

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Ins) No. 202 of 2019

IN THE MATTER OF:

Janak Goyal & Anr.

...Appellants

Versus

Satyendra Jain & Ors.

...Respondents

Present

**For Appellants: Mr. Mudit Sharma and Ms. Mahima Singh,
Advocates**

**For Respondents: Mr. Abhishek Anand, Advocate for R.P.
Mr. Lekhraj Bajaj, R.P.**

O R D E R

10.06.2019 Mr. Satyendra Jain (Financial Creditor) filed an application u/s 7 of the 'Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**') against 'M/s. Omway Buildestate Private Limited'. The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned order dated 12th February, 2019 having admitted the application u/s 7 of the 'I&B Code', the present appeal has been preferred.

2. On 5th March, 2019, when the matter was taken up, the learned counsel appearing on behalf of the Appellant submitted that the 'debt' is not payable in law or the loan given by the 'Financial Creditor' is time barred. However, from

the record, we find that the suit was filed against the 'Corporate Debtor' and decreed in favour of the 'Financial Creditor'. The 'Corporate Debtor' thereafter moved before the Hon'ble 'Supreme Court', which also dismissed the appeal on 17th January, 2014. In the meantime, the 'Financial Creditor' had filed the execution case within the limitation period being Execution Case No. 143/2013. Taking into consideration the fact that *prima facie* case has been made out by the Respondents that there is a continuous cause of action, learned counsel for the Appellant prayed for time to enable the Appellant to settle the claim with the Respondent (Financial Creditor) and the case was accordingly adjourned. Learned counsel appearing on behalf of the Appellant submitted that the matter has been settled between the parties. An affidavit has been filed on behalf of the 'Resolution Professional' of 'Omway Buildestate Pvt. Ltd.' (Corporate Debtor) whereby it is informed that the 'Committee of Creditors' was constituted on 4th March, 2019 who held its 1st meeting on 11th March, 2019 wherein the 'Resolution Professional' was confirmed as a 'Resolution Professional'. It is further stated that in the 3rd meeting of the 'Committee of Creditors' was convened on 4th June, 2019, the 'Financial Creditors' apprised the 'Resolution Professional' that the 'Financial Creditors' and the 'Corporate Debtor' have entered into a settlement and 'Form-FA' was submitted by the 'Financial Creditor'. The said agenda was put to vote in the 3rd meeting on 4th June, 2019

and the 'Committee of Creditors' unanimously by 100% voting share decided to file an application u/s 12A r/w Regulation 30A before the Adjudicating Authority for withdrawal of the 'Corporate Insolvency Resolution Process'. A copy of the minutes of the meeting dated 4th June, 2019 has been enclosed. The 'Resolution Professional' has also informed that he has received his fee for acting as the 'Interim Resolution Professional' / 'Resolution Professional' and further expenses incurred have also been paid. Mr. Lekhraj Bajaj, 'Resolution Professional' is also present along with his counsel.

3. Learned counsel appearing on behalf of 'Mr. Satyendra Jain' – 'Financial Creditor', who filed the application u/s 7 of the I&B Code, also accepts the aforesaid fact and also agrees for withdrawal of the petition.

4. In the facts and circumstances, we allow the Respondent – 'Mr. Satyendra Jain' to withdraw the application filed u/s 7 of the 'I&B Code' and the impugned order dated 12th February, 2019 is set aside passed by the Adjudicating Authority, New Delhi Bench in C.P. No. (IB)-1013/(PB)/2018 stands disposed of as withdrawn. The Adjudicating Authority (National Company Law Tribunal), New Delhi will close the matter as withdrawn.

5. In effect, order(s) passed by the Adjudicating Authority appointing any 'Interim Resolution Professional', order declaring moratorium and all other order(s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Interim 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 Respondent under Section 7 of the I&B Code, 2016 is disposed of as withdrawn. Learned Adjudicating Authority will now close the proceeding. The Corporate Debtor is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

6. The 'Resolution Professional' having been already paid the fees and total cost incurred, no further order is required to be passed. 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 A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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