

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 595 of 2018

IN THE MATTER OF:

**Sh. Jagdish Pershad Gupta
Director & Shareholder of
(M/s. Jagson International Ltd.)**

...Appellant

Vs.

JPC Enterprises & Anr.

...Respondents

Present: For Appellant: - Mr. Arun Kathpalia, Senior Advocate with Mr. Jayant Mehta, Dr. Shashwat Bajpai and Mr. Rohit Sathukar, Advocates.

For Respondents: - Mr. Pankaj Jain and Mr. Sagar Bansal, Advocates.

O R D E R

05.10.2018— This appeal has been preferred by the Shareholder of 'M/s. Jagson International Ltd.' ('Corporate Debtor') against the order dated 11th September, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-III, whereby and whereunder, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) preferred by 'M/s. J.P.C Enterprises'- ('Operational Creditor') has been admitted on the ground of alleged default in settling the dues to the extent of Rs. 11,60,612/- including interest at the rate of 18% for the services rendered by the Applicant.

Contd/-.....

2. Learned Senior Counsel appearing on behalf of the Appellant submitted that the Adjudicating Authority has failed to consider whether the Respondents actually provided any services to the 'Corporate Debtor' only on the strength of a civil litigation. If civil litigation is taken into consideration without deciding the question whether the Respondent is 'Operational Creditor' or not, no order can be passed in an application under Section 9 of the 'I&B Code'.

3. Further, according to him, the amount alleged to have been defaulted and noticed by the Adjudicating Authority itself was disputed and in spite of the same, on the ground of default of the aforesaid amount, as recorded in the impugned order, the case has been admitted.

4. It is informed by the parties that they have settled the dispute and copy of the settlement has been kept on record.

5. Learned counsel appearing on behalf of the Respondents submits that the matter having already settled they have no objection to be raised.

6. On bare perusal of the impugned order, we find that specific finding has been given by the Adjudicating Authority that there is a default in settling the dues to an extent of Rs. 11,60,612/- including interest at the rate of 18% for the services rendered by the Applicant. Whatever service has been rendered by the Respondents has not been discussed nor the

Adjudicating Authority has taken into consideration the objection raised by the Respondents in their reply under Section 8(2) dated 24th March, 2018.

7. As we find that there is some arguable point on the part of the Appellant which has not been taken into consideration by the Adjudicating Authority and the matter has been settled between the parties, we set aside the impugned order dated 11th September, 2018 passed in C.P. No. IB-525/(ND)/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, taken by the 'Interim Resolution Professional', including the advertisement, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the Respondents 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. As the matter of payment of fees to the 'Resolution Professional' has already been taken into consideration in the terms of the settlement and payment has already made, no further order is required to be passed with regard to the fee of the 'Resolution Professional'. In case there is a shortfall of 'Corporate Insolvency Resolution Cost', the Resolution Professional' will bring it to the notice of the 'Corporate Debtor' who will pay the shortfall amount. 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)

Ar/g