

Corporate Insolvency Resolution Process against the appellant- 'Corporate Debtor'-S3 Electrical and Electronics Private Limited. Learned Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, by judgement & order dated 28th June, 2017, admitted the application, declared 'Moratorium', appointed Insolvency Resolution Professional and passed order in terms of Sections 15, 16, 17, 18 and 20 of the I&B Code with certain observations and directions. The appeal has been preferred against the aforesaid order.

2. The same very impugned judgement & order has been challenged by Andhra Bank in connected appeal (Company Appeal (AT) (Insolvency) No. 109 of 2017). According to the appellant- Andhra Bank, they are banker of 'Corporate Debtor'- S3 Electricals & Electronics Private Limited and there is no default shown in the account. The Andhra Bank is satisfied with the performance of the 'Corporate Debtor'.

3. The appellant-'Corporate Debtor' has assailed the impugned judgement mainly on the ground that :

(a) The Adjudicating Authority, Principal Bench, New Delhi passed the impugned judgement & order without notice to the 'Corporate Debtor', in violation of the rules of natural justice;

- (b) The respondent, who claimed to be 'Financial Creditor' do not come within the meaning of 'Financial Creditor' as defined under sub-section (7) read with sub-section (8) of Section 3 of the I&B Code;
- (c) The respondent failed to produce any record of default or such other record or evidence of default as specified by the Insolvency and Banking Board of India; and
- (d) The notice under Section 8 was not issued by respondent but by his Lawyer which is not permissible.

5. Learned counsel appearing for the respondent has not disputed the fact that no notice was issued on the 'Corporate Debtor' before the admission of the application i.e. before passing of impugned order dated 28th June, 2017. He submitted that there are other records, such as 'Unsecured Loan Agreement dated 18th June, 2014' and communications on record to show evidence of default. However, such documents cannot be taken into consideration for the purpose of initiation of Insolvency Resolution Process under Section 7 of the I&B Code in absence of the documents as prescribed in the Code. In any case, as the impugned order dated 28th June, 2017 has been passed without notice to the

'Corporate Debtor' and in violation of the rules of natural justice, we are of the view that the same is fit to be set aside.

6. At this stage, we have been informed by learned counsel for the parties that during the pendency of the appeal, the parties have settled their dispute and amount as claimed by the respondent has been satisfied by issuing cheque(s) in his favour. However, we are not going into such question in this appeal.

7. For the reasons as recorded above, we set aside the impugned order dated 28th June, 2017 passed by Learned Adjudicating Authority, Principal Bench, New Delhi in C.P. No. 1251 of 2016.

8. In effect, order(s), if any, passed by the Learned Adjudicating Authority appointing any 'Interim Resolution Professional' or declaring moratorium, freezing of account and all other Order (s) passed by Learned Adjudicating Authority pursuant to the impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the respondent(s) under Section 7 of the I&B Code is dismissed. Learned Adjudicating Authority will close the proceedings. The appellant(s) are released from all the rigour of law and is allowed to

function independently through its Board of Directors with immediate effect.

9. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed and the appellant-'Corporate Debtor' will pay the fees of the Interim Resolution Professional, for the period he has functioned.

10. Both the appeals are allowed with the aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)