

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1462 of 2019

[Arising out of Order dated 14th November 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Cuttack in Company Petition (IB) No. 62/CTB/2019]

IN THE MATTER OF:

Prakash Kalash

Shareholder & Member of suspended Board of Directors

M/s Gurusukh Vintrade Service Pvt Ltd

R/o Gurusukh Villa

Opposite Shagun Farm

VIP Road, Raipur, Chattisgarh – 492006

Mobile: 9993333332

Email: prakashkalash@yahoo.in

Appellant

Versus

- 1. M/s Apeejay Surrendra Park Hotels Ltd
17, Park Street
Kolkata, West Bengal
Kolkata – 700016**

Respondent No.1

- 2. Ms Teena Saraswat Pandey
Resolution Professional of
M/s Gurusukh Vintrade Service Private
Limited
IBBI/IPA-P00652/2017-2018/11126
387 F 114 Scheme Part-1
Behind Diksha Boys Hostel
Sant Nagar, Indore
Madhya Pradesh – 452010**

Respondent No.2

Present:

For Appellant : Mr Krishna Mohan K Menon, Advocate

**For Respondent : Mr Vijay Kandel, Advocate for R1.
Mr Divyanshu Srivastava, Advocate for R2.**

J U D G M E N T

[Per; V.P. Singh, Member (T)]

1. This Appeal emanates from the order dated 14th November 2019 passed by the Adjudicating Authority/National Company Law Tribunal, Cuttack in CP (IB) No. 62/CTB/2019, whereby the Adjudicating Authority has admitted the Application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short **“I&B Code”**). The parties are represented by their original status in the Company Petition for the sake of convenience.

2. The brief facts of the case are as follows:

The Appellant, i.e. Gurusukh Vintrade Service Pvt. Ltd represented by Mr Prakash Kalash (Authorised Representative) filed the present Appeal against the Respondent No.1, Apeejay Surrendra Park Hotels Ltd., and Respondent No. 2 Umesh Chandra Sahoo, under Section 61(1) of the I&B Code. The Appellant is a company incorporated under the Companies Act, 1956 having its registered office at Maharshi Valmiki, Ward No.28, Telibandha, Raipur, and Chhattisgarh.

3. The Appellant has opened Hotel at Great Eastern VIP Road Chowk, Avanti Vihar, Raipur, Chhattisgarh. The Respondent No.1 had approached to the Appellant for providing technical services and pre-operation advice for launching Hotel and further for the operation and management services after the launch of the Hotel. The Appellant entered into the ‘Management and Technical Service Agreement’ from now on will be referred to as ‘MTSA’ with Respondent No. 1. As per the Agreement, the Respondent No.1 was responsible for the training of the staff. However, they failed to provide

proper training to the hotel staff. They were posting wrong revenue on barter ledger to hide their under performance since the Hotel started its commercial operations. As per terms of the Agreement, no payment was supposed to be made to any person without prior information of the Appellant. But the Respondent No.1/Operational Creditor in violation the terms of MTSA issued post-dated cheques of Rs. Seventy-three lakhs to itself even without informing the Appellant about the same.

4. The Appellant/Corporate Debtor further contends that as per the Agreement, all the money received as revenue from the operations of the Hotel was supposed to be deposited in the bank account of the Hotel, which was to be operated by the authorized representative appointed by Respondent No.1/Operational Creditor. Further, all the operating expenses, including taxes, were to be discharged by Respondent No.1. However, Respondent No.1 has miserably failed to deposit statutory dues and applicable taxes, such as TDS, EPF, ESI, GST, VAT, Service Tax and Luxury Tax since the beginning of the Hotel.

5. The Appellant, through an internal enquiry, found that a non-recoverable revenue of Rupees Seventy Lakh has been shown as revenue earned in financial records of the Hotel by the Respondent No.1. The Appellant contends that Respondent No.1 was responsible for the operation of the Hotel; however, there was no visit by the Respondent No.1 to the Hotel of the Appellant since August 2018. Thus effectively Respondent No.1 has not provided any service to the Appellant since August 2018.

