

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.660 of 2020

IN THE MATTER OF:

**Abhijit Guhathakurta,
Monitoring Agency of the Corporate Debtor**

...Appellant

Versus

AGC Networks Ltd.

...Respondent

**For Appellant: Shri Abhinav Vasisht, Sr. Advocate with
Shri Aakarshan Sahay, Shri Nakul Sachdeva and
Ms. Akshita Sachdeva, Advocates**

**For Respondent: Shri Gibran Naushad, Shri Tabrez Malawat, Shri
Dhruv Dewan, Shri Abhijeet Swaroop and
Ms. Harshita Choubey, Advocates**

O R D E R
(Virtual Mode)

21.09.2020 Senior Advocate Mr. Abhinav Vasisht submits that the Appeal has been filed by the Monitoring Agency. It is stated that the Respondent was providing IT services to the Corporate Debtor. The Respondent, according to the Counsel, is a group company which was providing the services free of cost to the Corporate Debtor and now when Resolution Plan has been approved and Monitoring Agency is taking further steps, Respondent threatened to discontinue the IT services and hence the Appellant was required to file I.A. No.1013 of 2020. Copy of the I.A. is at Page – 177. The learned Senior Counsel submits that when the Application was filed before the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) that the Respondent should continue with the services, the Adjudicating Authority directed payment of Rs.25 Lakhs per month during

CIRP period till disposal of Application. Counsel states that the Adjudicating Authority could not have given such direction and the services were required to be continued on terms as were earlier prevailing between the parties so as to ensure that the Corporate Debtor remains a going concern and there is no loss of data. Counsel submits that in such contingency, the present Appeal was required to be filed.

2. Counsel submits that the Impugned Order dated 14th July, 2020 (Annexure - 1 – Page 46) is only an Interim Order and the I.A. No.1013 of 2020 is yet to be decided. The Counsel makes a suggestion that when the matter had come up before this Tribunal on 30th July, 2020, Interim Order was passed staying the execution of the Impugned Order subject to payment of Rs.1 Crore. Counsel states that the amount of Rs.1,16,50,000/- (including GST) has been deposited on this Saturday i.e. 19th September, 2020 in the account of Respondent and it is suggested that maintaining the stay passed on 30th July, 2020, the matter can be sent back to Adjudicating Authority to urgently decide the I.A. filed by the Appellant.

3. Counsel for Respondent Mr. Dhruv Dewan submits that the prayer made before the Adjudicating Authority in the I.A. and the prayer now made in this Appeal are slightly different as in the Appeal, it is claimed that the services were being provided free of cost which was not stated in the prayer before the Adjudicating Authority.

4. Considering the submissions made by both the Counsel, it appears to us that when it is only an Interim Order and the I.A. as such is yet to be decided, the matter needs to be sent back to the Adjudicating Authority.

5. The Order dated 30th July, 2020 passed by this Tribunal reads as under:-

**“O R D E R
(Through Virtual Mode)**

30.07.2020 The issue raised in this appeal is that while the Appellant was taking steps to evaluate the fairness of the quotation provided by the Respondent, the impugned order came to be passed by the Adjudicating Authority directing the Corporate Debtor to pay 60% of the charges claimed by the Respondent which has been quantified at Rupees Twenty Five Lakhs per month without providing any rationale for arriving at the said figure. It is also submitted on behalf of the Appellant that the Appellant had filed I.A. No. 1013 of 2020 before the Adjudicating Authority seeking a direction in the name of the Respondent to continue to provide IT Infrastructure and render IT Services to the Corporate Debtor on the same terms as existed on 1st May, 2020 till the implementation of the approved resolution plan, which was zero payment. Thus the impugned order cannot be sustained. Issue notice upon Respondent. Appellant to provide mobile Nos./e-mail address of the Respondent. Notice be issued through e-mail or any other available mode. Requisites along with process fee be filed within three days.

List the matter ‘for Admission (After Notice)’ on **24th August, 2020.**

The execution of the impugned order shall remain on hold till the next date of hearing subject to payment of Rupees One Crore. This will be without prejudice to the rights and contentions of the Appellant.”

6.(A) We direct that execution of the Impugned Order shall remain on hold till the Adjudicating Authority decides the I.A. No.1013 of 2020. The

contentions raised by Counsel for both sides are left open and we are not taking a decision on merit on those contentions. The parties are free to raise the disputes they want to raise before the Adjudicating Authority. (It is stated that the matter is now coming up before the Adjudicating Authority on 24th September, 2020.)

(B) The Adjudicating Authority is requested to dispose of the I.A. No.1013 of 2020 at the earliest preferably within a month.

(C) With these directions, the present Appeal stands disposed of.

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

(Dr. Ashok Kumar Mishra)
Member (Technical)

rs/md