

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT)(Insolvency) No. 1374 of 2022**

**IN THE MATTER OF:**

**SPJ Cargo Pvt. Ltd.**

**...Appellant**

**Versus**

**Blossom Grocery & Foods India Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Mr. Utkarsh Joshi, Advocate**

**For Respondent : None.**

**ORDER**

**11.05.2023:** Heard learned Counsel for the Appellant.

2. This appeal has been filed against the order dated 13.10.2022 passed by the Adjudicating Authority (NCLT, Mumbai). When the appeal was heard by this Tribunal on 16.11.2022, the following order was passed:

*“ORDER*

*16.11.2022: Learned Counsel for the Appellant submits that the Application C.P. (IB)/667(MB)2020 has been filed by the Appellant under Section 9 which is proceeding for consideration and no order for admission of the Application has yet been passed.*

*2. By this Appeal, the Appellant challenges the order dated 13.10.2022. He submits that the Adjudicating Authority on 13.10.2022 has passed direction. Paragraph 2 of the direction reads as follows:-*

*“2. Counsel for the Operational Creditor is directed to get Demand Draft (DD) of Rs.5 lakhs in favour of the proposed IRP by next date of hearing. If he fails to get the DD of Rs.5 lakhs by next date of hearing, the matter will be dismissed on that date.”*

*3. Learned Counsel for the Appellant submits that the direction of the Adjudicating Authority to deposit Demand Draft of Rs.5 Lakhs was uncalled for since IRP has already given his consent and had no grievance with regard to any fee and the Section 9 Application has not yet admitted.*

*4. The above submissions prima facie has substance. We stay the direction issued in paragraph 2 in the order dated 13.10.2022. We further observe that the Adjudicating Authority may proceed with the consideration of Section 9 Application and pass appropriate order in accordance with law.*

*5. Let ‘Notice’ be issued to the Respondent through ‘Speed Post’. Let the requisites together with process fee be filed within three days from today. The Appellant is required to provide the e-mail address of the Respondent and in that mode also, the service can be effected. The Appellant is also required to furnish the Mobile No. of the Respondent to the ‘Office of the Registry’.*

*6. Let Reply be filed within two weeks.*

*7. List the Appeal on 19.12.2022.*

*[Justice Ashok Bhushan]*  
*Chairperson*

*[Dr. Alok Srivastava]*  
*Member (Technical)”*

3. In pursuance of the order issuing Notices, Notices have been issued and was also directed to be published in the local newspaper. Affidavit of service has been filed. Service of notice is sufficient, but no one has appeared today from the Respondent side when the case is called out.

4. The Appellant is an Operational Creditor who has filed Section -9 Application for a debt and default of Rs. 24,12,063/-. In the Application the Adjudicating Authority has issued a Notice on 26.02.2020 and further order was passed on 23.03.2021 directing the Corporate Debtor to file its Reply. Corporate Debtor did not appear before the Adjudicating Authority despite publication of Notice through local newspapers. The matter was adjourned on several dates and ultimately the matter was taken up on 13.10.2022 when the Adjudicating Authority passed following Order:

“ORDER

The Court is convened through Video Conference.

1. Mr. Anirudh Suresh a/w Balaji Harish Iyer, Ld. Counsel for the Operational Creditor present. None for the Corporate Debtor.
2. Counsel for the Operational Creditor is directed to get Demand Draft (DD) of Rs.5 lakhs in favour of the proposed IRP by next date of hearing. If he fails to get the DD of Rs.5

lakhs by next date of hearing, the matter will be dismissed on that date.

3. List this matter for further consideration on 17.11.2022.

Sd/-

MANOJ KUMAR DUBEY  
Member (Technical)

Sd/-

KISHORE VEMULAPALLI  
Member (Judicial)”

5. Challenging the said order, this Appeal has been filed. Learned Counsel for the Appellant has submitted that there is no occasion for the Adjudicating Authority to direct the Appellant to deposit Demand Draft of Rs. 5 lakhs in favour of the proposed IRP whereas IRP has already given his consent on the fees which was proposed by Operational Creditor. It is further submitted that Application under Section 9 having not yet been admitted, there was no occasion to direct to deposit of the fee.

6. We have considered the submission of Counsel for the Appellant and perused the records. When Section 9 Application has not been admitted, there is no occasion to issue any direction for depositing fee of IRP. Further direction of the Adjudicating Authority that in the event the Demand Draft is not deposited, the matter shall be dismissed was also uncalled for.

7. We are thus of the view that the direction issued in paragraph-2 of the impugned order deserves to be set aside. The Appeal is allowed. Direction in paragraph-2 is set aside. Section 9 Application being pending from the year 2020, we request the Adjudicating Authority to dispose of the matter.

8. We have been informed that the case is listed on 15.05.2023 before the Tribunal. The Adjudicating Authority shall endeavour to dispose of the matter on the next date or as early as possible.

**[Justice Ashok Bhushan]  
Chairperson**

**[Mr. Barun Mitra]  
Member (Technical)**

*akc/nn*