

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 966 of 2021**

[Arising out of Order dated 16.08.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-II, in IA/445/2021 in CP(IB) 470 (ND)/2017]

**IN THE MATTER OF:**

**Rishi Kapoor**

Office: E-11, Lower Ground Floor  
Jangpura Ext., New Delhi- 110014  
Email: [admin@kapoorandcompany.com](mailto:admin@kapoorandcompany.com)

**...Appellant**

**Versus**

**Kashi Vishwanathan Sivaraman**

Resolution Professional of  
Kindle Developers Private Limited  
R/o: E-10A, Basement, Kailash Colony,  
Greater Kailash-I, New Delhi- 110048  
Email: [kindle.developers@aaainsolvency.com](mailto:kindle.developers@aaainsolvency.com)

**...Respondent**

**Present:**

**For Appellant: Mr. Amar Dave, Mr. Akhil Shankwar and Mr. Satish Rai, Advocates.**

**For Respondent: Mr. Nipun Gautam, Advocate (RP-R1)  
Mr. Kashi Vishwanathan Sivaraman (RP-R1)**

**J U D G M E N T  
(07<sup>th</sup> January, 2022)**

**Ashok Bhushan, J.**

1. This Appeal has been filed against the order dated 16.08.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-II in IA. 445/2021 filed by the Appellant. Brief facts of the case and sequence of the events necessary to be noticed for deciding this Appeal are:

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) was filed by one Shri Amit Kumar Malik against ‘Kindle Developers Pvt. Ltd.’ (Corporate Debtor) being (IB) 470(ND)/2017. Notice was issued by the Adjudicating Authority on 20.11.2017. The Adjudicating Authority on 15.01.2018 recorded that Respondents have been duly served but no one is present on behalf of the Respondents. Respondents were ex-parte proceeded. On 30.01.2018, the arguments were heard in the Application. On 09.03.2018, Application was listed for pronouncement of the order before the Adjudicating Authority and on 09.03.2018, order was pronounced by the Adjudicating Authority admitting the Application under Section 7. One Mr. Yogesh Kumar Tyagi was appointed as Interim Resolution Professional. Interim Resolution Professional made public announcement on 03.08.2018. The Appellant before us filed his claim in Form-B on 09.07.2019. I.A No. 1442 of 2020 was filed by the Appellant praying for direction to the Resolution Professional to verify, entertain and accept the claim of the Appellant which Application was disposed off by the Adjudicating Authority on 26.07.2021 directing the Resolution Professional to consider the claim of the Applicant (Appellant) on merits. In the meantime, by an order passed on 30.07.2018, earlier Interim Resolution Professional was changed and one Mr. Anurag Nirbhay was appointed as the Interim Resolution Professional. An Application I.A. No. 445 of 2021 was filed by the Appellant praying for seeking amendment in earlier Application I.A. No. 1442 of 2020. In I.A 445 of 2021, Applicant prayed that in his earlier Application he may be permitted to add certain paragraphs. By

averment which was sought to be added the Appellant claim that he is an allottee in pursuance of Memorandum of Understanding dated 19.04.2018 and the claim of the Appellant should be verified as allottee for which Form CA was annexed with the Application. The Application I.A No. 445 of 2021 came for consideration before the Adjudicating Authority who by order dated 16.08.2021 has rejected the said Application. Aggrieved by the said order, this Appeal has been filed.

**2.** Shri Amar Dave, Learned Counsel for the Appellant submitted that the Application filed by the Appellant for carrying out amendments in his earlier Application has wrongly been rejected. It is submitted that the Appellant although had earlier filed his claim as Operational Creditor but in view of the Memorandum of Understanding dated 19.04.2018, he had become allottee and was Financial Creditor of the Corporate Debtor and his claim ought to have been verified as Financial Creditor. He further submitted that although Application under Section 7 was admitted on 09.03.2018 but the said order was uploaded only on 22.06.2018. The copy of order was neither sent to Interim Resolution Professional nor to any of the parties. Hence, no one knew about the initiation of the Corporate Insolvency Resolution Process proceedings till 22.06.2018. It is submitted that the Memorandum of Understanding dated 19.04.2018 thus cannot be said to be violating Section 14 of the 'I&B Code'. It is submitted that in the present case, Corporate Insolvency Resolution Process shall be treated to have commenced only on 22.06.2018. It is submitted that in the publication which was made by the Interim Resolution Professional in pursuance of Section 7 order, the date of

commencement of Corporate Insolvency Resolution Process proceedings was mentioned as 22.06.2018. It is submitted that the fact that order dated 09.03.2018 was uploaded on the website on 22.06.2018 is an admitted fact which has been accepted by the Adjudicating Authority in its order dated 30.07.2018 passed in the proceedings. It is submitted that the Board of Directors shall not be deemed to be suspended on 09.03.2018 and were entitled to function till 22.06.2018 which is the date on which the order of the Adjudicating Authority was uploaded on the website.

