THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.A.NO.2 OF 2018 IN C.R.P.NO.5188 OF 2018
AND
CIVIL REVISION PETITION NO.5188 OF 2018

ORDER

The corporate-debtor originally filed this revision. It was aggrieved by the order dated 30.08.2018 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad (*hereinafter*, 'the Tribunal'), in CP (IB) No.149/9/HDB/2018. Thereby, the Tribunal admitted the petition filed against it by the respondent-company under Section 9 of the Insolvency and Bankruptcy Code, 2016 (*for brevity*, 'the Code of 2016'), and declared a moratorium under Section 14 thereof along with various directions.

This revision petition was moved by way of a lunch motion on 07.09.2018 but Sri Pasham Mohith, learned counsel, informed this Court that he already entered appearance for the respondent-company by filing his vakalat, *vide* USR No.68986/2018 dated 07.09.018.

Though the corporate-debtor itself filed this civil revision petition, realising that it may not be proper on its part to do so after the admission of the company petition, the Managing Director of the corporate-debtor, being one of its shareholders, filed I.A.No.2 of 2018 seeking to be substituted in its place as the petitioner in this revision petition. As there is no opposition to this application, the same is ordered. Registry shall ensure that the substitution is carried out before issuing a copy of this final order.

On 07.09.2018, it was represented by Sri D.Prakash Reddy, learned senior counsel appearing for Sri Avinash Desai, learned counsel for the petitioner, and Sri Pasham Mohith, learned counsel for the respondent-company, that the matter was compromised by and between the parties and a sum of Rs.85,70,558/- has been paid by the corporate-debtor to the respondent-company in full and final settlement of the operational debt of Rs.79,20,558/-.

By order dated 11.09.2018, this Court granted interim suspension of the order under revision as the parties had already settled their dispute.

Sri D.Prakash Reddy, learned senior counsel, would contend that the Tribunal failed to give adequate opportunity to the corporate-debtor to put forth its stand and straight away admitted the company petition filed under Section 9 of the Code of 2016. He would point out that when the matter was taken up by the Tribunal on 17.07.2018, arguments were advanced and both sides were directed to file their written submissions. The parties were therefore under the impression that the matter would be coming up for consideration of their written submissions but the Tribunal straight away admitted the company petition, *vide* its order dated 30.08.2018.

Perusal of the order bears out that the last date of hearing was 17.07.2018 and thereafter, the order of admission was pronounced on 30.08.2018. The Tribunal did not even make a mention of any written submissions therein though it invited both parties to file the same. The Tribunal seems to have merely gone by the petition and the counter. Having invited both parties to file their written submissions, the Tribunal ought not to have straight away passed the order. The order of admission therefore suffers on this count.

On the above analysis, admission of the petition and passing of moratorium orders was not warranted, in any event. However, as this Court finds that the admission order was passed without even looking into the written submissions which were directed to be filed by the Tribunal itself, the same is liable to be set aside on that ground.

The civil revision petition is accordingly allowed setting aside the order dated 30.08.2018 passed by the Tribunal in CP (IB) No.149/9/HDB/2018.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

14th SEPTEMBER, 2018

Svv/PGS