

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Ins) No.242-245 of 2017

IN THE MATTER OF:

JAP Infratech Pvt Ltd

...Appellant

Vs

Innovation House Industries Pvt Ltd.

...Respondent

**Present: Mr. Chandra Shekhar Yadav, Advocate for the Appellant.
Mr. Manish Paliwal, Advocate for the Respondent.**

ORDER

05.12.2017- In view of the decision of Hon'ble Supreme Court in the matter of *M/s Innoventive Industries Ltd Vs M/s ICICI Bank and Another (Civil Appeals No.8337-8338 of 2017)*, learned counsel for the appellant is allowed to substitute Mr. Kumar Jyoti Ranjan and Ms Priyanka Kumari, Directors of 'JAP Infratech Private Ltd' as appellants in place of original appellant (corporate debtor) and to transpose 'M/s JAP Infratech Private Limited' as 2nd respondent. Necessary corrections be made in the records accordingly. Mr. Kumar Jyoti Ranjan and Ms Priyanka Kumari having already filed Vakalatnama, no separate Vakalatnama is required to be filed.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansilal Bhat)
Member (Judicial)

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NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT)(Ins) No.242-245 of 2017

IN THE MATTER OF:

Kumar Jyoti Ranjan and Ms Priyanka Kumari **...Appellants**

Vs

Innovation House Industries Pvt Ltd. **...Respondent**

**Present: Mr. Chandra Shekhar Yadav, Advocate for the Appellant.
Mr. Manish Paliwal, Advocate for the Respondent.**

ORDER

05.12.2017- These appeals have been preferred by Mr. Kumar Jyoti Ranjan and Ms Priyanka Kumari, Directors of the Corporate Debtor against the impugned orders dated 27th July, 2017, 24th August, 2017, 4th October, 2017 and 24th October, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench passed in IB No.(IB)-212(ND)/2017.

2. Vide order dated 27th July, 2017 the Adjudicating Authority admitted the application preferred by Respondent, M/s Innovation House Industries Pvt Ltd under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code'), initiated corporate insolvency resolution process against 'M/s JAP Infratech Private Limited' (Corporate Debtor), passed order of moratorium with certain directions and requested the Insolvency and Bankruptcy Board of India to recommend the name of the

Insolvency Resolution Professional. Rest of the impugned orders are consequential to the impugned order dated 27th July, 2017, including appointment of Interim Resolution Professional (IRP) dated 4th October, 2017.

3. Learned counsel appearing on behalf of the appellant referred to the demand notice dated 28th February, 2017 issued under sub-section (1) of section 8 the IBC Code and submitted that the said notice has been issued by an advocate of "Corporate Legal Partners" namely Mr. Vikas Kumar, Advocate. The reliance has been placed on decision of this Appellate Tribunal in the ***Uttam Galva Steel Ltd Vs DF Deutsche Forfait AG & Anr-Company Appeal (AT) (Insolvency) No.39/2017*** to suggest that demand notice issued through a lawyer is not permissible.

4. Learned counsel appearing on behalf of the respondent referred to a certified copy of the resolution passed by the Board of Directors of Innovation House Industries Private Ltd' on 13.02.2017, which reads as follows:

"Resolved that, Mr. Manish Paliwal, Mr. Vikas Kumar, Advocates at Corporate Legal Partners, New Delhi are hereby authorized to issue notice under the Insolvency & Bankruptcy Code, 2016 against M/s JAP Infratech Private Ltd, New Delhi and further to do necessary acts in this regards.

5. According to the learned counsel for the appellant this resolution is a forged, fabricated document now brought on record, which has been disputed by learned counsel for the Respondent.

6. We have heard the learned counsel for the parties perused the record.

7. Without going into the disputed question of fact as to whether the resolution dated 13th February, 2017 authorising Mr. Manish Paliwal and Mr. Vikas Kumar, Advocates to issue demand notice under sub-section (1) of section 8 of the IBC Code, what we find that the petition under Section 9 preferred by the Respondent was not maintainable for the following reasons.

