

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 272 of 2018

IN THE MATTER OF:

Sh. Sharad Kesarwani

...Appellant

Vs.

M/s. Planetcast Media Services Limited & Anr.

...Respondents

Present: For Appellant: - Mr. Mritunjay Tiwar Y and Mr. Sumit Kumar, Advocates.

For Respondents: - Mr. P.K. Mittal and Mr. M.K. Tiwari, Advocates for R-1.

Mr. Sanyam Goyal and Mr. Mohd. Nazim Khan, PCS and Mr. Mohtashim Kibriya, Advocate for RP.

ORDER

07.08.2018— This appeal has been preferred by Mr. Sharad Kesarwani, Shareholder and Director of 'M/s. Softline Media Limited'- ('Corporate Debtor') against the impugned order dated 26th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Bench-III, New Delhi, whereby and whereunder the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") preferred by 'M/s. Planetcast Media Services Limited'- ('Operational Creditor') has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed.

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2. The main ground taken by the Appellant is that no demand notice under Section 8(1) of the 'I&B Code' was served on the 'Corporate Debtor' and without service of notice, the application under Section 9 was admitted.

3. Learned counsel for the Appellant referred to the address of demand notice issued in Form-4 wherein registered office address of the 'Corporate Debtor' at 38, Rani Jhansi Road, Jhandewalan, New Delhi-110055 has been shown. It is informed that the office of the Company is now situated at Noida and the Noida premises has been closed by an order of a Court of Competent Jurisdiction.

4. On 24th July, 2018, the 'Resolution Professional' appeared and informed that the Appellant has not handed over the records of the Company. It was informed that the office at Noida has been locked by the Civil Court. In such situation, we allowed the 'Resolution Professional' to move before the Civil Court, by bringing to its notice that proceeding under 'I&B Code' having initiated, the order passed by the Adjudicating Authority will prevail over the orders of the other court.

5. Mr. Sanyam Goyal, Company Secretary appearing on behalf of the 'Resolution Professional' submitted that he visited the registered office of the 'Corporate Debtor' at 38, Rani Jhansi Road, Jhandewalan, New Delhi-

110055 and was detected that no such office of the 'Corporate Debtor' is existing over there. It is the 'Operational Creditor' who informed the 'Resolution Professional' that the office of the 'Corporate Debtor' is situated at Noida. Thereafter, the 'Resolution Professional' went there and found the registered office locked and sealed by the order of the Civil Court.

6. From the stand taken by the 'Resolution Professional', we find that the demand notice under section 8(1) was issued by the 'Operational Creditor' in a wrong address at 38, Rani Jhansi Road, Jhandewalan, New Delhi- 110055, where the office of the 'Corporate Debtor' was not situated. From the statement made by 'Resolution Professional', we find that the 'Operational Creditor' had knowledge of present address of the 'Corporate Debtor', at Noida but no notice under Section 8(1) was issued at the Noida address. However, even if it is to be issued, we are of the view that the notice cannot be served as the office has been locked and sealed by an order of a Court of Competent Jurisdiction.

7. In view of the aforesaid fact, as we find that demand notice under section 8(1) was not served on the 'Corporate Debtor' or on its Directors or the Shareholders, we set aside the impugned order dated 26th April, 2018.

8. In effect, order (s), passed by the Adjudicating Authority appointing any 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, 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' 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.

9. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional', and the Appellant- Mr. Sharad Kesarwani, will pay the fees of the 'Interim Resolution Professional', for the period he has functioned.

10. Liberty is given to the 'Operational Creditor' to issue a fresh demand notice under section 8(1) at the address of the 'Corporate Debtor' at Noida and another to Appellant-Mr. Sharad Kesarwani- in the address as given in this appeal. After service of demand notice, it will be open to the 'Corporate Debtor'/Appellant to submit reply under Section 8(2) and thereafter it will be open to the 'Operational Creditor' to proceed

in accordance with law. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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