**3.** Learned Counsel appearing for the Respondent submits that the order dated 09.03.2018 was pronounced by the Adjudicating Authority which was duly shown in the cause list of the said date. Arguments were heard earlier on 30.01.2018. The Corporate Insolvency Resolution Process proceedings shall be commenced on 09.03.2018 and it cannot be said to have commenced on 22.06.2018. The mere fact that earlier Interim Resolution Professional in his public announcement has mentioned the date of commencement as 22.06.2018 shall not change the legal position. It is submitted that the Appellant had filed his claim as Operational Creditor in Form-B and the endeavour to change the claim from Operational Creditor to Financial Creditor was wholly unjustified. Section 7 proceedings having commenced from 09.03.2018, there was no occasion for the Corporate Debtor to enter into any Memorandum of Understanding with the Appellant on 19.04.2018. The Memorandum of Understanding dated 19.04.2018 was hit by Section 14 of the 'I&B Code' and was void and inoperative. It is further submitted that against the order dated 09.03.2018, an Appeal was filed

being Company Appeal (AT) (Ins.) No. 512 of 2018 by one Mr. Paramjit Gandhi which Company Appeal has been ultimately dismissed by this Appellate Tribunal by judgment and order dated 28.02.2019 upholding the order dated 09.03.2018. The order dated 09.03.2018 having been upheld by this Appellate Tribunal, it is not open for the Appellant to contend that the order dated 09.03.2018 was not effective and remain dormant till 22.06.2018.

**4.** We have considered the submissions of the Learned Counsel for the Appellant and have perused the record.

**5.** One of the issues which has arisen for consideration in this Appeal is as to whether the order passed by the Adjudicating Authority becomes operative from the date it is pronounced or the order become operative only when it is uploaded on the website. From the fact which has been brought on record, it is clear that the order dated 09.03.2018 was pronounced by the Adjudicating Authority, which was duly shown in the cause list for the date 09.03.2018 at Item No. 1 under the heading 'pronouncement of the order'.

**6.** It is also apparent from the record that the order was uploaded on the website on 22.06.2018 which fact has been noticed in the subsequent order of the Adjudicating Authority dated 30.07.2018. The fact that order has not been uploaded till 22.06.2018 whether it shall be treated to have taken away the implementation of the order dated 09.03.2018, is the question to be answered.

**7.** Before we answer the above question, it is relevant to notice that the Application under Section 7 was filed in the year 2017 in which notice was issued to the Corporate Debtor on 20.11.2017. Notices were served. Despite service of notice, no one appeared for the Corporate Debtor which fact is noticed in the order dated 15.01.2018 which is to the following effect:-

*“The Affidavit of service is on record. Respondents were served vide email as well as by Speed Post. The tracking report reflects that the same has been duly serviced on them. Notice has already been duly served through the process of the Bench also. None is present on behalf of the Respondent.*

*They are therefore proceeded ex parte.*

*Ld. Counsel for the Petitioner prays for a adjournment on grounds that the arguing counsel is unwell.*

*At his request adjourned to 30<sup>th</sup> January, 2018.”*

**8.** Further, the arguments were heard in Application under Section 7 on 30.01.2018 when the Adjudicating Authority directed the matter to come up for clarification/ orders. The cause list of the Court has been brought on record along with the Reply which indicates that it was listed for ‘pronouncement of order’ on 09.03.2018 as Item No.1. The order was pronounced on that date. The order dated 09.03.2018 which has been

brought on the record along with the Reply of the Respondent, on the top of the order mentioned “order delivered on 09.03.2018”.

9. Rule 150 of the National Company Law Tribunal Rules, 2016 provides for ‘pronouncement of order’. Rule 150 is as follows:-

**“150. Pronouncement of Order.-** (1) *The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.*

(2) *Every order of the Tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order.*

(3) *A certified copy of every order passed by the Tribunal shall be given to the parties.*

(4) *The Tribunal, may transmit order made by it to any court for enforcement, on application made by either of the parties to the order or suo motu.*

(5) *Every order or judgment or notice shall bear the seal of the Tribunal.”*

10. The order dated 09.03.2018 which was signed and pronounced on 09.03.2018 in accordance with Rule 150 was the order of the Adjudicating Authority with all its legal and natural consequences. The order dated 09.03.2018 further indicates that by the same order one Mr. Yogesh Kumar Tyagi was also appointed as Interim Resolution Professional. The order also directed a Moratorium in terms of Section 14 of the ‘I&B Code’. We are not

persuaded by the arguments of the Learned Counsel for the Appellant that the order did not become effective on 09.03.2018 since it was admittedly uploaded on 22.06.2018 on the website. In the order dated 30.07.2018, the Adjudicating Authority has noticed the fact that the order was not uploaded till 22.06.2018. The Adjudicating Authority has also observed that it appears that there is some negligence on the part of the court staff who had failed to take appropriate steps. Following observation has been made in the order dated 30.07.2018:

