Dated: 31.08.2017

NCLAT quashes insolvency order, declares actions of Interim Resolution Professional (IRP) as illegal

The National Company Law Appellate Tribunal (NCLAT) in the case of Mobme Wireless Solutions Ltd. (MWSL) vs Bhash Software Labs Pvt Ltd (BSLPL) declared all actions taken by the Interim Resolution Professional (IRP) to be illegal. The act was declared illegal pursuant to NCLAT setting aside the order passed by Chennai bench of the NCLT on 1st of June, 2017, initiating insolvency proceeding against BSLPL in relation to application filed by MWSL, an operational creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code).

BSLPL challenged the order of the NCLT on the grounds that there is gross violation of rules of natural justice and denied the receipt of notice being served to it along with the existence of dispute.MWSL claimed the service of notice however BSLPL claimed that the same was not served.

Although MWSL had rightfully issued a notice u/s 8 of the Code, the notice was not served due to change in address of BSLPL. While the same was acknowledged, neither MWSL served the notice again to BSLPL, nor NCLT gave any instructions to serve the notice to BSLPL on the correct updated address.

Further, prior to filing of this insolvency application, MWSL also served a notice under Section 433(e) of the Companies Act, 1956 demanding payment of the outstanding debt, which was duly disputed by BSLPL.

As per the Code there are two preconditions required for an application filed by "operational creditor" to be maintainable which are as follows:

- Serving of notice in the prescribed format under Section 8 of the Code;
- The absence of any dispute by the debtor in relation to the debt claimed in the notice.

For the first Question, the NCLAT relied on the decided case of *Innoventive Industries Ltd. v. ICICI Bank* where the NCLAT had ruled serving of statutory notice even in the case of application filed by a financial creditor, where there is no statutory requirement as to serving of statutory notice.In the aforesaid case the Bench was of the opinion that rules of natural justice have not been followed and the order initiating insolvency is likely to be set aside.

For the second question, Relying on the ruling in the case of *Kirusa Software Pvt Ltd. c. Mobilox Innovations Pvt. Ltd*, the Bench noted that there being an "existence of dispute", petition under Section 9 was not maintainable.

NCLAT set aside order of the NCLT admitting the application and all subsequent orders by the IRP and declared the orders as "illegal". The NCLAT ruled,

"The appellant company is released from all rigour of law and is allowed to function independently through its Board of Directors from immediate effect."

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