

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT)(Insolvency) No. 548 of 2020

[Arising out of order dated 4th June, 2020 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi, Bench-V, in (IB) No. 1906(ND)/2019]

IN THE MATTER OF:

Mr. Umesh Saraf,
Suspended Director,
TRIUMPH REALTY PVT. LTD.
C/o Hotel The Grand, Plot No. 2,
Vasant Kunj, Phase-II,
Nelson Mandela Road,
New Delhi- 110 070

.. Appellant

Vs.

TECH INDIA ENGINEERS PVT. LTD,
D-49, Solaris I,
Saki Vihar Road, Powai,
Mumbai – 400 072

.. Respondent

Present:

For Appellant: **Mr. Arun Kathpalia, Sr. Advocate, with Mr. Yogesh Jagia and Ms. Sumedha Chadha, Advocates**

For Respondent: **Mr. K K Tiwari, Advocate**

J U D G M E N T

(19th October, 2020)

KANTHI NARAHARI, MEMBER (TECHNICAL)

The present appeal arises against the order of the learned Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-V) in (IB) No. 1906(ND)/2019 dated 4th June, 2020 whereby,

learned Adjudicating Authority admitted the Application filed by the Respondent herein i.e., TECH INDIA ENGINEERS PVT. LTD, Mumbai under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short **IBC**)

2. Aggrieved by the above order, the suspended Director of the Corporate Debtor i.e., Triumph Realty Pvt. Ltd filed the present Appeal challenging the admission and initiation of Corporate Insolvency Resolution Process (in short '**CIRP**') against the Corporate Debtor for the reason that there is a pre-existing dispute between the Corporate Debtor and the Operational Creditor.

3. The learned Adjudicating Authority admitted the Application on the ground that the Corporate Debtor has not raised any dispute by giving a suitable reply in pursuance of the Demand Notice dated 11.04.2019 issued under Section 8(1) of IBC by the Operational Creditor to the Corporate Debtor. The findings of the learned Adjudicating Authority at paragraphs 13 & 14 are reproduced herein:

...

13. *In the light of that decision, when we shall consider the case in hand then we are of the considered view that since it is specifically mentioned in Section 8(2) of the Code that within ten days from the date of the receipt of the demand notice, the corporate-debtor is required to bring to the notice of the operational-creditor, the existence of dispute or the documents regarding the payment of debt, therefore, we have no option, but to hold that since the corporate-debtor fails to give the reply of the demand notice and*

*raised the disputes, hence after his appearance in response to the notice, he cannot raise it by filing the reply to the application, filed on behalf of the operational-creditor and this has also been held by another NCLT, Delhi Bench in the case of **M/s Jai Laxmi Traders v M/s Mayasheel Retail India Ltd. IB-2184/ND/2019.***

14. *Since, no dispute has been raised in pursuance of the demand notice issued under Section 8(1) of IBC, 2016, therefore, in our considered view, any dispute raised after the appearance of the respondent in pursuance to summons issued after filing the main application is not liable to be accepted.”*

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BRIEF FACTS:

4. The Appellant/Corporate Debtor is into business of Hotels, Tourism and Travel Services and operating and managing luxury resort at Goa. The Corporate Debtor invited Tender in carrying out electrical works. The electrical works were assigned to the Respondent/Operational Creditor under tender process and Agreement dated 07.06.2016, was executed between the Operational Creditor and the Corporate Debtor. It is submitted that in terms of the Agreement and the Letter of Intent (in short '**LOI**') dated 20.05.2016, the payment terms were specifically incorporated therein. In terms of the LOI in clause -2, a specific mention the time of completion is the essence of the contract and milestones were accordingly incorporated. According to LOI, the work was to be completed within 120 days.

