

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL (AT)(Insolvency) NO.52 OF 2017

In the matter of:

Kaliber Associates Pvt Ltd.

...Appellant

Versus

Mrs Tripat Kaur

....Respondent

**Present: Mr. Ayush Beotra, Advocate for the appellant.
 Mr. R.K. Gupta, Advocate for the Respondent.**

Order

26.05.2017- This appeal has been preferred by the appellant-corporate debtor M/s Kaliber Associates Pvt Ltd (hereinafter referred to as 'Corporate Debtor') against the order dated 26th April, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi in Company Petition No.(IB)-51(ND)/2017 whereby and whereunder application preferred by respondent, proprietor of a firm under the name and style of M/s Gallerie Nvyra for initiation of insolvency resolution process under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted. Further a moratorium have been declared and an Interim Resolution Professional have been appointed who has been asked to announcement of corporate insolvency resolution process under Section 15 of the I&B Code and to perform the duties as per I&B Code.

Learned counsel appearing on behalf of the appellant, corporate debtor, submitted that the impugned order has been passed by the Adjudicating Authority in violation of principle of natural justice i.e. without giving any notice to the corporate debtor prior to admission of the application. Reliance was placed on the decision of the Appellate Tribunal in "**Innoventive**

Industries Ltd Vs ICICI Bank and Another, Company Appeal (AT)(Insolvency) No.1 and 2 of 2017

In the said case the Appellate Tribunal vide judgement dated 15th May, 2017 taking into consideration the decision of Hon'ble Supreme Court and provisions of I&B Code and rules framed thereunder held

“As amended Section 424 of the Companies Act, 2013 is applicable to the proceeding under the MB Code, 2016, it is mandatory for the adjudicating authority to follow the Principles of rules of natural justice while passing an order under I&B Code, 2016. Further, as Section 424 mandates the Tribunal and Appellate Tribunal, to dispose of cases or/appeal before it subject to other provisions of the Companies Act, 2013 or MB Code 2016 such as, Section 420 of the Companies Act, 2013 was applicable and to be followed by the Adjudicating Authority.”

Learned counsel appearing on behalf of the appellant further contended that the appellant is a solvent company and in a position to pay the dues. Since financial dealings was entered into in the year 2012 a sum of Rs.50 lacs out of Rs.1.5 crores has been repaid to the respondent, financial creditor. However, in the year 2016 some disagreements arose between the parties on account of which the corporate debtor was constrained to stop payment to the Respondent. He further submitted that after receipt of legal demand notice dated 20.10.2016, the appellant was making arrangement for amount for making payment to the respondent and is now willing to unconditionally and irrevocably pay the respondent, financial creditor the entire sum of Rs.1 crores alongwith interest of Rs.12 lakhs subject to deduction of TDS. The cheques of the amount issued in the name of the respondent, financial creditor, have been shown as follows:

- i) Cheque No.139895 dated 4.6.2017 drawn on Union Bank, Lajpat Nagar Branch for a sum of Rs.1,00,00,000/-.
- ii) Cheque No.139896 dated 4.6.2017 drawn on Union Bank of India, Lajpat Nagar Branch for a sum of Rs.10,80,000/-

He further submitted that the appellant unconditionally agrees to deposit the relevant TDS with respect to the above mentioned amounts with the Tax Authorities within the prescribed time period.

Learned counsel appearing on behalf of the respondent, financial creditor while accepts that no notice was issued by the Adjudicating Authority before admitting the application under Section 7 of I&B Code and that he has no objection to settle the dispute with the appellant.

In the aforesaid background, as we find that the impugned order dated 26th April, 2017 passed by Adjudicating Authority in Company Petition No.(IB)-51(ND)/2017 have been passed in violation of rules of natural justice and against the decision of the Appellate Tribunal in **Innoventive Industries Ltd case**, no other option is left except to set aside the impugned order dated 26th April, 2017.

In the result, the appointment of Interim Resolution Professional, order declaring moratorium, freezing of account and all other order passed by Adjudicating Authority pursuant to impugned order and action taken by the Interim Resolution Professional including the advertisement published in the newspaper calling for applications are declared illegal. The Adjudicating Authority is directed to close the proceeding. The appellant is released from the rigour of law and allow the appellant company to function independently through its Board of Directors with immediately effect.

After the order was dictated the learned counsel appearing on behalf of the appellant handed over two account payees cheque issued in the name of firm M/s M/s Gallerie Nvya, posted dated 4th June, 2017, one for Rs.1 crore and another for Rs.10,80,000/- drawn on Union Bank of India to Learned counsel for the respondent as full and final payment of debt with interest for onward transmission to the financial creditor.

The appeal stands disposed of with the aforesaid observations.

The Adjudicating Authority will fix the fee of Interim Resolution Professional and the financial creditor will pay the fees of the Interim Resolution Professional for the period he has worked.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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