

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 102 of 2019**

**IN THE MATTER OF:**

**Harish Bagla**

**...Appellant**

**Versus**

**Agarwal Industries Pvt. Ltd. & 4 Ors.**

**...Respondents**

**Present:**

**For Appellant :**           **Mr. Joy Saha, Senior Advocate assisted by Mr. V. Jhunjhunwala, Mr. D. Maheshwari, Mr. Sachin Shukla, Mr. Aditya V. Singh, Advocates**

**For Respondents :**       **None**

**ORDER**

**11.02.2019**       The Respondent - 'Agarwal Industries Pvt. Ltd.'- ('Operational Creditor') has filed application Under Section 9 of Insolvency & Bankruptcy Code ('I&B' Code) for initiation of Corporate Insolvency Resolution Process against 'Amit Feeds Limited' ('Corporate Debtor'). The application having been admitted by impugned order dated 15.01.2019 by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, the present appeal has been preferred by Director / Shareholders of the Company ('Corporate Debtor').

On 31.01.2019, we noticed the submissions made on behalf of the Appellant. On that day, notice was issued to the Respondents.

Learned Counsel for the Appellant produced a settlement agreement reached between the parties on 08.02.2019 to suggest that Demand Draft No. 316696 dated 08.02.2019 drawn on State Bank of India for Rs. 20,50,000/- has been prepared for payment in favour of 'Operational Creditor'. It is further submitted that 'Committee of Creditors' has also not been constituted.

Mr. B.Kiran Kumar, Constituted Attorney of 'Agarwal Industries Pvt. Ltd. ('Operational Creditor') accepts that the parties have reached settlement on 08.02.2019. No reply-affidavit has been filed by the 'Operational Creditor' against the statement made by the Appellant that there were pre-existing disputes intimated by letter dated 10.04.2017.

Taking into consideration the aforesaid fact, that there were pre-existing disputes between the parties and the matter have been settled subsequently on 08.02.2018 and the 'Committee of Creditors' have not yet been constituted, we set aside the impugned order dated 08.02.2019.

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 all such orders and actions

are declared illegal and are set aside. The application preferred by the 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 law and is allowed to function independently through its Board of Directors from immediate effect.

The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and the 'Corporate Debtor' will pay the fees for the period he has functioned. The appeal is allowed with aforesaid observations and directions. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

ss/sk/