

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 484 of 2018

IN THE MATTER OF:

Dilip Singh

...Appellant

Vs

Nuvoco Vistas Corporation Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. C. S. Gupta, Ms. Kritika and Mr. Shekhar Kumar, Advocates.

For Respondents: Ms. Aakanksha Kaul, Advocate for R-1.

ORDER

10.09.2018: This appeal has been preferred by Shareholder and Ex-Director of 'M/s Soho Infrastructure Pvt. Ltd.' (Corporate Debtor) against order dated 14th June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No. IV), whereby the application preferred by the Respondent – 'M/s Nuvoco Vistas Corporation Ltd.' (Operational Creditor) under Section 9 of Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) has been admitted, order of moratorium has been passed and Interim Resolution Professional has been appointed.

2. Learned counsel for the Appellant submitted that no demand notice under Section 8(1) of the I&B Code was served on the Corporate Debtor. In spite of the same, the Adjudicating Authority treating it to be served has admitted the application. Learned counsel for the Appellant relied on 'Track Consignment Report' of India Post (at page 91), which shows that item delivery was attempted by Postal Department, but the same was not served. Learned counsel appearing on behalf of the Respondent submits that previously the Respondent attempted to serve on the demand notice but it was returned undelivered.

3. However, it is not in dispute and evidence is also on record to show that the demand notice under section 8(1) notice was never served on the Corporate Debtor.

4. On 27th August, 2018, when the matter was taken up, learned counsel for the Appellant submitted that if the demand notice under Section 8(1) would have been served on the Corporate Debtor, the parties would have settled the matter. It was also informed that the parties were negotiating for settlement and in terms of the settlement a Draft of a Bank will be handed over to the Operational Creditor.

5. Today, an affidavit has been filed by the Appellant enclosing terms of settlement which shows that the amount payable to the Respondent has been paid by draft dated 27th August, 2018. It is also accepted by the learned counsel for the Respondent (Operational Creditor).

6. In the preset case as we find that the impugned order passed by the Adjudicating Authority without taking into consideration the evidence that the demand notice under Section 8(1) was never served on the Corporate Debtor, we set aside the impugned order dated 14th June, 2018. The case is not remitted parties have settled the claim.

7. In effect, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications 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. The 'Corporate Debtor' is released from 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 the 'Resolution Professional', and the 'Corporate Debtor' will pay the fees, and other cost incurred by him. The appeal is allowed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

am/gc