8. In '**Uttam Galva Steel Ltd**' wherein this Appellate Tribunal vide judgement dated 28th July, 2017 having notice the relevant provisions of the I&B Code and rules framed thereunder, held as follows:

"28. Sub-rule (1) of Rule 5 of the 'Adjudicating Authority Rules' mandates the 'Operational Creditor' to deliver to the 'Corporate Debtor' the demand notice in Form-3 or invoice attached with the notice in Form-4, as quoted below: -

"Rule 5. (1) An operational creditor shall deliver to the corporate debtor the following documents, namely: -

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4."

29. Clause (a) and (b) of sub-rule (1) of Rule 5 of the 'Adjudicating Authority Rules' provides the format in which the demand notice/invoice demanding payment in respect of unpaid 'Operational Debt' is to be issued by 'Operational Creditor'. As per Rule 5(1) (a) & (b), the following person (s) are authorised to act on behalf of operational creditor, as apparent from the last portion of Form-3 which reads as follows: -

4.

"6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of [name of corporate debtor].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor
Name in block letters
Position with or in relation to the operational creditor
Address of person signing

30. From bare perusal of Form-3 and Form-4, read with sub-rule (1) of Rule 5 and Section 8 of the I&B Code, it is clear that an Operational Creditor can apply himself or through a person authorised to act on behalf of Operational Creditor. **The person who is authorised to act on behalf of Operational Creditor is also required to state "his position with or in relation to the Operational Creditor", meaning thereby the person authorised by Operational Creditor must hold position with or in relation to the Operational Creditor and only such person can apply.**

31. The demand notice/invoice Demanding Payment under the I&B Code is required to be issued in Form-3 or Form - 4. Through the said formats, the 'Corporate Debtor' is to be informed of particulars of 'Operational Debt', with a demand of payment, with clear understanding that the 'Operational Debt' (in default)

required to pay the debt, as claimed, unconditionally within ten days from the date of receipt of letter failing which the 'Operational Creditor' will initiate a Corporate Insolvency Process in respect of 'Corporate Debtor', as apparent from last paragraph no. 6 of notice contained in Form – 3, and quoted above.

Only if such notice in Form-3 is served, the 'Corporate Debtor' will understand the serious consequences of non-payment of 'Operational Debt', otherwise like any normal pleader notice/Advocate notice, like notice under Section 80 of C.P.C. or for proceeding under Section 433 of the Companies Act 1956, the 'Corporate Debtor' may decide to contest the suit/case if filed, distinct Corporate Resolution Process, where such claim otherwise cannot be contested, except where there is an existence of dispute, prior to issue of notice under Section 8.

32. In view of provisions of I&B Code, read with Rules, as referred to above, we hold that an 'Advocate/Lawyer' or 'Chartered Accountant' or 'Company Secretary' in absence of any authority of the Board of Directors, and holding no position with or in relation to the Operational Creditor cannot issue any notice under Section 8 of the I&B Code, which otherwise is a 'lawyer's notice' as distinct from notice to be given by operational creditor in terms of section 8 of the I&B Code."

9. In the present case the notice has been issued by a law firm namely "Corporate Legal Partners" and there is nothing on record to suggest that the said law firm has been authorised or holds any position with or in relation to the respondent (operational creditor). In view of the fact that the law firm do not hold any position 'with or in relation to the operational creditor', we hold that the demand notice issued by the Corporate Legal Partners on behalf of the respondent cannot be treated to be a demand notice under sub-section (1) of section (8) of the IBC Code and for the said reason the petition under Section 9 was not maintainable.

10. In view of the detailed reasons and findings as recorded above we have no option but to set aside impugned orders dated 27th July, 2017, 24th August, 2017, 4th October, 2017 and 24th October, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench passed in IB No.(IB)-212(ND)/2017.

11. 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(s) and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications and 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.

12. Learned Adjudicating Authority will fix the fee of 'Resolution Professional', 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)

company Appeal (AT)(Ins) No.242-245 of 2017

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