

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT)(Insolvency) No. 800 of 2018

IN THE MATTER OF:

Kumar Vihaan

...Appellant

Vs

Overseas Packaging Industries Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Saurabh Kalia, Mr. Harshit Agarwal and Mr. Arjun Aggarwal, Advocates.

For Respondents: Ms. Garima Sharma and Mr. Mohit Chaudhary, Advocates for Respondent No. 1

O R D E R

29.01.2019 The Appellant, Director of YSG Cabs and Logistics Private Limited ('Corporate Debtor'), has challenged the order dated 28th November, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench, New Delhi whereby and whereunder an application under Section 9 of Insolvency and Bankruptcy Code, 2016 (henceforth referred to as 'I&B Code') preferred by Overseas Packaging Industries Pvt. Ltd ('Operational Creditor') has been admitted, the order of moratorium has been passed and Interim Resolution Professional has been appointed.

2. The Respondent(s) took the plea that pursuant to agreement dated 16th April, 2016 for the premises in Kolkata and Amenities Agreement at various offices belonging to the 'Corporate Debtor' at Bhubaneswar, Guwahati, Ranchi,

Lucknow, Chennai, Bangalore, Pune and Mumbai etc., services for leasing out premises providing furniture, fixtures, interior decorations, air-conditioners and other fit outs were agreed upon. Thereafter, the 'Operational Creditor' raised invoices on various offices at Bhubaneswar, Guwahati, Ranchi, Lucknow, Chennai, Bangalore, Pune and Mumbai etc. It was alleged that the outstanding dues payable, to the tune of Rs. 2,30,12,045/- inclusive of TDS, has not been paid to the 'Operational Creditor' in spite of Demand Notice issued under Section 8 of I&B Code on 22nd November, 2017.

3. Learned Counsel appearing on behalf of the Appellant took plea that there was pre-existing dispute and thereby application under Section 9 of I&B Code is not maintainable. It was further submitted that before impugned order passed on 28th November, 2018, no hearing was given to the 'Corporate Debtor', otherwise the matter could have been settled. It is stated that the parties have now settled the claims. The terms of settlement have been filed.

4. Learned Counsel appearing on behalf of the 1st Respondent ('Operational Creditor') while disputing the claims, submits that existence of a pre-existing dispute, has been accepted. The Adjudicating Authority has not heard 'Corporate Debtor' before the impugned order was passed on 28th November, 2018. It is also accepted that the parties have now settled their claims.

5. Learned Counsel for the Resolution Professional and learned Counsel for the Committee of Creditors are present. The pleas taken by the learned Counsels for the Resolution Professional and Committee of Creditors were heard and perused.

6. In the circumstances, we are of the opinion that the impugned order dated 28th November, 2018 was passed in violation of principle of Natural Justice without notice to the 'Corporate Debtor' and we set aside the impugned order dated 28th November, 2018. However, we do not remit back the matter for fresh hearing as the parties have settled their claims. The parties are directed to act in terms of their settlement.

7. In effect, order 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, if any, 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', if appointed, and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned as per the decision of the Committee of Creditors after adjusting the amount already paid, if any.

9. In the aforesaid facts and circumstances, we allow the appeal preferred by the Appellant.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Akc/Uk