However, the work was delayed and the same has been communicated by the Operational Creditor vide e-mail dated 05.12.2017 (Page 244 of Vol. II). It is further submitted that as per the said e-mail, it clearly reflects that the project has been delayed and the Operational Creditor neglected to complete the project and hand over the site to the Corporate Debtor. From the trail of e-mail correspondences of the Appellant, it is submitted that the Operational Creditor has not completed the work and the Corporate Debtor time and again reminded Operational Creditor to complete the work by pointing out the defects. Learned Senior Counsel for the Appellant submitted that vide e-mail dated 29.10.2016 (Page 245, Vol. II) and 24.02.2017 (Page 246, Vol. II), the Appellant pointed out inefficiency and deficiency in execution of work. It is reiterated that vide e-mail of the Respondent dated 05.12.2017 (Page 244, Vol.-II), the Respondent/Operational Creditor admitted delay in execution of work. Further it is submitted that on 02.04.2018 (Page 247 Vol. II), the Corporate Debtor once again called upon Respondent/Operational Creditor by way of e-mail regarding incomplete work at site (Hotel). Learned Senior Counsel further submitted that the Corporate Debtor assigned pending work to a third party i.e., Yadav Electrical Work for completion of the Hotel project since the Operational Creditor could not complete the work. It is submitted that on 05.11.2018 (Page 255 Vol.-II), the Corporate Debtor again pointed out Operational Creditor about the discrepancies of the work executed and requested Respondent/Operational Creditor to depute technical persons at site where all the discrepancies can be

shown. The Appellant/Corporate Debtor on 11.01.2019 appointed IM Cost Management Private Limited (in short “**IMCMPL**”), a team of consulting Engineers to carry out the audit of Civil structures, electrical, plumbing, finishing work and other miscellaneous packages. On 4th and 5th February, 2019, one Mr. Shiraj, Project Engineer of Respondent/ Operational Creditor along with representative of Appellant carried out joint inspection with IMCMPL and stated that subsequently no one came forward from Respondent to explain the measurement or deficiencies pointed out by IMCMPL. On 11.03.2019 (Page-272 Vol.-II), the Appellant/Corporate Debtor called upon the Respondent/Operational Creditor for meeting and resolving all the issues reflected in the Audit Report submitted by IMCMPL on 05.03.2019 (Page 31 of the Rejoinder, diary No. 21148). However, the Respondent/Operational Creditor did not attend the meeting, making bald observation through e-mail dated 20.03.2019 (Page 273 Vol. II). While so, the Respondent/Operational Creditor issued Demand Notice dated 11.04.2019 (Page 274 vol. II) under Section 8 of IBC for claiming an amount of Rs. 46,64,878/- against 50 invoices. Learned Senior Counsel further submitted that Corporate Debtor on 29.04.2019 (Page 283 Vol. II), Appellant reiterated various defects and deficiencies in the execution of work to the Respondent/Operational Creditor and called upon the Respondent/ Operational Creditor to rectify the same. He further submitted that learned Adjudicating Authority was of the view that the Appellant/Corporate Debtor had not taken into consideration the e-

mail dated 29.04.2019. However, the learned Adjudicating Authority was of the view that the Appellant/Corporate Debtor has failed to reply to the Demand Notice dated 11.04.2019 which was received by the Appellant/Corporate Debtor on 16.04.2019. He also submitted that the learned Adjudicating Authority also observed that in e-mail dated 29.04.2019 nowhere it has been mentioned that the said e-mail is in the form of Reply to the Demand Notice issued by the Respondent/Operational Creditor. Further, he submitted that the learned Adjudicating Authority observed that the Appellant/Corporate Debtor has not complied with the statutory requirement as contemplated under Section 8(2) of IBC. He submitted that the Application under Section 9 filed by the Respondent/Corporate Debtor was admitted on the sole ground that the Appellant/Corporate Debtor has not raised any dispute in pursuance to the Demand Notice dated 11.04.2019 and submitted that the learned Adjudicating Authority failed to consider the existence of dispute prior to the Demand Notice. Learned Senior Counsel relied upon the following judgments in support of his case.

- i) ***“Innoventive Industries Ltd. Vs. ICICI Bank and Ors.”***
– (2018)1 SCC 407 passed by Hon’ble Supreme Court &
- ii) ***“Vinod Mittal Vs. Rays Power Experts & Anr.”*** in
Company Appeal(AT)(Insolvency) No. 851/2019 dated
18.11.2019 passed by this Tribunal.

iii) **Mr. Gajendra Parihar Vs. M/s Devi Industrial Engineers & Anr.** in Company Appeal(AT)(Insolvency) No. 1370 of 2019 dated 18.03.2020 of this Tribunal.

