

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

C.P. NO. (IB)-74(PB)/2017

**IN THE MATTER OF:**

Sh. Dattatray Gokhale

.....Operational Creditor

v.

ABW Infrastructure Ltd.

.....Corporate Debtor

**SECTION : UNDER SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016**

Order delivered on 28.06.2017

**Coram:**

CHIEF JUSTICE M.M. KUMAR  
Hon'ble President

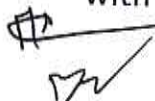
DEEPA KRISHAN  
Hon'ble Member (T)

For the Operational Creditor(s): Shri Subhash C. Jindal, Advocate

**ORDER**

**CHIEF JUSTICE (RETD.) M.M. KUMAR, HON'BLE PRESIDENT**

Learned counsel for the petitioner has placed on record a copy of the order dated 14.03.2017 passed by Hon'ble Delhi High Court and has apprised the Tribunal with regard to pendency of winding up petition pending before the Hon'ble Delhi



High Court namely Co.PET. No. 961/2015 (Meera Nayar v. ABW Infrastructure Ltd.).

A copy of the order is taken on record. It shows that the matter is posted for hearing on 28.08.2017 where ABW Infrastructure Limited is a party respondent.

In view of the above, we dispose of the petition with the observation that this petition may be forwarded to Hon'ble Delhi High Court as insolvency process under the Insolvency and Bankruptcy Code, 2016 cannot be triggered in the face of the winding up proceeding pending before the Hon'ble Delhi High Court. We have already expressed our view in the case of *Neetu Patro v. Iyogi Technical Services Pvt. Ltd.*, C.P. No. (IB)-85(PB)/2017 decided on 24.05.2017 that in cases where winding up proceedings are pending against a Company, then it would not be conducive for the Tribunal to trigger insolvency process against that very company as there is likelihood of conflict between the two statutory entities, namely Official Liquidator and the Insolvency Resolution Professional. Therefore, the winding up proceedings which are in progress in the Hon'ble Delhi High Court may constitute a better basis for adjudication being earlier in point of time and the claim having been made there by other Operational Creditors as well. Accordingly, we refer this matter to Hon'ble Delhi High Court which may be considered alongwith Co.PET. No. 961/2015 (Meera Nayar v. ABW Infrastructure Ltd.). The

Registry is directed to send all the papers at the earliest.

Parties through their Counsel are directed to appear before the Hon'ble  
Delhi High Court on 28<sup>th</sup> August, 2017.

Sd/-

**(CHIEF JUSTICE M.M. KUMAR)  
PRESIDENT**

Sd/-

**(DEEPA KRISHAN)  
(MEMBER TECHNICAL)**

Vineet