

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal(AT)(Insolvency) No. 634 of 2018**

**IN THE MATTER OF:**

**Rajesh Arora**

**...Appellant**

**Vs**

**Sanjay Kumar Jaiswal**

**....Respondent**

**Present:**

**For Appellant: Mr. Virender Ganda, Senior Advocate along with Mr. Ayandeb Mitra, Mr. Simran and Mr. Anand Singh Sengor, Advocates**

**For Respondent: Mr. Abhishek Anand, Mr. Anant A Pavgi and Mr. Tushar Tyagi, Advocates**

**O R D E R**

**05.11.2018** This appeal has been filed by Mr. Rajesh Arora, shareholder of M/s Amira Pure Foods Pvt. Ltd ('Corporate Debtor') against order dated 8<sup>th</sup> October, 2018 whereby the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court No. IV had admitted the application under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short I&BC) preferred by Respondent-Mr. Sanjay Kumar Jaiswal (Ex-employee – 'Operational Creditor').

2. Learned Senior Counsel appearing on behalf of the Appellant submits that the application under Section 9 of I&BC was admitted without any notice to the 'Corporate Debtor'. The Adjudicating Authority had not given any notice before admitting the case and the impugned order had been passed in violation of rules of Natural Justice. It is also stated that the parties have settled the matter and a draft for Rs. 2,88,000/- has been handed over to Ms. Anushua, learned Counsel for the 'Operational Creditor' towards rest of the amount in terms of settlement.

She handed over the draft to Mr. Sanjay Kumar Jaiswal who is present in Appellate Tribunal.

3. The Respondent has not disputed the fact that the impugned order was passed by the Adjudicating Authority without any notice to the 'Corporate Debtor'. This is also clear from the impugned order wherein the Adjudicating Authority observed as follows:

*"12. This Tribunal is **constrained to proceed with the matter exparte** in relation to the Corporate Debtor since the section 8 notice and the present application duly served on the Corporate Debtor and proof of service along with service affidavit is filed by the applicant making the service complete."*

4. Mr. A. Raja Ram, learned Advocate submits that some other 'Operational Creditors' are entitled to certain payments. However, we are not deciding such issue in the present appeal they being party to this appeal.

5. Admittedly, impugned order dated 8<sup>th</sup> October, 2018 was passed by the Adjudicating Authority without notice to the 'Corporate Debtor' in violation of rules of Natural Justice, we set aside the impugned order. The matter having been settled between the parties, we are not remitting the matter back to the Adjudicating Authority.

6. In effect, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing account, and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action, taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions

are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I & B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor(Company)' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. The Adjudicating Authority will fix the fee of 'Resolution Professional' and the 'Corporate Debtor' will pay the fees of the 'Resolution Professional', for the period he has functioned.

8. However, the impugned order will not come in the way of other 'Operational Creditor' to move before appropriate forum for appropriate relief.

The appeal stands disposed of. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

Akc/Sk