He prayed this Bench to allow the Appeal by setting aside the impugned order of the learned Adjudicating Authority.

5. Mr. K.K. Tiwary, learned Counsel appearing for the Respondent filed his Reply and submitted that there is no infirmity in the impugned Order passed by the learned Adjudicating Authority and there is no pre-existence of dispute in the eye of law. Learned Counsel submitted that by not filing Reply to the Demand Notice dated 11.04.2019 issued under Section 8(1) of IBC, it is admitted by the Appellant/Corporate Debtor that they have not raised any dispute. Learned Counsel further submits that in order to justify its malafide, illegal stand has been taken by the Appellant/Corporate Debtor which are contradictory pleas on the face of the record. It is also submitted by the learned Counsel for the Respondent, that Respondent/Operational Creditor has completed the work to the satisfaction of the Appellant/Corporate Debtor. He submitted that some alleged works were done by the third party contractor is false since the stand has been taken for the first time in the Reply filed to the Insolvency Petition. He submitted that the Project Director of the Appellant/Corporate Debtor i.e., Mr. Joshi was satisfied with the works, documents and Commissioning Reports of Respondent/Operational Creditor and he did not express any dissatisfaction on 29.12.2018. He further submitted that the

Appellant/Corporate Debtor inspected the work in February, 2019 which was almost 10 months after the work was commissioned and Appellant/Corporate Debtor was making beneficial uses of the facility for commercial business. He also submitted that even during the joint inspection with third party in the month of February, 2019, the system was found running smoothly and satisfactorily. Hence it is a baseless submission of the Appellant/Corporate Debtor that the system is having workmanship issues. He submitted that despite several reminders from the Respondent/Operational Creditor, the Appellant/Corporate Debtor did not make the payment for the work done on account of quality and quantity of work, deficient services and incomplete work. Learned Counsel further submitted that the correct position is that, that at no point of time, the Appellant/Corporate Debtor raised any such plea in response to several e-mails sent by the Respondent/Operation Creditor. The learned Counsel submitted that even the Appellant/Corporate Debtor had not replied to the Demand Notice thereby they failed to raise any issues pertaining to the quality and quantity of work. He submitted that the Respondent/Operational Creditor's Project Engineer completed the work and handed over the project during April, 2018 and there was no payment nor any return reply against the payment request. Learned Counsel further submitted that the Appellant/Corporate Debtor having satisfied with the work done by the Respondent/Operational Creditor issued Completion Certificate on 15.05.2018. Learned Counsel further submitted that the Appellant/Corporate Debtor in this Appeal raised issue of delay in

construction. He submitted that there was no delay in completion of the work and the Appellant/Corporate Debtor issued 'Completion Certificate' without any protest of any nature. Therefore, he submitted that even this issue is untenable. He submitted that the learned Adjudicating Authority rightly admitted the Application filed by them on the ground that the Appellant/Corporate Debtor has not raised any dispute which is not prior to the Demand Notice by way of Reply to their Demand Notice dated 11.04.2019, even though the Demand Notice was served on them on 16.04.2019.

6. The learned Counsel for the Respondent submitted that the Appellant/Corporate Debtor has not raised any valid ground in this Appeal and he prayed the Bench to dismiss the Appeal.

FINDINGS:

7. Heard learned Counsel for the respective parties. Perused pleadings and citations relied upon by them. After analysing the pleadings, the only issue fell for consideration is whether there is existence of dispute prior to issuance of Demand Notice dated 11.04.2019 or not?

8. Admittedly, the Respondent/Operational Creditor issued Demand Notice on 11.04.2019 to the Appellant/Corporate Debtor demanding Rs. 46,64,878/- and the Appellant/Corporate Debtor received the said Demand Notice. While so, the Appellant/Corporate Debtor, vide e-mail dated 29.04.2019 addressed to the

Respondent/Operational Creditor whereby it has been stated as under:

“Dear Mr. Pankaj,

This has reference to the audit team’s ie IMCM’s representative’s visit to site and discussion with your team for verification of qualitative/quantitative work executed by your company. You are very well aware that your representative came on 4th February 2019 and 5th February 2019 date for measurement and verification required by the agency. And your representative were not been able to explain any measurements neither could explain any queries. Hence he committed and confirmed that the billing engineer from your end will be there on 6.2.2019 but the billing engineer did not turn up at site on 3rd day with the supporting.”

