

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No.971 of 2019

IN THE MATTER OF:

Raj Singh Gehlot, Director of Ambience Pvt. Ltd.Appellant

Vs.

Vistra ITCL(India) Ltd. & Anr.Respondents

Present :

For Appellant: Mr. Abhishek Manu Singhvi, Senior Advocate, Mr. Rajiv Ranjan, Senior Advocate, Mr. Amit Bhandari, Ms. Tannya Sharma, Ms. Deepti Gupta, Ms. S. Hazarika, Ms. Aliya, Mr. Ritesh Khare, Advocates

For Respondents: Mr. Arun Kathpalia, Senior Advocate, Mr. Vijay Nair, Mr. M.Sharma, Mr. Paliwal, Ms. Sakshi Kapoor, Mr. Mritunjay Kumar, Advocates

O R D E R

25.10.2019 - The 'Vistra ITCL(India) Ltd.' filed an application Under Section 7 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) for initiation of 'Corporate Insolvency Resolution Process' against 'Ambience Pvt. Ltd.' ('Corporate Debtor'), the Divisional Bench of one Hon'ble Member (Judicial) and another Hon'ble Member (Technical) of 'National Company Law Tribunal' Bench No. III, New Delhi heard the application on 26th

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November, 2018 and passed different orders as detailed below as shown in chart below:-

LIST OF DATES OF ORDERS

Vistra ITCL (India) Limited & Anr Versus Ambience Pvt. Ltd. (NCLT)NCLT Case No. IB-1600(ND)2018

Date	Coram	Particulars
26.11.2018	Mr. R. Vardharajan Mr. V.K. Subbaraj	Vistra to file documents
12.12.2018	Ms. Deepti Mukesh Mr. V.K. Subbaraj	Matter be posted before regular bench.
17.12.2018	Mr. R. Vardharajan Mr. V.K. Subbaraj	CD of file reply
22.01.2019	Mr. R. Vardharajan	Absence of Coram. Matter adjourned
18.02.2019	Ms. Deepti Mukesh	Matter to be posted before regular bench
25.02.2019	Mr. R. Vardharajan	Absence of Coram. Matter Adjourned
11.03.2019	Mr. R. Vardharajan Ms. Deepa Krishan	Adjourned at joint request.
09.04.2019	Mr. R. Vardharajan Ms. Deepa Krishan	Final Arguments heard. Parties directed to file written submission.
22.04.2019	Mr. R. Vardharajan	Written submissions filed.

		Reserved for order.
19.07.2019		Ms. Deepa Krishan retires.
27.08.2019		Order delivered & pronounced by Mr. R. Vardharajan

The Appeal was admitted by Hon'ble Member (Judicial) on 27th August, 2019 as in the meantime one of the Hon'ble Member(Technical) Ms. Deepa Krishan retired on 19th July, 2019.

The order of 'admission' is challenged on the ground that the matter having been heard by two Hon'ble Members and the final order could not have been passed by Hon'ble Member(Judicial).

Dr. Abhishek Manu Singhvi, Learned Senior Counsel appears on behalf of the Appellant referred to Section 419(3) of the Companies Act and Rule 152(4) of 'NCTL' Rules, 2016 in support of its claim.

Mr. Arun Kathpalia, Learned Senior Counsel has appeared on behalf of 'Vistra ITCL(India) Ltd.' ('Financial Creditor') accepts the aforesaid fact.

In the facts and circumstances, as suggested by Learned Counsel for the parties and we are also of the opinion that the matter may be remitted back for fresh hearing on merit relating to admission of application Under Section 7 of the 'I&B' Code after giving liberty to the parties.

Mr. Sandip, 'Resolution Professional' has appeared with Mr. Mritunjay Kumar, Learned Counsel and submitted that he has incurred certain expenses and entitled for fee of last one month 20 days. However, we are not deciding his claim at this stage as we intend to remit the matter to the Adjudicating Authority.

We accordingly, set aside the impugned order dated 27th August, 2019 without extending any opinion on merit of the claim and counter claim of the parties. The matter is remitted back to the 'National Company Law Tribunal' Bench III, New Delhi should be heard by Divisional Bench of Hon'ble Member(Judicial) and Hon'ble (Technical) as per the provisions of the Act and after notice and hearing, the Adjudicating Authority pass appropriate order in accordance with Law uninfluenced by an impugned order dated 27th August, 2019. It is expected that the application will be taken up and disposed of on early date preferably within three weeks from the date of appearance of the parties. Both the parties will appear before the Hon'ble President of 'NCLT' on 6th November, 2019 and bring this order to the notice of Hon'ble President.

In so far as the fee and cost of the 'Resolution Professional' is concerned, the Adjudicating Authority will decide the same in accordance with law after the Application Under Section 7 is admitted in case, it will be decided by the 'Committee of Creditors' as per the provision of the Code.

The Appeal stands disposed of and remitted with the aforesaid observations and directions. The Appeal stands disposed of without costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)

[Justice Jarat Kumar Jain]
Member (Judicial)

ss/sk