6. Consequent upon the default made by the Respondent No.1 about the provision of services; the Appellant disputed the amount payable to the Respondent and stopped making payment to Respondent No.1/ Operational Creditor.

7. Respondent No. 1 had initiated the proceedings under Section 9 of the I&B Code for alleged unpaid dues arising out of the services performed under the 'MTSA' between the Appellant and the Respondent. As per the operational creditor/Respondent No.1's claim in the Section 9 Application a total of Rs.1,45,99,236/- [Principal- Rs.1,25,63,786/- and Interest Rs.20,35,450/- calculated @ 24% p.a.] was due from the Corporate Debtor for services performed by the Operational Creditor for a period from 01st January 2018 to 20th May 2019.

8. It is contented by the Appellant that there were various email communication and telephonic conversations held between the Appellant and the Respondent No.1, even after filing of the Application by the Respondent No.1 before the Adjudicating Authority. However, the Respondent No.1/Operational Creditor never communicated to the Appellant about the filing of the petition U/S 9 of the Code.

9. It is submitted on behalf of the Appellant that there was a plausible pre-existing dispute between the parties, which was not brought to the notice of the Adjudicating Authority. Since the Appellant was not aware of the proceedings, they could not appear before the Adjudicating Authority,

and an ex-parte impugned order has been passed. The corporate insolvency proceeding started against the Appellant /corporate Debtor.

10. The Respondent in his reply submitted that the Company Appeal filed by the Appellant is devoid of any merit and as such liable to be dismissed.

11. It is submitted that the Appeal is liable to be dismissed on the ground that the same is filed beyond 30 days from the date of passing of the impugned order which is beyond the statutory period as prescribed under Section 61(2) of the I&B Code.

12. The Respondent No.1 further submits that the Appellant had the sufficient knowledge of initiation of proceedings under Section 9 of the I&B Code against him by admitting the receiving of Demand notice sent to him, and further when the Respondent No.1 sent a copy of Application, in Form-5, filed under Section 9 of the I&B Code. The service on the corporate office of the Appellant has been proved by the Affidavit of Service, containing tracking report of successful delivery of the same.

13. The Respondent No.1/Operational Creditor further submits that the Adjudicating Authority based on the affidavit of service and other documents, filed with the petition regarding service of notice, passed an order to proceed ex-parte against the Appellant, as there was no representation from the Corporate Debtor despite substituted service of notice through the publication of notice in newspapers.

14. Respondent No.1 contends that from a bare perusal of the contents of Appeal and the material placed on record, it is sufficiently established that, till date, the Appellant has not disputed even a single invoice or the amounts therein amongst the total invoices raised by Respondent No.1/operational creditor.

15. Further, Respondent no.1 denies that at the time of entering into the contract, the Appellant was assured by Respondent No. 1, that there would be 40% of sales contribution from their side.

16. The Respondent No.1 submits that it was pointed out by the Respondent to the Appellant that due to Appellants failure to provide the working capital as agreed under the Agreement, salaries of the employees could not be paid on time and resultantly a lot of competent people resigned from the organization.

17. Further, Respondent No.1/Operational Creditor denies of posting wrong revenue on barter ledger since the Hotel started its commercial operations to inflate the income, to increase their fee share, and to hide its under performance and violation of the conditions of the Agreement. Regarding the allegation of issuance of post-dated cheques of Rs. Seventy-three Lakhs to itself without informing the Appellant, it is contended that the Appellant is hiding the fact from this Tribunal. Respondent No.1 argued that the Appellant was informed of the post-dated cheques and further shared cheque sheet showing details of the cheques issued by the Respondent No.1.

18. The Respondent No.1/Operational Creditor submitted and denied that as per the Agreement, all the operating expenses, including taxes, were to be discharged by the Respondent No.1. It has never been agreed between the parties that the Respondent No.1 shall discharge the liabilities of payment of taxes. It is pleaded that even the word “tax” find no mention in the said Agreement.

19. Heard the arguments of the Learned Counsel for the parties and perused the record.

20. The Respondent contends that the Appeal is liable to be dismissed on the ground that the same is filed beyond 30 days from the date of passing of the impugned order, which is beyond the statutory period as prescribed under section 61(2) of the I&B Code. The impugned order dated 14th November 2019 and Appeal is filed on 05.12.2019, which is within 30 days from the date of order. Thus Appeal is filed within the statutory period of Limitation as prescribed under Section 61(2) of the Code.

