

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 152 of 2017

IN THE MATTER OF:

**M/s. Hyosan Automative India
Pvt. Ltd.**

...Appellant

Vs.

Metecno (India) Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. P. Jegan, Advocate.

For Respondent:- Mr. Nikhil, Advocate.

ORDER

09.10.2017- This appeal has been preferred by Appellant-‘Corporate Debtor’ against the order dated 16th August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai in TCP/232/(IB)/CB/2017 whereby and whereunder on the Transfer Petition under Sections 433(e)(f), 433(i)(a) and 439(i)(b) of the Companies Act 1956, the Adjudicating Authority treated the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”), admitted the application, initiated ‘Corporate Insolvency Resolution Process’, passed prohibitory orders in terms of ‘I&B Code’ and requested the Insolvency and Bankruptcy Board of India to recommend the name of ‘Interim Resolution Professional’.

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2. The main plea taken by the appellant is that the Adjudicating Authority has treated the petition as an application under Section 9 wherein the documents were not complete in terms of the 'I&B Code'.

3. Learned Counsel for the appellant submits that Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 as notified by the Central Government on 7th December, 2016 and subsequently modified, has not been complied with. The respondent has not submitted all information required for admission of the petition under Section 9 of the 'I&B Code' within 60 days, nor proposed the name of the 'Interim Resolution professional'. He further submits that the parties have already settled the dispute.

4. On notice, the Respondent-'Operational Creditor' has appeared and filed reply. It has not been disputed that the provisions of the 'I&B Code' were not followed in letter and spirit. Nothing on records suggest that notice under Section 8 was issued or the requirements under Rule 5 was followed.

5. Learned Counsel appearing on behalf of the Respondent submits that the parties have settled the dispute and filed a copy of the settlement.

6. Having heard the parties, as we find that the application under Section 433(e)(f) read with Sections 433(i)(a) and 439(i)(b) of the

Companies Act 1956, which was transferred to the Adjudicating Authority was not complete before treating it as an application under Section 9 of the 'I&B Code' and admitting the case, we hold that the application was fit to be rejected. The Adjudicating Authority having failed to notice the same, we set aside the impugned order dated 16th August, 2017.

7. In effect, order (s), if any, passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, if any, 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.

8. Learned Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed, and the Respondent 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 A.I.S. Cheema)
Member (Judicial)

(Balvinder Singh)
Member(Technical)

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