*“.....The applicant’s petition was admitted on 09.03.2018. However since the same was not uploaded till 22<sup>nd</sup> June of 2018 and therefore subsequent steps could not be taken. It appears that there was negligence on the part of the Court staff who had failed to take appropriate steps.....”*

**11.** Section 13 of the ‘I&B Code’ requires the Adjudicating Authority, after admission of the Application under Section 7 or 9, by an order to declare a Moratorium for the purposes referred to in Section 14. The order dated 09.03.2018 indicate that after admission, Moratorium was declared and an Interim Resolution Professional was also appointed. The effect and consequence of the order dated 09.03.2018 shall not remain suspended only on the ground that the order was not uploaded on the website. The submission of the Counsel for the Appellant was that the order should be treated to have become effective only when the same is received and communicated to the Interim Resolution Professional or has come to knowledge of the public in general. If we accept the submission of the



Learned Counsel for the Appellant, there will be too much uncertainty and vagueness. There shall be different dates. Then the date of the operation of the order shall depend on knowledge of Interim Resolution Professional and public in general which is not intent and purpose of the 'I&B Code'. Any such interpretation will give ample rope to Corporate Debtor to defy the order of admission passed by the Adjudicating Authority to suit its purpose and object. When the statute specifically provides for declaration of Moratorium after admission of the Application, the said declaration cannot remain suspended and inoperative for any reason. When a Tribunal or Court pronounce an order in accordance with Rule, the legal consequences from the order flow from pronouncement of judgment and its operation shall not be suspended on specious submission as was contended before us that since order was uploaded on 22.06.2018, it shall not become operative.

**12.** In the present case, we have already noticed that the Application under Section 7 was filed in the year 2017. Notices were served on the Corporate Debtor as recorded by the Court on 15.01.2018. Application under Section 7 was heard on 30.01.2018 and order was pronounced on 09.03.2018. It is not permissible either the Corporate Debtor or any other stakeholders to contend that the order shall not become operative on 09.03.2018 when it was pronounced. We thus reject the submissions of the Counsel for the Appellant that the order dated 09.03.2018 shall become operative only on 22.06.2018 when it was uploaded. We hold that the order dated 09.03.2018 become operative on 09.03.2018 when it was pronounced in the Court and all legal consequences shall follow. The Application I.A No.

445 of 2021 which was filed by the Appellant was for the purposes of changing his nature of the claim from Operational Creditor to Financial Creditor on the basis of Memorandum of Understanding dated 19.04.2018 along with Apartment Buyer Agreement. It is the case of the Appellant that vide Memorandum of Understanding dated 19.04.2018 he has been allotted 20 units in lieu of the outstanding debt on account of legal services rendered to Corporate Debtor. When Section 7 petition already admitted on 09.03.2018 and Moratorium has kicked in, there was no authority in the Corporate Debtor to enter into a Memorandum of Understanding with regard to its property and assets. The Memorandum of Understanding dated 19.04.2018 is wholly void and inoperative and the Adjudicating Authority did not commit any error in rejecting the Application of the Appellant seeking amendment in its earlier Application for incorporating his claim on the basis of Memorandum of Understanding dated 19.04.2018.

**13.** Shri Amar Dave, Learned Counsel for the Appellant has also submitted that his earlier claim which has been directed to be considered on the strength of the order dated 26.07.2021 in I.A No. 1442/2020 may not be prejudiced by rejection of his Application I.A No. 445 of 2021. When the Adjudicating Authority on 26.07.2021 has directed Resolution Professional to consider the claim of the Applicant pending before him on merits, we are of the view that the apprehension of the Appellant is misconceived. Whatever claims were submitted by the Appellant before the Resolution Professional, in accordance with the procedure and law, need to be considered

accordingly. However, the same not being subject matter of the present case, we express no opinion on the merits of such claim.

**14.** In view of the foregoing discussions, we do not find any error in the impugned order of the Adjudicating Authority rejecting I.A No. 445 of 2021. There is no merit in the Appeal. Appeal is dismissed, accordingly.

**[Justice Ashok Bhushan]  
Chairperson**

**[Justice Jarat Kumar Jain]  
Member (Judicial)**

**[Dr. Alok Srivastava]  
Member (Technical)**

**New Delhi**

Anjali