21. The Learned Counsel for the Appellant submits that the impugned order is liable to be set aside on the sole premise of the failure of compliance with the service procedure prescribed under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016. It is submitted that the prescribed mode of service as per Rule 6(2) is a registered post or speed post. The publication of notice is not a prescribed mode of service and hence impugned order is liable to be set aside on this ground. It is further submitted that registered notice issued against the

Corporate Debtor was returned with the postal remarks 'want of sufficient address'. In such a situation Respondent No.1 was not stopped from serving the Corporate Debtor via email.

22. Learned Counsel for the Operational Creditors submits that as per Clause (a)(b) of sub-rule (2) of Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, the demand notice or the copy of an invoice demanding payment, may be delivered to the Corporate Debtor at the registered office by hand, registered post or speed post with acknowledgement due or by electronic mail service to a Whole Time Director of the Corporate Debtor. It is submitted that a demand notice dated 21st May 2019 was sent to the Appellants registered office as well as the Corporate Office. However, the demand notice dated 21st May 2019 was returned with endorsement "insufficient address". Further, a copy of the demand notice was also sent to the corporate address of the Appellant, and the same has been successfully delivered. Lastly, in compliance with clause (b) of sub-rule (2) of Rule 5 of the above Rules copy of the demand notice dated 21st May 2019 was also sent to the Appellant vide email dated 22nd May 2019. The Operational Creditor has annexed the xerox copy of an email dated 22nd May 2019 which shows that demand notice was sent to Corporate Debtor through an email dated 22nd May 2019 at 2:49 pm. In the circumstances, it is clear that the Appellant was having sufficient knowledge of the demand notice issued under Section 8 of the I&B Code.

23. The Learned Counsel for the Appellant has filed the copy of the order sheets of the Adjudicating Authority dated 09th July 2019 and dated 01st

August 2019. It appears that on 09th July 2019 after filing of the petition under Section 9 of the Code, the Adjudicating Authority passed an order for issuance of notice against the Corporate Debtor. After that on 01st August 2019 the Adjudicating Authority passed an order;

“Ld. Counsel for the Operational Creditor appear. Corporate Debtor could not be served with notice for reason of insufficient address. Operational Creditor to publish notice in newspaper one English and one vernacular, having wide circulation in the area where the Registered Office of the Corporate Debtor situated and file affidavit-in-reply, service of notice. Matter to appear for further consideration on 20.08.2019.”

(verbatim copy)

24. Thus, it is clear that the Court notice issued against the Corporate Debtor could not be served on account of insufficient address; after that, the Adjudicating Authority passed an order of publication of notice in the newspaper. Based on the publication of notice in the newspaper, service was held sufficient, and the Court passed an order to proceed the case ex-parte against the Corporate Debtor. Thus, it is clear that before the publication of notice in the newspaper, no effort was not made for serving the notice through email.

25. The Hon’ble Supreme Court in case of Neerja Realtors (P) Ltd. Vs. Janglu2018 (2) SCC 649 has held that *‘for ordering substituted service the Court is required to be satisfied that there is reason to be read that Defendant is keeping out of the way for the purpose of avoiding service or for any other*

reason, the summons cannot be served in an ordinary way. Thus, while making that Order, Court must apply its mind to requirements under Order 5 Rule 20 of CPC and indicate in its order and due consideration of provisions contained in Order 5 of Rule 20.'

26. In the present case, the notice issued against the Corporate Debtor returned unserved because of 'insufficient address'. After that, without exploring the possibility of service by other modes like email, the Adjudicating Authority passed the order for substituted service by publication of notice in the newspaper. In such circumstances, passing of an order for an ex-parte hearing against the Corporate Debtor, based on substituted service, cannot be held proper in the light of the law laid down by Hon'ble Supreme Court in the Neerja Realtors (P) Ltd (supra).

