

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 482 of 2018

IN THE MATTER OF:

Sunil Kumar Rishi

...Appellant

Vs.

Debashis Chakravarty

...Respondent

Present: For Appellant: - Mr. Ratnanko Banerji, Senior Advocate with Mr. R. Sudhinder and Ms. Amrita Sarkar, Advocates.

For Respondent:- Mr. Gursat Singh and Mr. Daniel George, Advocates.

ORDER

08.01.2019— The Appellant, Director of ‘Stone India Ltd.’- (‘Corporate Debtor’) has preferred this appeal against the order dated 17th July, 2018, passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, whereby and whereunder, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) preferred by the Respondent- Mr. Debashis Chakravarty, erstwhile CEO and Managing Director of the ‘Corporate Debtor’ has been admitted, order of ‘Moratorium’ has been passed and ‘Interim Resolution Professional’ has been appointed.

Contd/-.....

2. Mr. Ratnanko Banerjee, learned Senior Counsel appearing on behalf of the Appellant submits that there was pre-existence dispute which was brought to the notice of the Adjudicating Authority, but in spite of the same, the application under Section 9 of the 'I&B Code' has been admitted. It is also informed that the parties in the meantime has settled the claim.

3. Mr. Daniel George, learned counsel appearing on behalf of the Respondent while accepts that the settlement has been reached between the parties, informed that the 'Resolution Process' has progressed and 'Resolution Plans' have already been submitted by different 'Resolution Applicants'.

4. From the record, we find that demand notice under Section 8(1) of the 'I&B Code' was issued by the Respondents on 23rd October, 2017, but much prior to the same an e-mail was sent by the Respondent on 5th May, 2017 which was brought to the notice of the Adjudicating Authority. Learned counsel for the 'Corporate Debtor' submits that the Respondent demanded commission from the tenderer, who submitted tender for the sale of elevators to the 'Corporate Debtor'.

5. It is submitted that in view of such e-mail addressed by the Respondent demanding commission from the tenderer enquiry was made. E-mail dated 5th May, 2017 was enclosed as Annexure “B”, but in spite of the same, the Adjudicating Authority admitted the application under Section 9, without looking into the pre-existence dispute relating to such demand of commission and the question whether demand of commission was justified or not; cannot be decided by the Adjudicating Authority or by this Appellate Tribunal, we are of the opinion it was not a fit case for admission.

6. In this circumstances, we have no other option but to set aside the impugned order dated 17th July, 2018 passed by the Adjudicating Authority, Kolkata Bench, Kolkata, in CP (IB) No. 203/KB/2018. The same is, accordingly, set aside. The parties having settled the matter, we direct the parties to act in terms with settlement which should be treated to be a direction of this Appellate Tribunal.

7. 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 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 from immediate effect.

8. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional' 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)

Ar/g