

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 275 of 2017

IN THE MATTER OF:

Bajoria Holdings Pvt. Ltd.

...Appellant

Versus

Bard Roy Infotech Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : **Shri Gourab Banerji, Senior Advocate assisted by
Shri Nakul Dewan, Shri Pradhuman Gohit, Shri
Himanshu Chaubey and Ms. Neelu Mohan,
Advocates**

For Respondents : **Shri Ajay Kohli and Ms. Priyanka Ghorawat,
Advocates**

ORDER

15.01.2018 This appeal was preferred by the appellant (Corporate Debtor) against order dated 26th October, 2017 passed by the Adjudicating Authority (National Company law Tribunal), Kolkata Bench, Kolkata in CP No. (I.B.) 463/KB/2017 whereby and whereunder the application preferred by the respondent (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the, "I&B Code") was admitted, order of moratorium was passed and the Interim Resolution Professional has been appointed.

2. On 22nd November, 2017, this Appellate Tribunal considered the arguments advanced by the learned Senior Counsel for the appellant and passed the order, which reads as under :

“The question arises for consideration in this appeal is when there is an admitted dispute in existence between the parties which may relates to one or other State can be a ground to reject the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”).

In the present case it appears that the appellant, Corporate Debtor, has entered two agreements with the respondent (operational creditor) in regard to two States i.e. U.P. and Orissa. Respondent (operational creditor) moved the application under Section 9 of I&B Code on alleged default of debt for the services it rendered in the State of Orissa in support of which it enclosed the bank statement which relates to both the States. When the appellant pointed out that there is a dispute in existence the Adjudicating Authority held that the dispute in existence related to service rendered in another State U.P. and not with regard to services rendered in the State of Odisha, and rejected the objection. Thereafter, the respondent appears to have settled the dispute with the appellant (corporate debtor) on 13.11.2017 and then filed a claim petition before the Interim Resolution Profession (IRP) with regard to total claim as due for services rendered in both the State of U.P. and Odisha.

Let notice be issued on respondents through speed post. Requisites alongwith process fee, if not filed, be filed by tomorrow. If the appellant provides the email address of the respondent, then notice be also issued through email. Dasti Service is also permitted. Let a copy of this order be also forwarded to the respondents alongwith notice.

In the meantime, the Interim Resolution Profession(s) will ensure that the company remains on-going and if so necessary will take assistance of the (suspended) Board of

Directors. The person who is authorised to sign the bank cheques may issue cheque only after authorization of the Interim Resolution Profession(s). The bank accounts(s) of the 'Corporate Debtor(s)' be allowed to be operated for day-to-day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of the employees'/workmen electricity bills. etc. but no dues of period prior to order of moratorium be made."

3. Pursuant to the notice, the respondents have appeared and filed the reply. Learned counsel for the respondents submits that a 'Deed of Settlement' has been reached between the parties on 13th November, 2017, a copy of which has been annexed as Annexure A to the reply. It has been brought to our notice with regard to the claim of U.P., an Interim Resolution Professional has already given a finding that there is an 'existence of dispute', which has also been noticed by the Adjudicating Authority, Kolkata Bench.
4. In view of the fact that the Interim Resolution Professional found that there is an existence of dispute with regard to the supplies made in different districts of Uttar Pradesh, we hold that petition under Section 9 in view of such existence of dispute was not maintainable.
5. For the reasons aforesaid, while we set aside the impugned order dated 26th October, 2017 passed by the Adjudicating Authority, Kolkata in CP(IB) No. 463/KB/2017 and allow the respondent (Operational Creditor) to raise the dispute and make claim before the appropriate forum with regard to the claim of supplies made in different districts of Uttar Pradesh.

6. In effect, order(s), if any, passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional' and all other order (s) passed by Adjudicating Authority pursuant to 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 Respondent under Section 9 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The appellant company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

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

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