

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 909 of 2019

IN THE MATTER OF:

Sarita Vishal

...Appellant

Versus

M/s. Aarti Security Services

...Respondent

Present:

For Appellant :

Mr. Shikhil Suri, Mr. Shiv Kumar Suri and Ms. Shilpa Saini, Advocates

For 1st Respondent:

Ms. Neha Rai and Mr. Shiv Ahlawat, Advocates

For 2nd Respondent :

**Mr. Rishabh Jain, Advocate for IRP
Mr. Kailash C. Jain, IRP**

Company Appeal (AT) (Insolvency) No. 929 of 2019

IN THE MATTER OF:

Sarita Vishal

...Appellant

Versus

Anupam Enterprises & Anr.

...Respondents

Present:

For Appellant :

Mr. Shikhil Suri, Mr. Shiv Kumar Suri and Ms. Shilpa Saini, Advocates

For 1st Respondent:

Mr. Tarun Arora and Mr. Puneet Yadav, Advocates

For 2nd Respondent :

**Mr. Tarun Arora, Advocate for IRP
Mr. Kailash C. Jain, IRP**

ORDER

05.12.2019 'M/s. Aaarti Security Services' filed an application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**') for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Shahi Infrastructure Pvt. Ltd.'. The Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi by impugned order dated 22nd August, 2019 admitted the application and appointed one Mr. Kailash Chander Jain, as 'Interim Resolution Professional'. The Appellant has challenged the impugned order in '*Company Appeal (AT) (Insolvency) No. 909 of 2019*'.

2. Another petition under Section 9 of the 'I&B Code' was filed by 'Anupam Enterprises' against the same very 'Corporate Debtor' namely 'M/s. Shahi Infrastructure Pvt. Ltd.'. By another order of the same date i.e. 22nd August, 2019 the same Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi admitted the application and appointed the same very 'Interim Resolution Professional' - Mr. Kailash Chander Jain. The 2nd order is under challenge in '*Company Appeal (AT) (Insolvency) No. 929 of 2019*'.

3. Initially, when the matter was taken up, the learned counsel for the Appellant argued the case on merit. Subsequently, on 30th September, 2019, it was informed that the Appellant in '*Company Appeal (AT) (Insolvency) No. 929 of 2019*' had already paid a sum of Rupees Three Lakhs to the Respondent (Operational Creditor). Insofar as '*Company Appeal (AT) (Insolvency) No. 909 of 2019*' was concerned, it was informed that the Appellant was ready to settle the matter. The 'Committee of Creditors' having not been constituted, the 'Interim

Resolution Professional' was asked not to constitute the 'Committee of Creditors' to enable the parties to reach the settlement.

4. It is informed that both the parties have reached the settlement. The 'Settlement Agreement' dated 3rd December, 2019 filed in 'Company Appeal (AT) (Insolvency) No. 909 of 2019' and the affidavit has been signed by one Mr. Brahm Pal Singh – 'M/s. Aarti Security Services' and the Appellant – 'Sarita Vishal, relevant of which reads as follows:

“5. To resolve the issue both parties have amicably arrived on the settlement and the both agreed as per the details below:

- i. Rs.10,00,000/- (Ten Lacs) to be paid by the Second Party on 05.12.2019 before Hon'ble NCLAT, New Delhi.*
- ii. Second Party agrees to pay balance amount sum of Rs.30,00,000/- (Thirty Lacs Only) to the First party as full and final settlement with respect to the due invoices. The said amount would be paid as per final settlement.*
- iii. The balance amount will only be paid upon claim settlement of Shahi Infrastructure Pvt. Ltd. by Hon'ble Supreme Court in respect to Amrapali Centurian Park Pvt. Ltd. Project or within a year whichever is earlier.”*

Learned counsel for the Appellant has handed over a cheque for Rupees Ten Lakhs to Ms. Neha Rai, learned counsel for 'M/s. Aarti Security Services'. She accepts that 'M/s. Aarti Security Services' is entitled to receive another sum of Rupees Thirty Lacs in terms of Agreement after the decision of the Hon'ble Supreme Court.

5. Another affidavit of 'Settlement Agreement' dated 30th November, 2019 has been filed in '*Company Appeal (AT) (Insolvency) No. 929 of 2019*' reached between the 'Anupam Enterprises' and the Appellant 'Sarita Vishal' whereby 'Anupam Enterprises (Operational Creditor) has confirmed that it has already received the claim amount, which stands settled.

6. So far as the fees of the 'Interim Resolution Process' is concerned, Mr. Rishabh Jain, Advocate who appears along with Mr. Kailash Chander Jain, Interim Resolution Professional, submits that they have received the payment towards fees and cost of Rupees Two Lakhs and the 'Interim Resolution Professional' is satisfied with the same.

7. As the parties have reached the settlement and the 'Committee of Creditors' was not constituted, in exercise of powers conferred under Rule 11 of the NCLAT Rules, 2016, we set aside the impugned order dated 22nd August, 2019 passed in '*C.P. No. IB-1066(PB)/2019*' filed by 'M/s. Aarti Security Services' and '*C.P. No. IB-1566 (PB)/2018* filed by 'Anupam Enterprises'

8. The petition(s) filed by 'M/s. Aarti Security Services' and 'Anupam Enterprises' (Operational Creditors) stand disposed of. The 'Interim Resolution Professional' will hand over the assets and records of the 'Corporate Debtor' to the Board of Directors. The Adjudicating Authority will now close the proceeding.

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

Both the appeals are allowed with aforesaid observations and directions.

No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

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