27. The Learned Counsel for the Appellant/Corporate Debtor further contends that the Adjudicating Authority has failed to consider that alleged amount for which claim is filed under Section 9 of the I&B Code was already in dispute, on account of under-performance and non-performance of services by the Operational Creditor/Respondent, from a time much before the filing of the Application under Section 9 of the I&B Code. In this respect, our attention is drawn towards the following email communications dated 14th July 2018, 17th October 2018, 17th January 2019 and 14th March 2019, i.e. much before the issuance of the demand notice under Section 8 of the I&B Code. Photocopy of the alleged email communications is as under:

Annexure S 78

12/9/2019

Yahoo Mail - Concern No. 1

Concern No. 1

From: Gursukh Vintrade Services (gursukhvintrade@yahoo.in)

To: do.rpr@zonebythepark.com; suinder.singh@zonebythepark.com; naveen.shekhawat@zonebythepark.com; abhinav.anand@zonebythepark.com; santosh.kutty@zonebythepark.com

Cc: devendra.karait@zonebythepark.com; ram.krishna@zonebythepark.com; ar@zonebythepark.com; prakashkalash@yahoo.com; dharampalkalash@yahoo.com; gv.ankitkalash@gmail.com

Date: Saturday, 14 July, 2018, 12:57 pm IST

Dear All,

Since Last two years we found that management has posted wrong revenue on barter ledgers and we are going to reverse the revenue about 1cr so that Now and onward you have to get approval from owner side before posting any barter revenue if not you will be liable to collect the amount. further we will not be able to reverse the revenue.

This ledgers should be passive immediately.

Regards
GURSUKH VINTRADE SERVICES PVT.LTD.

Sajid Kalawadia
Chief Financial Officer

GURSUKH VINTRADE SERVICES (P) LTD.
Sajid
DIRECTOR

True copy

Annexure 6 79

12/9/2019

Yahoo Mail - MANAGEMENT FEES

MANAGEMENT FEES

From: prakashkalash@yahoo.com (prakashkalash@yahoo.com)

To: abhinav.anand@zonebythepark.com; surinder.singh@zonebythepark.com;
naveen.shekhawat@zonebythepark.com; do.rpr@zonebythepark.com; fc.rpr@zonebythepark.com

Cc: vdewan@theparkhotels.com

Date: Wednesday, 17 October, 2018, 01:28 pm IST

Dear Abhinav Ji,

We came to know that unit ha has released the PDC cheques of Rs. 7300000/- without keeping informed us, and we haven't updated by you also. This was the reason why we had taken over the signatures earlier, It has clearly discussed earlier that any management fees paid will be informed to us and It is also discussed that management fees will be paid after barter reconciliation and issue resolved.

We shocked and don't understand why you need PDC cheques when you are managing the operation and signatures is also in your hand. it seems that you haven't faith on yourself. now we are going to takeover one side signature for verification only.

We are also serious to pay the management fees but you are also aware of our financial situation, Unit has other important liabilities like Taxes, PF, ESI and EMIs. we are seriously trying to resolve the financial crisis and we assure you that the management fees also be regularized within short period.

Prakash kalash

GURUSUKH VENTRADE SERVICES (P) LTD.
Prakash
DIRECTOR

True copy

Annexure 7, 80

12/9/2019

Yahoo Mail - Information and discussion on the certain issues.

Information and discussion on the certain issues.

From: prakashkalash@yahoo.com (prakashkalash@yahoo.com)

To: vdewan@theparkhotels.com; priyapaul@apeejaygroup.com

Date: Thursday, 17 January, 2019, 11:50 am IST

Dear, Mr. Dewan, Mrs. Paul,

We would like to inform and discuss certain issues that, since opening of the hotel we never got the appropriate GOP from the management site. There was some argument in 2017-18 that hotel has not BAR, SPA, and GYM hence management was failed to reach the appropriate GOP. But since May 2018 BAR and SPA are opened for operation then after also we are struggling for appropriate Turnover & GOP.

One thing is notable that the first year sale performance was better than hotel running after 2 years; the sale performance is decreasing month after month. Performance of the Room sale is appreciable but BAR, restaurant and banquet sale is very poor.