“Kindly note that number of email written by our Project Director specifically pointed out that the bills were submitted by your company without supporting of documents such as drawing, approved measurement sheet, DC, MTC, check list and approval on extra items/rate analysis for the extra items.”

“Further, you are also fully aware that delay cause in executing the work has resulted in delay in commencement of the operation of the hotel and our company has suffered huge financial loss for the same. We hereby call upon you to send authorised representative or senior official of the Respondent Company along with all documents/ drawings/reports which were duly certified and signed by the Project

Director along with R.A. Bills so that joint meeting can be arranged and carried out at the earliest possible time for the deficiency observed by the Audit Team on qualitative and quantitative and delay in execution of work summary which had already been shared to you.”

...

9. Learned Senior Counsel for the Appellant/Corporate Debtor contended that the apart from e-mails exchanged between the Appellant and Respondent importantly a specific dispute has been raised vide emails dated 04.10.2018, 01.11.2018, 04.12.2018. Admittedly the said e-mails were sent prior to issue of Demand Notice dated 11.04.2019. We have perused e-mail dated 01.11.2018 (Annexure-12, Vol.-II at page 256) whereby the Appellant/Corporate Debtor stated as under: -

“Dear Mr. Gupta,

Only submission of bill does not mean the completion and correctness of the works. Your team is more than welcome to see for themselves the incomplete/rectification works that are being carried out these dates. We are open to show and discuss all the points across the table with your technical person at site.”

10. The Appellant/Corporate Debtor sent another e-mail dated 05.11.2018 (Annexure- A13 at page 257) to the Respondent/Operational Creditor stated as under:

“Dear Sir,

We reiterate that we would like to discuss all the items and issues with your technical person at site and show him the discrepancies in the billed and actual executed work in order to settle the account.

It is worth stating that in the contract, any intermediate made against the R.A. bill is only adhoc payment and not necessarily certifies and accepts the work as final completion.”

11. Prior to the above e-mail, we have also noticed various exchange of e-mails between the parties. The Respondent/Operational Creditor, vide their e-mail dated 05.12.2017 addressed to the Appellant/Corporate Debtor whereby it has been stated that the Project is also delayed much beyond the original schedule leading to enhanced overheads and stated that they need funds to source materials with respect to work progress. The Respondent/Operational Creditor, vide e-mail dated 15.05.2018 (Annexure-R6 at page 74 of the Reply) addressed to the Appellant/Corporate Debtor stating that testing, commissioning and handing over of partial electrical works/services at the Triumph Reality Pvt. Ltd. and requested the Appellant to certify the equipment for the testing and commissioning and successfully handing over by listing out details of the items. However, the Appellant/Corporate Debtor has contended that the work was not completed by the Respondent/Operational Creditor and that they had given the Work Order to a third party vide Work Order dated 25.08.2018 (Annexure-A7 at page 248). In the e-mail dated 30.08.2018

(Annexure-A8 at page 249), the Appellant addressed to the Respondent whereby it has been stated in paragraph-3 as under:

..

“3. During the verification it was found that some of the items which are not yet commissioned/ executed, has been claimed in the R.A. Bill and similarly many items certified for commissioning and handing over, no documentation has been submitted so far. You are advised to make necessary amendments and re-submit the bill with corrected quantities, supported with proper documentation.”

..

12. The Appellant (Corporate Debtor), vide e-mail dated 04.10.2018 (Annexure-A11, at page 253) addressed to the Respondent (Operational Creditor) specifically stated that the team of the Appellant has closely scrutinized the bills submitted and found that the claims made therein are exaggerated and not in line with the contractual terms and at paragraph -3 of this e-mail it has been stated as under:

..

“3. Further, during the actual verification of works, it was found that in many areas the works are either incomplete or incorrectly executed, however, claimed in full. All such works are to being redone, rectified by other agencies, because you had abandoned the site”

..

