

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 714 of 2018

IN THE MATTER OF:

Gaurav Pandey

...Appellant

Versus

**Eternity Investment Services
Pvt. Ltd. & Anr.**

...Respondents

Present:

For Appellant : **Mr. Virender Ganda, Sr. Advocate with Mr. Naman Joshi, Mr. Abhishek Chhabra, Mr. Gaurav Singh and Ms. Avshreya P.S. Rudy, Advocates**

For 1st Respondent: **Mr. Nikhil Srivastava, Advocate**

For 2nd Respondent : **Mr. Savar Mahajan, Advocate**

O R D E R

30.11.2018 On 16th November, 2018 when the matter was taken up, the following order was passed :

“Apart from other issues raised in the appeal it is contended by learned senior counsel representing the Appellant (Corporate Debtor) that a settlement has been reached between the parties and the factum of the Corporate Debtor having worked out a settlement with the Financial Creditor had been brought to the notice of the learned Adjudicating Authority on the very date of pronouncement of order of admission of the

application filed under Section 7 by the Respondent – Financial Creditor, which declined to allow the Respondent – Financial Creditor to withdraw the application on the ground that the matter had been fixed for pronouncement.

*Issue Notice. Mr. Nitesh Shrivastava, Advocate accepts notice on behalf of the 1st Respondent (Financial Creditor). Mr. Savar Mahajan, Advocate accepts notice on behalf of 2nd Respondent (IRP). No further notice needs to be issued on Respondents. Since the Respondent – Financial Creditor admits that the settlement had been arrived at between the Financial Creditor and the Corporate Debtor prior to passing of impugned order of admission, the appeal be posted ‘for orders’ on **30th November, 2018.***

In the meanwhile, the Interim Resolution Professional shall not take any further steps in regard to Corporate Insolvency Resolution Process.”

Pursuant to notice, apart from contesting Respondent No. 1 the Resolution Professional has also appeared.

The parties have brought on record the ‘Settlement Deed’ dated 1st November, 2018. The Contesting Respondent (Financial Creditor) filed the application under Section 7 of the I&B Code. From the ‘Settlement Deed’ filed it

appears that e-stamp was purchased on 30th October, 2018 at 01:41 PM and the settlement was reached on 1st November, 2018. Thus, it is clear that the parties have reached for settlement much prior to the date of admission of application on 13th November, 2018. From the aforesaid fact, it is clear that there was no default of payment on the part of the appellant as on 13th November, 2018 and thereby no occasion for the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh to admit the application under Section 7. Learned counsel for the 'Resolution Professional' submits that in view of the settlement, parties have also paid the fees and insolvency cost to the 'Resolution Professional'. He further submits that there is no more claim to be paid by the parties.

For the reasons aforesaid, we set aside the order dated 13th November, 2018 passed by the Adjudicating Authority, Chandigarh in CP (IB) No. 197/Chd./HP/2018.

In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the 1st Respondent under Section 7 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 2nd Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk/