

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 273 of 2018

IN THE MATTER OF:

**Kamal Kumar Kandpal,
Ex-Director,
Lepton Projects Private Limited & Anr.**

...Appellant

Vs.

Sanghvi Movers Limited & Anr.

...Respondents

Present: For Appellant: - Mr. Narendera N. Sharma and Ms. Prachi Gupta, Advocates.

For Respondents:- Mr. Nitin S. Tambwekar, Advocate for 1st Respondent.

Mr. Hemendra, Advocate for 2nd Respondent.

O R D E R

31.05.2018- Mr. Kamal Kumar Kandpal, Director of 'Lepton Projects Private Limited'- ('Corporate Debtor') has preferred this appeal against an order dated 9th April, 2018, passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in (IB)-518(PB)/2017, whereby and whereunder, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") preferred by the 'Sanghvi Movers Limited' has been admitted, order of 'Moratorium' has been passed and 'Insolvency Resolution Professional' has been appointed.

Contd/-.....

2. Learned counsel appearing on behalf of the Appellant submitted that no notice under Section 8(1) of the 'I&B Code' was served on the 'Corporate Debtor'. The impugned order dated 9th April, 2018 has been passed without notice to the 'Corporate Debtor'.

3. He further brought to the notice of this Appellate Tribunal the affidavit by dasti served by the 1st Respondent- 'Sanghvi Movers Limited'- ('Operational Creditor') wherein he has stated that the Respondents reached the office of Mr. Kamal Kumar Kandpal, the Director of the 'Corporate Debtor' and found neither the 'Corporate Debtor' nor their representative were occupying the premises. In spite of the same, the Adjudicating Authority without hearing the 'Corporate Debtor' passed the impugned order.

4. It is submitted that if the demand notice would have been received in terms of Section 8(1) or notice of the petition would have been served on the Appellant, they could have settled the claim. In fact, the amount has been paid to the 'Operational Creditor'.

5. Mr. Nitin S. Tambwekar, learned counsel appearing on behalf of the 'Operational Creditor' accepts that the notice could not be served on the 'Corporate Debtor' and also accepts that the Appellant has paid the amount in favour of the 'Operational Creditor'.

6. Mr. Hemandra, Advocate appears on behalf of the 'Resolution Professional' submits that if the order is set aside then the Court should ensure payment of fees and cost incurred by the 'Resolution Professional'.

7. In view of the aforesaid stand taken by the Appellant and not disputed by the Respondent, we have no other option but to set aside the impugned order. We accordingly set aside the order dated 9th April 2018 and allow the prayer.

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

9. The 'Corporate Debtor' will pay a sum of Rs. 1,50,000/- in favour of the 'Interim Resolution Professional' towards fee and another sum of Rs. 37,000/- towards the expenses i.e. total of Rs. 1, 87,000/- within 15 days. The appeal is allowed with aforesaid observation and directions. 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)

Ar/G