13. The Appellant/Corporate Debtor on 11.01.2019 pointed out that one IM Cost Management Private Limited has been appointed to audit the civil structures, electrical, plumbing finishing etc and submitted its report on 05.03.2019. There is no dispute that one Mr. Shiraj, Project Engineer of the Respondent/ Operational Creditor carried out joint inspection with IMCMPL. After joint inspection, the representative of the Respondent/Operational Creditor has not come forward for further inspection. This is borne out from the records of the Appellant's e-mail dated 29.04.2019 (Annexure-A18 at page 283) addressed to the Respondent/Operational Creditor wherein it has been specifically stated that the representative of the Respondent/Operational Creditor visited on 4th and 5th February, 2019 for measurement and verification. However, the Respondent's representative was not able to explain any measurement neither could explain any query. Further, it has been stated that the Billing Engineer from the Respondent/Operational Creditor will be present on 06.02.2019. However, the Billing Engineer did not turn up at site even on 3rd day. It has been stated in the letter that in view of the delay in executing the work, resulting in delay in commencement of the operations of the Hotel and the Company had to suffer huge financial loss. Learned Adjudicating Authority had taken note of the e-mail dated 29.04.2019 in the Impugned Order at paragraph-9 and came to a conclusion that the said e-mail dated 29.04.2019 was not the Reply in response to the Demand Notice dated 11.04.2019 and found that the Appellant/Corporate Debtor has not complied with the statutory provision of Section 8(2) of IBC.

14. We are of the view that the learned Adjudicating Authority instead of taking technical objection that the above e-mail dated 29.04.2019, may not be a Response/Reply to the Demand Notice issued by the Respondent/ Operational Creditor, however, the contents, as raised by the Appellant/Corporate Debtor should have been taken into consideration for the purpose of deciding the issue to elucidate any pre-existing dispute keeping in view of trail of exchange of e-mails regarding deficiency in service.

15. We are inclined to refer the letters/e-mails of the Respondent/Operational Creditor dated 29.12.2018 addressed to the Appellant/Corporate Debtor (Annexure-R7 at page 75 of the Reply filed by the Respondent) wherein it is stated as under:

..

“Dear Sir,

We are handing over Electrical Works, Documents

Details at Triumph Resort 336/ 1A, village Calwaddo,

Benaulim, Goa- 403716.”

..

Along with this letter, the Respondent/Operational Creditor enclosed Final bill, material communication, testing and commissioning reports handing over signed letter, Code order etc.

16. The contention of the Appellant/Corporate Debtor that in view of deficiency of services of Respondent/Operational Creditor forced the

Appellant/Corporate Debtor to appoint Professional Engineer from IMCMPL.

17. From the perusal of e-mail /correspondences between the Appellant/Corporate Debtor and Respondent/Operational Creditor, it is the case of the Appellant/Corporate Debtor that the Respondent has not completed the project in time thereby the Project was got delayed thereby they suffered losses. On the other side, the stand of Respondent/Operational Creditor that they have completed the Project and handed over to the Appellant/Corporate Debtor, however, Appellant/Corporate Debtor failed to pay bills even after complete of the project. It is unequivocal that there exists dispute between the parties prior to the issuance of Demand Notice dated 11.04.2019.

18. We are of the view that the learned Adjudicating Authority instead of taking a technical objection that the Appellant/Corporate Debtor has not replied to the Demand Notice issued by the Respondent/Operational Creditor within statutory period of 10 days as contemplated under Section 8(2) of IBC, should have analysed the documents placed before it, before taking such objection.

19. As per Article 141 of the Constitution of India, we are bound by the decision of the Hon'ble Supreme Court in the matter of "**Mobilox Innovations Private Limited vs. Kirusa Software Private Limited**" reported in (2018) 1 SCC 353 at paragraph 33 held as under:

“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. **Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.”**

20. The Hon'ble Supreme Court clearly held that the dispute must exist before the receipt of the Demand Notice or Invoices as the case may be. Further, in the matter of "**Innoventive Industries Ltd. Vs. ICICI Bank and Anr.**" – (2018)1 SCC 407, in paragraph 29 held which reads as under:

..

"29. *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in subsection (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*"

..

21. Further, this Bench in the matter of "**Vinod Mittal Vs. Rays Power Exports & Anr.**" in Company Appeal(AT) (Insolvency) No. 851 of 2019 dated 18.11.2019 held in paragraph-11 as under:

..