On the GOP matter on August 2018 last visit of ZBTP officials Mr. Santosh Kutty & Mr. Abhinav Anand have assured that now and onward management will be able to get the GOP above @35% of the turnover. But sadly till date that was the last visit of corporate and never looked back to the hotel operation and made the hotel forlorn. All employees almost newly appointed are also facing lack of training and hotel is suffering of customer dissatisfaction and resentment. Mr. Abhinav Anand had also assured that the statutory liabilities especially GST also be paid on time monthly basis which is exclude part of the GOP, but it is not visible on the ground. We are observing that resent management of corporate is too inactive.

The management is making the budget and target for sales is easily gettable which is 1.25cr monthly, while other hotels in Raipur is doing better sales performance ratio then ZBTP Raipur.

Performance of the NSO is very poor, NSO sale is completely not matching with budget and debt recovery of NSO is also under performance.

Also we have found non-recoverable revenue of about Rs.70 lakhs. We never accepted the drastic mistake like this from renowned hotel management group. Please also take a look on this matter.

Now we are going to issue the debit note/adjustment to the management fees for the non-recoverable amounts.

Expecting from you resolution on above issues.

Prakash Kalash
(GURUSUKH VINTRADE SERVICES PVT.LTD.)

GURUSUKH VINTRADE

[Handwritten Signature]

DIRECTOR

[Handwritten: True Copy]

12/9/2019

Yahoo Mail - Re: Information and discussion on the certain issues.

Re: Information and discussion on the certain issues.

From: prakashkalash@yahoo.com (prakashkalash@yahoo.com)
 To: vdewan@theparkhotels.com; priyapaul@apeejaygroup.com
 Date: Thursday, 14 March, 2019, 10:09 pm IST

Dear Mr, Diwan & Piya Paul

As we have informed and discussed the situation of the hotel in above mentioned mail but there has been no response from your side. we have given the management of our hotel to you because we thought that the national level brand and experience can run the hotel at best (Class level Service, employee management, and the appropriate GOP) but it is unfortunate that on the ground reality is inferior service, higher paid lower class employees and unjustified GOP.

Employees are switching jobs frequently no one wants to stay here and no one wants to join. Hotel is running without F&B manager, IT manager, while HR and Training manager cost is too high with poor performance, management is not able hire a decent F&B manager in two months. As mentioned due to very poor service hotel is facing customer dissatisfaction and consecutive complaints which is resulting revenue loss. There is very poor effort in sales compared to last year also.

No visit and response from corporate since August is making hotel forlorn hence need to write to you but there is no response from your side also.

Now constrainedly we are taking over the complete management in our hand until your response on the matter, And we are feeling that "Zone by the Park" is not able to run the property at all.

Prakash Kalash.

Sent from Yahoo Mail on Android

On Thu, Jan 17, 2019 at 11:50, prakashkalash@yahoo.com
 <prakashkalash@yahoo.com> wrote:

Dear, Mr. Dewan, Mrs. Paul,

We would like to inform and discuss certain issues that, since opening of the hotel we never got the appropriate GOP from the management site. There was some argument in 2017-18 that hotel has not BAR, SPA, and GYM hence management was failed to reach the appropriate GOP. But since May 2018 BAR and SPA are opened for operation then after also we are struggling for appropriate Turnover & GOP.

One thing is notable that the first year sale performance was better than hotel running after 2 years; the sale performance is decreasing month after month. Performance of the Room sale is appreciable but BAR, restaurant and banquet sale is very poor.

On the GOP matter on August 2018 last visit of ZBTP officials Mr. Santosh Kutty & Mr. Abhinav Anand have assured that now and onward management will be able to get the GOP above @35% of the turnover. But sadly till date that was the last visit of corporate and never looked back to the hotel operation and made the hotel forlorn. All employees almost newly appointed are also facing lack of training and hotel is suffering of customer dissatisfaction and resentment. Mr. Abhinav Anand had also assured that the statutory liabilities especially GST also be paid on time monthly basis which is exclude part of the GOP, but it is not visible on the ground. We are observing that resent management of corporate is too inactive.

The management is making the budget and target for sales is easily gettable which is 1.25cr monthly, while other hotels in Raipur is doing better sales performance ratio then ZBTP Raipur.

