

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 111 of 2018

IN THE MATTER OF:

A.Murlidharan

...Appellant

Vs.

Chava Bharath Kumar & Ors.

...Respondents

Present: For Appellant: - Mr. Purushottam Kr. Jha, Advocate

**For Respondent:- Mr. Virender Ganda, Sr. Advocate with Mr. Varun Sethi, Mr. Ajay Bowry, Advocate for R-1
Mr. Divyanshu Goyal and Ms. Shikha Sinha, Advocates.**

ORDER

23.07.2018— There is nothing on the record to suggest that a notice was issued by the Adjudicating Authority (National Company Law Tribunal) to the 'Corporate Debtor' before admitting the application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (for short 'I & B Code' 2016). There is also nothing on record to suggest that notice under Section 8(1) issued by the 'operational creditor' was served on the 'Corporate Debtor'.

Mr. Virender Ganda, Learned Senior Counsel appearing on behalf of the 'Operational Creditor' submits that the respondent - 'Operational Creditor' has agreed to reinitiate the proceedings by issuance of fresh notice under Section 8(1) of the 'I & B Code' 2016 in accordance with law.

In view of such stand taken by the respondent and the observations made above, we set aside the impugned order dated 17th January 2018 with liberty to the respondent – ‘operational creditor’ to proceed in accordance with law.

For the purpose of service of notice if there is a confusion relating to address of the ‘Corporate Debtor’, the address given by the ‘Corporate Debtor’ in this appeal be treated to be the correct address. In such case if the notice returned on the ground that there is “No such person”, the shareholder/director or the ‘Corporate Debtor’ cannot take advantage of the same.

It will also be open to the respondent – ‘operational creditor’ to serve a copy on Mr. A. Murlidharan, Shareholder.

In effect, order (s), passed by the Adjudicating Authority appointing any ‘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 ‘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, 2016 is dismissed with liberty aforesaid. 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.

The Adjudicating Authority will fix the fee of 'Resolution Professional' and the 'Corporate Debtor' will pay the fees for the period he has functioned. The appeal is allowed with aforesaid observation. 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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