

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

I.A. No. 2081 & 2082 of 2018

IN

Company Appeal (AT) (Insolvency) No. 766-767 of 2018

IN THE MATTER OF:

Mukesh Agarwal

...Appellant

Versus

Ultimate Infracity Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Rajiv Ranjan, Senior Advocate assisted by
Mr. Pramod Sharma, Advocate**

For Respondent : **Mr. Ahsaan Ahmad, Advocate for IRP**

O R D E R

20.12.2018 This appeal has been preferred by the appellant, shareholder of M/s. Paramount Propbuild Pvt. Ltd. ('Corporate Debtor') against the order dated 16th November, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No. IV) whereby and whereunder an application under Section 9 was filed by M/s. Ultimate Infracity Pvt. Ltd. (Operational Creditor) has been admitted. The order dated 27th November, 2018 passed by the Adjudicating Authority appointing the 'Interim Resolution Professional' is also under challenge.

Learned counsel for the appellant submits that notice under Section 9 was never served on the 'Corporate Debtor' and the *ex-parte* order of admission was passed without giving any opportunity to the 'Corporate Debtor' otherwise parties would have settled the issues.

On 10th December, 2018, learned counsel for the appellant referred to a notice issued by the Adjudicating Authority enclosed at page No. 182 and the affidavit served by the respondent –‘Operational Creditor’ which is at page 187-189, from which it appears that notice was never served on the ‘Corporate Debtor’.

The 1st Respondent – ‘Operational Creditor’ has appeared and admitted that no notice was issued by the Adjudicating Authority was nor served on the ‘Corporate Debtor’ before the order of admission passed on 16th November, 2018. It is informed that the parties have also reached the settlement on 1st December, 2018.

Learned counsel appearing on behalf of the ‘Interim Resolution Professional’ submits that he has already performed his duties till 30th November, 2018 – for about 20 days and has also incurred expenses towards publication of notice, compliance etc.

Having heard the learned counsel for the parties and taking into consideration that the impugned order dated 16th November, 2018 passed in violation of rules of natural justice, we set aside the order dated 16th November, 2018. In view of the fact that the parties have settled the matter on 1st December, 2018, we are not remitting the matter to the Adjudicating Authority.

In effect, order (s) passed by Ld. Adjudicating Authority appointing ‘Interim Resolution Professional’, declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the ‘Resolution Professional’, including the advertisement published in the newspaper calling for applications and other orders and actions as taken are declared illegal and are set aside. The application preferred by the

1st Respondent under Section 9 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of 'I&B Code' and is allowed to function independently through its Board of Directors from immediate effect.

Taking into consideration the nature of the work performed by Mr. Rajesh Kumar Parek, 'Interim Resolution Professional', we direct the 'Corporate Debtor' to pay a sum of Rs. Two Lakhs in favour of the 'Interim Resolution Professional' towards fees and the actual expenses as have been incurred by him. The Resolution Professional will submit the actual bill and the 'Corporate Debtor' will clear the same within 15 days.

The appeal stands disposed of with the aforesaid observation and directions. No cost.

I.A. No. 2082 of 2018 stands disposed of.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk/