

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

**Company Appeal (AT) (Insolvency)No. 759 of 2019**

[Arising out of Order dated 3<sup>rd</sup> July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi in the Company Petition No. (IB) – 1218 (PB) / 2018.

**IN THE MATTER OF:**

**Vivek Pasricha and Anr.**

**.....Appellants**

**Vs.**

**Amit Sachdeva and Anr.**

**.....Respondents**

**Present :**

**For Appellant:           Mr. Ruchin Middha and Mr. Iggu Chittiappa,  
Advocates**

**For Respondents:       Mr. Shalok Chandra, Advocate**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

‘Dr. Amit Sachdeva’ – the 1<sup>st</sup> Respondent filed application u/s 9 of the Insolvency & Bankruptcy Code, 2016 (‘I&B’ Code, for short) against M/s. ‘Axiss Dental Pvt. Ltd. (‘Corporate Debtor’) which has been admitted by the Adjudicating Authority (‘National Company Law Tribunal’) Principal Bench, New Delhi by impugned order dated 3<sup>rd</sup> July, 2019.

2. Learned Counsel appearing on behalf of Appellant submitted that there was pre-existing dispute, therefore, the application u/s 9 of the 'I&B' Code was not maintainable.

3. On the other hand, according to the learned counsel for the 1<sup>st</sup> Respondent, there was no pre-existing dispute.

4. Learned Counsel for the Appellant placed reliance on Company Petition No. 96/241-242/(PB) of 2018 preferred by 1<sup>st</sup> Respondent ('Dr. Amit Sachdeva') u/s 241, 242 and 244 of the Companies Act, 2013 alleging certain acts of '*oppression and mis-management*' against the Respondent Nos. 2 to 7 of the said petition including the 'Corporate Debtor'. The said Company petition is pending for consideration before the 'National Company Law Tribunal', New Delhi wherein the 1<sup>st</sup> Respondent has filed one Interlocutory Application on 5<sup>th</sup> April, 2018 for following Interim relief: -

***“Prayer***

*In view of the facts and circumstances of the present case, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to:*

*(i) Pass appropriate orders directing the Respondents to forthwith supply to the Petitioner the Minutes of all the Board Meetings*

*of the Respondent No. 1 Company held from its incorporation till date;*

***(ii) Pass appropriate orders directing the Respondents to forthwith credit the salary owed to the petitioner as CEO and Managing Director of the Respondent No. 1 Company for the Months of February 2018 and March 2018;***

*(iii) Restrain the Respondent Nos. 2 to 7 from taking any action or continuing to take any action which is oppressive towards the Petitioner in his capacity as Shareholder, CEO and Managing Director of the Respondent No. 1 Company or is in any manner prejudicial to his rights and interests in the Respondent No. 1 Company;*

*(iv) Restrain the Respondents from amending the Articles of Association of the Respondent No. 1;*

- (v) *Restrain the Respondents to utilize the funds of the Respondent No. 1 for contesting the present litigation;*
- (vi) *Pass appropriate orders directing the Respondents to include the Petitioner in all or any activities/ actions with regard to the management and conduct of the affairs and the business of the Respondent No. 1 Company which the Petitioner has the right to participate in by virtue of him being a Shareholder, CEO and Managing Director of the Respondent No. 1 Company including but not limited to full access to the Petitioner's emails, operational emails, right to access records and data and all other rights being exercised by Respondent Nos. 2 to 7 by virtue of them being Directors of the Respondent No. 1;*
- (vii) *Restrain the Respondent Nos. 2 to 7 from taking any action or continuing to take any action which is in disobedience of the order dated 22 March, 2018 passed by this Hon'ble Tribunal;*

- (viii) *Pass such other appropriate orders against the Respondent Nos. 2 to 7 as this Hon'ble Tribunal may deem fit and proper as punishment for acting in contempt of its order dated 22 March, 2018;*
- (ix) *Such further order or orders be passed and/or direction or directions be given as this Hon'ble Tribunal may deem fit and proper."*

5. In the said case, the 'Corporate Debtor' has filed its reply denying the claim with prayer to reject the petition and made following averments: -

*"5(i)-(ii) That the contents of Paragraph 5(i) and (ii) of the Petition are wrong and denied. It is denied that the Respondent No. 2 to 7 continued to deny the Petitioner his rights as a director of Respondent No. 1 Company by continuously denying him access to Minutes of the Board Meeting of Respondent No. 1 Company. It is denied that the Petitioner has repeatedly requested for the Minutes of Board Meeting, but to no avail. It is most humbly submitted that the Petitioner as on date still remains as the*

*Board Director of the Respondent No. 1 Company and the Petitioner has complete access to Minutes of Meeting of Respondent No. 1 Company. It was also communicated to the Petitioner by the Respondent No. 1 Company vide Email dated 20<sup>th</sup> March, 2018 that the Minutes of Meeting would be made available to the Petitioner at the earliest which has been confirmed by the Petitioner under paragraph 5(iii) of the present Application. Therefore, the Applicant has filed the present Application with a malafide intent to delay and deviate the proceedings before this Hon'ble Tribunal and cause damage and losses to the Respondents. It is denied that the Applicant vide email dated 24<sup>th</sup> March, 2018 requested the Minutes of Board Meeting in view of his status as a Managing Director of Respondent No. 1 Company. **It is on the other hand submitted that the Applicant had voluntarily resigned from his position as the CEO and***

***Managing Director of the Company at the Board Meeting dated 7<sup>th</sup> March, 2018 and the same was accepted and confirmed by Respondent No. 2-7 vide Board Meeting dated 31<sup>st</sup> March, 2018. Therefore, owing to voluntarily resigning from his position as the Managing Director of the Respondent No. 1 Company, the Applicant ceases to be the Managing Director of the Respondent No.1 Company. Therefore, it is wrongly stated by the Petitioner/ Applicant before this Hon'ble Court that the petitioner / applicant requested for the copies of the Minutes of Board Meeting in view of his status as a Managing Director.***

6. Learned counsel appearing on behalf of the 1<sup>st</sup> Respondent submitted that the 1<sup>st</sup> Respondent is a shareholder of the Company and was also the CEO & Director of the 'Corporate Debtor'. He was not paid salary for certain months and inspite of Demand Notice u/s 8(1) the 'Corporate Debtor' defaulted to pay.

8. From the record, we find that the Company Petition under Section 241 and 242 of the Companies Act, 2013 filed by the 1<sup>st</sup> Respondent is pending before the

‘National Company Law Tribunal’. In the said case, application for interim relief in CA No. 278/PB/2018 filed by the 1<sup>st</sup> Respondent has been heard and the order has been reserved on 14<sup>th</sup> May, 2018.

9. During the pendency of the aforesaid application for payment of salary, without waiting for decision of NCLT, the 1<sup>st</sup> Respondent issued Demand Notice u/s 8(1) of the ‘I&B’ Code on 26<sup>th</sup> July, 2018 for the same amount as claimed and prayed for before the Tribunal in a Petition u/s 241,242, which has already been disputed by the ‘Corporate Debtor’.

11. Though the Adjudicating Authority (‘National Company Law Tribunal’) Principal Bench has noticed that the petition u/s 241, 242 and 244 of the Companies Act, 2013 with prayer for payment of salary is pending before the ‘National Company Law Tribunal’ and the ‘Corporate Debtor’ in the said case disputed the entitlement of 1<sup>st</sup> Respondent to get salary of the said period, the Adjudicating Authority has admitted the application u/s 9.

12. From the facts as detailed above, as we find that there is a pre-existence of dispute with regard to salary payable to the 1<sup>st</sup> Respondent and matter is pending for decision before the ‘National Company Law Tribunal’, New Delhi prior to issuance of Demand Notice u/s 8(1), we hold that the application u/s 9 of the ‘I&B’ Code filed by the 1<sup>st</sup> Respondent was not maintainable.

13. Learned Counsel appearing on behalf of the 1<sup>st</sup> Respondent submitted that no Suit or Arbitration is pending. But the fact that the same claim made by 1<sup>st</sup>



Respondent is pending for decision before the 'National Company Law Tribunal', having not disputed, we hold that there is a pre-existing dispute.

14. For the reasons aforesaid, we set aside the impugned order dated 3<sup>rd</sup> July, 2019 passed by the Adjudicating Authority ('National Company Law Tribunal') Principal Bench, New Delhi in Company Petition No. (IB)-1218 (PB)/2018 and dismiss the application u/s 9 of the 'I&B' Code filed by the 1<sup>st</sup> Respondent. The Company Petition No. (IB)-1218 (PB)/2018 is dismissed.

15. In effect, the order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium etc. pursuant to impugned order of admission and action taken by the 'Resolution Professional', including the advertisement published in the newspaper; calling for applications and all such actions are declared illegal and are set aside. The application preferred by the Respondent under Section 9 of the 'I&B Code' having been 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 with immediate effect.

16. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and the cost incurred by him and the 'Corporate Debtor' will pay the fees and costs within the period as may be fixed by the Adjudicating Authority.

17. One Mr. Nikhil orally sought permission to intervene without filing a petition and without any Valakalatnama on behalf of one 'Tabset Equity Holding

Ltd.’, that it is also a shareholder of the ‘Corporate Debtor’ as also a ‘Financial Creditor’, but we are not inclined to make any observation in this appeal as we hold that the application u/s 9 of the ‘I&B’ code was not maintainable in view of pre-existing dispute.

The appeal is allowed with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice A. I. S. Cheema]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

**New Delhi**

**2<sup>nd</sup> September, 2019**

SS