11. *Having gone through the matter and on considering record, there remains hardly any doubt that the earlier correspondence shows that between the parties there were disputes regarding installation of the project as well as functioning of the same. Although the project had been commissioned for which Completion Certificate had been issued, still if disputes had arisen between the parties regarding the installation and functioning of the project, the Operational Creditor merely pointed out Certificate of Appreciation dated 19th April, 2015 issued and claims that once Completion Certificate had been issued, Corporate Debtor could not raise issues with regard to the quality of the work done. In fact, the record shows that there had been even a review meeting between Operational Creditor and Corporate Debtor and excerpts of which minutes have been placed on record by the Corporate Debtor at Page – 187 which showed that full installation was yet to be completed (see Page – 188). There was also discussion regarding Sag Structure Correction Action Plan. In fact, there is Annexure – 24 showing the Experts enquiry on 5th May, 2015 as to when the plant would be declared fully commissioned so that they could start electrical review of the project. Looking to such material on record, it is quite clear that there was pre-existing dispute regarding installation as well as operation of the project. When this is so, the Section 9 Application could not have been admitted. In fact, when e-mail dated 20th October, 2016 (Page – 431) was already before the Adjudicating Authority and it had also noticed the same, the Adjudicating Authority should*

have found preexisting dispute and the Section 9 Application should have been rejected. Only by observing that the Respondent – Corporate Debtor have not come forward to dispute the Application would not be sufficient to initiate CIRP, if the record already showed existence of dispute.”

..

And in the matter of **“Mr. Gajendra Parihar Vs. M/s Devi Industrial Engineers & Anr.”** in Company Appeal(AT)(Insolvency) No. 1370 of 2019 this Bench dated 18.03.2020 was of the view that existence of dispute prior to the issuance of Demand Notice, the Application under Section 9 IBC is not maintainable and once there is existence of such dispute, the Operational Creditor gets out of the clutches of the Code.

CONCLUSION:

22. Having gone through the records and the law laid down by the Hon’ble Supreme Court and the precedents of this Tribunal, we are of the considered view that the correspondences i.e., e-mail/letters show that there is existence of disputes prior to issuance of Demand Notice.

23. Exchange of e-mails/correspondences, as referred above, clearly establishes that there is a pre-existing dispute between the parties regarding completion of the work and the Appellant/Corporate Debtor continuously made complaints regarding non-completion of work and deficiency in services, thereby loss caused to the Appellant/Corporate Debtor.

24. Therefore, it is quite clear that there is pre-existing of dispute regarding completion of the work and the learned Adjudicating Authority ought not to have admitted the Application under Section 9 of IBC filed by the Respondent/ Operational Creditor. Even in the Reply filed by the Appellant/Corporate Debtor before the learned Adjudicating Authority pursuant to Section 9 Application, it is quite clear that there was sufficient material produced before the learned Adjudicating Authority and the learned Adjudicating Authority ought to have considered the materials placed before it.

25. We are of the considered view that the learned Adjudicating Authority should have considered the substantial material placed before it in its correct perspective and law laid down by the Hon'ble Supreme Court in this regard, before passing the Impugned Order dated 04.06.2020 thus committed error.

26. It is re-iterated that the Code is a beneficial legislation intended to put the Corporate Debtor on its feet and it is not a mere money recovery legislation for the Creditors.

27. For the above reasons, we set aside the Impugned Order dated 04.06.2020 passed in (IB) No. 1906(ND)/2019 by the learned Adjudicating Authority.

28. Initiation of Corporate Insolvency Resolution Process (in short '**CIRP**') against the Appellant/Corporate Debtor is quashed and set aside. Steps taken in consequence of Impugned Order dated

04.06.2020 and the further orders passed during CIRP are all quashed and set aside.

29. We release the Corporate Debtor from the rigour of Corporate Insolvency Resolution Process. Interim Resolution Professional/Resolution Professional will hand over the assets and records to the Corporate Debtor/Promotor/Board of Director.

30. The matter is remitted back to the Adjudicating Authority to decide Fee and Cost of CIRP which shall be payable to Interim Resolution Professional/Resolution Professional by the Respondent/Operational Creditor.

31. The Appeal is allowed as above. No orders as to cost.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

New Delhi

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