

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 342 of 2018

IN THE MATTER OF:

**Sandeep Anand
Director**

G.S. Express Private Limited

...Appellant

Vs.

APL Apollo Tubes Ltd.

...Respondent

Present: For Appellant: - Mr. Ankur Khandelwal, Advocate.

For Respondent:- Mr. Karan Gandhi, Advocate.

ORDER

10.07.2018— This appeal has been preferred by Mr. Sandeep Anand, Director of 'G.S. Express Private Limited'- ('Corporate Debtor') against the order dated 13th June, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Allahabad in Company Application No. 171 of 2018, whereby and whereunder the application preferred by the Respondents under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") for initiation of 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor' has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed with certain directions.

Contd/-.....

2. On 5th July, 2018, when the matter was taken up, learned counsel for the Appellant submitted that before admission of the application under Section 9 of the 'I&B Code', the parties had already settled the dispute and therefore, there was no default. This fact was brought to the notice of the Adjudicating Authority who ignored the fact and admitted the application.

3. Mr. Karan Gandhi, learned counsel appeared on behalf of the Respondent- ('Operational Creditor') accepted that settlement was reached prior to the admission of the petition and this was also brought to the notice of the Adjudicating Authority who in spite of the same has admitted the application. They were asked to file an affidavit which has been filed by them; the same plea has been taken by the Respondent.

4. In view of the aforesaid fact that the parties have already reached settlement and there was no default on the part of the 'Corporate Debtor' and as the Adjudicating Authority has failed to notice the same, we have no other option but to set aside the impugned order dated 13th June, 2018.

5. 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, 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.

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