

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 287 of 2019**

**IN THE MATTER OF:**

**A.P Abdul Kareem**

**...Appellant**

**Vs.**

**Om Industrial Corporation & Anr.**

**...Respondents**

**Present: For Appellant: - Mr. Sunav Rastogi, Advocate.**

**For Respondents: - Mr. G.K. Jain, Chartered Accountant  
for R1.**

**O R D E R**

**16.04.2019—** This appeal has been preferred by the Appellant, Shareholder of 'M/s. Hajee A.P. Bava & Company Constructions Pvt. Ltd.'- ('Corporate Debtor') against the order dated 11<sup>th</sup> March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, Bengaluru, admitting the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) preferred by 'M/s. OM Industrial Corporation'- ('Operational Creditor') against the 'Corporate Debtor'.

2. Learned counsel appearing on behalf of the Appellant submitted that the 'Committee of Creditors' has not yet been constituted and the Appellant is ready to pay the total dues to the Respondent- 'Operational Creditor'.

3. Learned counsel for the Appellant has brought Demand Draft of Rs.66,87,540/- (Rupees Sixty Six Lakh Eighty Seven Thousand Five Hundred Forty Only), a copy of which has been enclosed with the appeal.

4. On 15<sup>th</sup> April, 2019, when the matter was taken up, Mr. G.K. Jain, Chartered Accountant along with Mr. Hemant Sarin, Advocate appearing on behalf of 'M/s. OM Industrial Corporation'- ('Operational Creditor') submitted that the admitted claim by the 'Interim Resolution Professional' is Rs.74,30,682/- which includes interest. This apart, the 'Operational Creditor' had to pay Rs.2 Lakhs towards the Resolution Cost to the 'Interim Resolution Professional' for publication of advertisement, etc.

5. Mr. A. Harish, Chartered Accountant, the 'Interim Resolution Professional' also appeared on 15<sup>th</sup> April, 2019, while he accepted that the 'Committee of Creditors' having not yet been constituted submitted that he is entitled for fee for the working period of 33 days, which was assessed by this Appellate Tribunal at Rs. 2 Lakhs.

6. Today, when the case was taken up, learned counsel appearing on behalf of the Appellant has handed over three Demand Drafts details whereof given below: -

- (i) Demand Draft No.994654 dated 18<sup>th</sup> March, 2019 issued by 'The Federal Bank' for Rs.66,87,540/- (Rupees Sixty Six Lakh Eighty Seven Thousand Five Hundred Forty Only) issued in the name of 'OM Industrial Corporation'.

(ii) Demand Draft No.994738 dated 12<sup>th</sup> April, 2019 issued by 'The Federal Bank' for Rs.7,43,142/- (Rupees Seven Lakh Forty Three Thousand One Hundred Forty Two Only) issued in the name of 'OM Industrial Corporation'.

(iii) Demand Draft No.067498 dated 15<sup>th</sup> April, 2019 issued by 'The Federal Bank' for Rs.2,00,000/- (Rupees Two Lakhs Only) issued in the name of 'OM Industrial Corporation'.

Thus, a total sum of Rs.76,30,682/- which includes the principal amount with interest and Rs. 2,00,000/- towards the 'Resolution Cost' which was paid on behalf of the 'Interim Resolution Professional'. The aforesaid Demand Drafts are handed over to Mr. G.K. Jain, Chartered Accountant for their onward transmission to 'M/s. OM Industrial Corporation'.

7. Learned counsel appearing on behalf of the Appellant has also brought a Demand Draft No.067499 dated 15<sup>th</sup> April, 2019 issued by 'The Federal Bank' for Rs.2,16,000/- (Rupees Two Lakh Sixteen Thousand Only) in the name of Mr. Addanki Haresh, 'Interim Resolution Professional' but because of the absence of the said 'Interim Resolution Professional' today, it cannot be handed over. Learned counsel for the Appellant will hand over the same to Mr. Addanki Haresh, 'Interim Resolution Professional' within 15 days.

8. In view of the fact that the total amount has been paid to the 'Operational Creditor' and the 'Committee of Creditors' has not yet been constituted, we set aside the impugned order dated 11<sup>th</sup> March, 2019.

9. 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, if any, 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' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors with immediate effect.

10. 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 A.I.S. Cheema)  
Member(Judicial)

(Kanthi Narahari)  
Member(Technical)

Ar/g