

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 144 & 149 of 2017

IN THE MATTER OF:

Jammu Paper Pvt. Ltd.

...Appellant

Versus

Shiv Pooja Traders

...Respondent

Present:

For Appellant :

**Shri Arun Kathpalia, Senior Advocate
assisted by Shri Jayant Mehta, Shri Atul
Sharma, Shri Nitesh Jain, Ms. Arveena
Sharma and Shri Shubhankar, Advocates**

For Respondent :

Shri Nonu Khera, Advocate

O R D E R

04.09.2017 Both the appeals have been preferred by the appellant against order(s) dated 10th July, 2017 and 21st July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh. By the order dated 10th July, 2017, the learned Adjudicating Authority admitted the application preferred by respondent – ‘Operational Creditor’ under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I&B Code’) declared moratorium and requested the Insolvency and Bankruptcy Board of India to recommend the name of the Insolvency Resolution Professional. By the subsequent order dated 21st July, 2017, the learned Adjudicating Authority appointed the

Interim Resolution Professional and directed to prepare a list of inventory assets of the 'Corporate Debtor' etc. in terms of the provisions of the I & B Code.

2. Learned counsel for the appellant submits that both the impugned order(s) dated 10th July and 21st July, 2017 have been passed without serving any notice on the appellant – 'Corporate Debtor'. He further submits that the respondent – 'Operational Creditor' also not given any notice to the appellant under Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016. It is further stated that the parties have settled the dispute and the amount has already been paid to the 'Operational Creditor'.

3. On notice the respondent – 'Operational Creditor' has appeared.

4. Learned counsel for the respondent accepts that the matter has been settled and the amount has been paid. He further submits that because of wrong address of the appellant the notice under Rule 4(3) could not be served. The respondent has made the following statement in its reply :

"9. That later after the above mentioned meeting the appellant also apprised the deponent of the fact that the appellant has not received any demand notice in Form-4 and the address mentioned in the track report as well as the postal receipt of the same is "SIDCO I/Complex, Bari Brahmna" whereas the correct address of the appellant is "SIDCO I/Complex, Phase-II, Bari Brahmna, Samba" as mentioned in the Form-4 also, and pursuant to which the deponent also noticed that various track reports as well as the postal receipts show the address of the appellant

written as "SODCP I/Complex, Bari Brahmna: and the deponent does not deny that there is a possibility that the address therein on some of the postal envelopes could have been inadvertently written as "SIDCO I/Complex, Bari Brahmna" instead of "SIDCO I/Complex, Phase-II, Bari Brahmna, Samba", due to which the possibility that Appellant might not have been duly served with Form-4 or with the copy of Petition cannot be denied."

5. From both the impugned order(s), we find that no appearance has been recorded on behalf of the 'Corporate Debtor'. There is nothing on record to suggest that the Tribunal has issued any notice to the appellant before admission of the application nor anything on record to suggest that the copy of the impugned order dated 10th July, 2017 was served on appellant prior to 21st July, 2017.

6. Learned counsel for the appellant submits that the said order was served after appointment of Interim Resolution Professional (IRP) i.e. on 21st July, 2017.

7. From the statement made by the parties and record as we find that the impugned order(s) dated 10th July and 21st July, 2017 have been passed by the learned Adjudicating Authority in violation of the rules of natural justice and against the decision of the Appellate Tribunal in ***Innoventive Industries Ltd. vs. ICICI Bank and another, [Company Appeal (AT) (Insolvency) No. 1 and 2 of 2017]***, we set aside both the impugned order(s) dated 10th July, 2017 and 21st July, 2017 and direct the Adjudicating Authority to close the petition under Section 9 of the Companies Act, in absence of any claim.

8. In the result, the appointment of Interim Resolution Professional, order declaring moratorium, freezing of account and all other order(s) passed by the Adjudicating Authority pursuant to impugned order(s) and action taken by the Interim Resolution Professional including the advertisement published in the newspaper calling for applications are declared illegal. The appellant is released from the rigour of law and allow the appellant company to function independently through its Board of Directors with immediate effect.

7. Learned Adjudicating Authority will now determine the fee of Interim Resolution Professional and the appellant will pay the fees of the Interim Resolution Professional for the period he has worked.

8. Both the appeals stand disposed of with the 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

[Balvinder Singh]
Member (Technical)