of the value of Rs. 5,00,000/- out of the three cheques has been cleared on 29th December, 2018 and credited to the account of Respondent- ('Operational Creditor') and value of two cheques to the tune of Rs. 5,00,000/- and Rs. 6,10,000/- respectively is reflected in the account of the Respondent- ('Operational Creditor') on 1st January, 2019.

3. This factual position is not disputed by the learned counsel for the Respondent- 'Operational Creditor' who admits that in terms of the amicable settlement *inter se* the 'Operational Creditor' and the 'Corporate Debtor', the claim of the 'Operational Creditor' has been fully and finally settled.

4. It is submitted that the dispute has been settled and the settlement worked out, implemented and the claim of the Respondent- 'Operational Creditor' settled well before the admission of the application under Section 9 of the 'I&B Code'.

5. Learned counsel for the Appellant submits that unfortunately, the development in regard to settlement of dispute was not brought to the notice of the learned Adjudicating Authority on 2nd January, 2019 when the impugned order of admission of application under Section 9 of the 'I&B Code' was passed.

6. After hearing learned counsel for the parties and wading through the records including the Bank Statements produced today to substantiate and corroborate the stand taken in regard to settlement, I

am of the considered opinion that an amicable settlement has already been reached between the parties on 27th December, 2018 in terms whereof cheques worth Rs. 16,10,000/- have been delivered to the Respondent- 'Operational Creditor' towards full and final satisfaction of his claim. The Bank Statements corroborate the terms of the amicable settlement placed on record reflecting credit of the amount of Rs. 16,10,000/- in the account of Respondent- 'Operational Creditor' well before the date of passing of the impugned order.

7. In view of this factual matrix, there is no difficulty in holding that no debt was payable in law and consequently no default has occurred qua the 'operational debt' when the impugned order of admission of application under Section 9 of the 'I&B Code' was passed by the learned Adjudicating Authority. In view of the same, the impugned order cannot be sustained and the same is set aside.

8. In effect, order (s), passed by the Adjudicating Authority appointing '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, 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' 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 with immediate effect.

9. The fee and cost incurred by Mr. Aditya Kumar- 'Interim Resolution Professional', who is present in court in person, shall be determined by the learned Adjudicating Authority who will pass order with regard to the same. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice Bansi Lal Bhat)
Member(Judicial)

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