

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 191 of 2017

IN THE MATTER OF:

Mr. Piyush

...Appellant

Versus

**Reliance Commercial Finance Ltd.
& another**

...Respondents

Present:

For Appellant :

Shri Aok Dhar, Ms. Varsha Banerjee, Shri Milan Singh Negi and Shri Kunal Godhwani, Advocates

For Respondent

Though present name not given

O R D E R

13.12.2017 This appeal has been preferred by the appellant, the authorised signatory of the suspended Board of Directors of Maharashtra Vidyut Nigam Pvt. Ltd. (Corporate Debtor) against order dated 4th August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in C.P. No. 1140/I&BP/NCLT/MB/MAH/2017 whereby and whereunder the application preferred by the respondent – ‘Reliance Commercial Finance Limited’ (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘I&B Code’) has been admitted, order of moratorium has been passed and the Interim Resolution Professional has been appointed.

2. Learned counsel appearing on behalf of the appellant submits that the impugned order dated 4th August, 2017 has been passed in violation of rules of

natural justice and against the decision of this Appellate Tribunal in the matter of *“Innoventive Industries Limited vs. ICICI Bank & Anr. – Company Appeal (AT) Nos. 1 & 2 of 2017”*. Before passing the impugned order dated 4th August, 2017 no notice was given by the Adjudicating Authority to the Corporate Debtor.

3. Learned counsel for the appellant further submits that the parties have already settled the dispute by compromise agreement dated 13th December, 2017, a copy of which has been produced before this Appellate Tribunal.

4. Learned counsel appearing on behalf of the respondent – ‘Reliance Commercial Finance Limited’ (Financial Creditor) accepts that the impugned order was passed without notice and without hearing the Corporate Debtor - ‘Maharashtra Vidyut Nigam Private Limited’.

5. In the Court, learned counsel for the appellant handed over a demand draft dated 12th December, 2017 issued by ‘Yes Bank Limited’, 9th Floor, Nehru Centre, Discovery of India Building, Dr. A.B. Road, Worli, Mumbai issued in the name of Financial Creditor – ‘Reliance Commercial Finance Limited’ for a sum of Rupees Two Crores as a part payment in terms of agreement dated 13th December, 2017.

6. Having heard the learned counsel for the parties and taking into consideration the fact that the impugned order dated 4th August, 2017 was passed by the Adjudicating Authority in violation of rules of natural justice, the impugned order is set aside. Further, in view of the compromise agreement reached between the parties on 13th December, 2017, we are not inclined to remit the matter to the Adjudicating Authority, who is directed to close the proceedings

and the parties will be bound by the compromise agreement, which should be treated as a direction of the Appellate Tribunal.

7. In effect, order(s) passed by the Adjudicating Authority appointing '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 433 and 434 stands abated. The 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 the 'Resolution Professional' and the Corporate Debtor will pay the fees for the period the Resolution Professional has functioned. The appeal is allowed with 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

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk