

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 115 of 2017

IN THE MATTER OF:

International Recreation & Amusement Ltd. ... Appellant

Versus

S.R. Construction ... Respondent

**Present: For Appellant : Shri Virender Ganda, Senior Advocate with
Shri Vivek Mallik, Shri Tarun Mehta and Shri
Dhawan Jain, Advocates**

For Respondent : Shri Swaroop George, Advocate

For Financial Creditor : Shri Pankaj Jain, Advocate

ORDER

11.10.2017 An application for condonation of delay has been preferred by the appellant. It is stated that the impugned order dated 28th April, 2017 was passed without notice to the appellant-‘Corporate Debtor’, no copy of the order was made available by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi (hereinafter referred to as ‘Adjudicating Authority’). The appellant could come to know of the impugned order from the ‘Interim Resolution Professional’ on 20th July, 2017 and preferred the appeal on 26th July, 2017.

2. On notice, learned counsel for the respondent-‘Operational Creditor’ has appeared and not disputed the aforesaid fact. Learned counsel for the respondent further submits that the parties have settled the dispute.

3. Shri Pankaj Jain, Advocate appeared and filed Vakalatnama on behalf of some of the Financial Creditors. He submits that the other Financial Creditors have also filed the claim application before the ‘Interim Resolution Professional’. However, it has not been disputed that the impugned order was passed without notice to the appellant-‘Corporate Debtor’ in violation of the rules of natural justice.

4. For the reasons aforesaid, while we hold that the appeal is within the time i.e. within 30 days from the date of knowledge, the impugned order dated 28th April, 2017 having passed in violation of rules of natural justice is set aside.

5. In effect, order(s), if any, passed by learned Adjudicating Authority appointing any ‘Interim Resolution Professional’ or declaring moratorium, freezing the account and all other order(s) passed by Adjudicating Authority pursuant to impugned order dated 28th April, 2017 and action, if any, taken by the ‘Interim Resolution Professional’, including the advertisement, if any, published in the newspaper calling for applications etc. and 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, 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.

6. 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 as per their settlements. The appeal is allowed with the aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.

7. However, the impugned order will not come in the way of other Financial Creditor(s)/Operational Creditor(s), if any, move before appropriate forum.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Balvinder Singh)
Member(Technical)