Performance of the NSO is very poor, NSO sale is completely not matching with budget and debt recovery of NSO is also under performance.

GURUSUKH VENTURE SERVICES (P) LTD.
John

DIRECTOR

True copy

1/2

28. Admittedly, in this case, the demand notice, dated 22nd March 2019, in Form-3, was issued against the Corporate Debtor by registered post, which could not be served on account of insufficient address. After that, the demand notice dated 21st May 2019 in Form-3 was again sent through

speed post. On perusal of the email dated 14th July 2018, it appears that the Corporate Debtor objected to 'the posting of wrong revenue on barter ledgers'. It also appears from a perusal of email correspondence dated 17th October 2018 that the Corporate Debtor objected to releasing post-dated cheque of Rs.73 lakhs without keeping it informed to the Corporate Debtor. It is also stated in the email that management fees will be paid after the barter reconciliation issue is resolved. By perusal of email communication dated 17th January 2019, it appears that dispute was raised regarding the quality of services. On perusal of email dated 14th March 2019, it appears that the Corporate Debtor raised the issue regarding service rendered by the Operational Creditor. It also shows that the Corporate Debtor informed the operational Creditor of taking over the complete management in its own hands because of being dissatisfied with the services rendered by the Operational Creditor. All these correspondences are before issuance of demand notice.

29. Looking to such material above, it is quite clear that there was a pre-existing dispute regarding the operation of management and services provided by the Respondent No.1 before the issuance of the demand notice dated 21.05.2019 under Section 8 of the I&B Code.

30. The definition of the word dispute provided under the Code was well elaborated and explained by Hon'ble Supreme, in the case of 2018(1)SCC 353 Mobilox Innovation Pvt Ltd vs. Kirusa Software Pvt Ltd, in the following words:

Para 40

“It is clear, therefore, that once the operational Creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the Application under S.9(5)(2)(d) if notice of dispute has been received by the operational Creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational Creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain 9 Company Appeal (AT)(Insolvency) No.542/2020 from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the Application.”

The intent of Legislature is very vital for interpreting any law, which can be well deduced from the words of Section 8(2)(a) of I&B Code ‘existence of a dispute if any’. It can be easily inferred that dispute shall not be limited to instances specified in the definition as provided under Section 5(6), as it has far arms, apart from pending Suit or Arbitration as provided Under Section 5(6) of IBC. The IBC is not a substitute for a recovery forum. Section 9 of the IBC makes it very clear for the Adjudicating Authority to admit the application “if no notice of dispute is received by the Operational Creditor and there is no record of the dispute in the information utility.” Whereas, on the other hand, Section 9 also states that the Adjudicating Authority shall reject

the Application so filed “if the Operational Creditor has received a notice of a dispute from the Corporate Debtor.

*Thus, it is clear that once an operational creditor has filed an application which is otherwise complete the Adjudicating Authority must reject the Application **if notice of dispute has been received by the operational Creditor or there is a record of dispute in the information utility, the Adjudicating Authority is to see whether there is a plausible contention which requires further investigation and the “dispute “is not a patently feeble legal argument or an assertion of fact, unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.”***

(emphasis in bold supplied)

31. In the present case, it is crystal clear that there was a pre-existing dispute, even though the Adjudicating Authority admitted the Application for initiation of Corporate Insolvency Resolution Process by the impugned order.

32. Thus the Appeal is allowed, and the impugned order dated 14th November 2019 passed by the Adjudicating Authority/National Company Law Tribunal in CP (IB) No.62/CTB/2019 is set aside. In effect, the order passed by the Adjudicating Authority appointing Interim Resolution Professional, declaring moratorium and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and actions taken by the Resolution Professional is declared illegal and are set aside. The application preferred by the respondent No.1 under Section 9 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding.

33. The Adjudicating Authority will fix the fee of Interim Resolution Professional for the period he has functioned. The Appeal is allowed with the observation above and direction; there shall be no order as to cost.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

[V. P. Singh]
Member (Technical)

NEW DELHI
23rd SEPTEMBER, 2020

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