

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**COMPANY APPEAL(AT) NO.156 OF 2018**

**IN THE MATTER OF:**

1. Janakiraman Srinivasan  
S/o Mr. S. Srinivasan.
2. Janakiraman Priya,  
W/o Mr. Janakiraman Srinivasan
3. Venkatraman Narayani,  
W/o Late Venkatraman Sunderesan

All residents of  
13/6, 37<sup>th</sup> Street,  
Nanganallur,  
Chennai -600 061

Appellants

Vs

1. Nava Healthcare Pvt Ltd  
Regd Off  
B-702 Vasundhara Apartments,  
Plot No.16 Sector-6,  
Dwarka,  
New Delhi-110075.
2. Hemant Suri  
S/o Late Kulbir Kumar Suri,
3. Vani Suri,  
W/o Mr. Hemant Suri

Both residents of:  
B-702, Vasundhara Apartments  
Plot No.16  
Sector 6  
Dwarka  
New Delhi-110075

Respondents

**For Appellant:-**Mr. Kamal Kapoor, Advocate.

**For Respondents: -** Mr.Navind Kumar and Ms Shalini Kaul, Advocates.

### **ORAL JUDGEMENT**

**Per: A.I.S.Cheema, J:**

**18.01.2019** - Heard counsel for both sides. The learned counsel for appellant is submitting that because of the MOU dated 17.12.2015 entered into between the appellant and respondents the company petition CP 113(ND)2015 which was filed by the appellant had come to be disposed on 10.2.2016 and in the MOU there was a clause requiring the first party i.e. Respondent No.2, Hemant Suri to get released two properties of appellant in given time frame which was till 30<sup>th</sup> June, 2016 but this was not done and because of this the appellants suffered losses as they had to pay extra interest of about Rs.14 lakhs as the property of the appellant was still stuck with the Bank. Learned counsel points out the document at Annexure P-2 (Page 51) to show the calculations. According to the counsel the NCLT has wrongly held in the present impugned order dated 19<sup>th</sup> March, 2018 that the judgement debtor had taken all the necessary steps required for compliance. Thus according to him the impugned order deserves to be set aside and in terms of the MOU the respondents may held be liable to compensate the appellant. The counsel referred to term 10 of the MOU in support of his arguments.

2. Learned counsel for Respondents is opposing the contentions of the learned counsel for appellants and points out the reply she has filed in the appeal and also refers to the order passed by NCLT dated 13.7.2017. According to her

the respondents were required to pay particular amounts as per the MOU and to do substitution in the Bank so that the appellant could get their properties released. She submits that the amounts were paid on time and the respondents also substituted their own properties by way of securities which was given to the Bank and appellants were free to take back their documents given as security to the Bank which they did not do in time and so they could not put blame on the respondents.

3. We have gone through the matter. The NCLT earlier passed the order dated 13.7.2017 as can be seen with Annexure R-3 (See reply filed vide Diary No.6420). That order referred to the reply which was filed by the respondent and reproduced portions from the letter issued by Punjab National Bank which stated as under:

**“1.In the sanction letter dated 30.03.2016 for sanction of enhanced WC limits of Nava Healthcare Pvt Ltd, IP’s in the name of Shri S.Janakiraman namely, House no 13/6, 37<sup>th</sup> street, Nanganallur, Chennai and Flat No. C 402, Elite Anmol, Piplayanaha, Indore are not considered in the list of IP’s mortgaged.**

**2. Subsequently, Revised CHG1 was filed in Registrar of Companies on 2/4/2016, for creation of charge of Rs18 cr. On IP’s mortgaged, in which also above side IP’s in the name of Shri S. Janakiraman are not considered.**

**3. The original property documents for above said IP’s would be handed over to the title holder only after receipt of necessary permission from competent authority.”**

4. The learned NCLT further considered the matter and recorded the finding on that date which is as follows:

***“In view of the above we find that the respondent has been making all the efforts to fulfil the obligation undertaken in para 6© of the MOU whereas some delay on account of process initiated by the Punjab National Bank, Shalimar Bagh Branch Delhi seems to have been caused.***

***In view of the above we direct the Assistant General Manager, Branch Office Shalimar Bagh, delhi-110088 to consider the release of the property belonging to S. Janakiraman expeditiously preferably before the next date of hearing. An intimation in that regard be sent to the Punjab National Bank, Shalimar Bagh Branch, Delhi by the parties alongwith a copy of this order. The registry shall also send a copy.”***

5. The above finding was recorded by NCLT which shows the steps which the respondents took. It shows NCLT found that the Respondent has made all the efforts to fulfil the obligations undertaken in para 6c of the MOU. The NCLT subsequently, after hearing parties has then passed the present impugned order on which is as under:

***“CA 25/2017 in CP 113/2015 has been filed by the petitioner. Pursuant to the compromise effected, there were certain direction for implementation of the compromise. As per the order dated 13.07.2017, one of the terms was that the Judgement Debtor would take all steps within a period of 6 months for release of the title deeds of the Decree Holder’s immovable properties mortgaged with Panjab National Bank.***

***Learned Counsel for the Judgement Debtor submits that steps had been duly taken at their end. It is only on account of the procedural hurdles created by Panjab National Bank that they were released belatedly. This was beyond their control, but as required by the mortgagee Bank all steps were taken at their end.***

***The Decree-Holder presses for being compensated with liquidated damages of Rs. 2 crores on account of the delay in terms of their compromise. He seeks to justify his claim on the basis of being burdened with the interest liability @ 13.5% instead of 7% now applicable on submission of title documents for the loan facility availed by him.***

***This Bench is of the opinion that the Judgement Debtor had taken all steps to comply with the directions of this Bench. The delay was beyond their control. In view of the same, the relief claimed by the Decree Holder in respect of the liquidated damages is not justified and is rejected.***

***As nothing further survives, Execution petition stands disposed off as being fully satisfied.***

***File be consigned to the Record Room.***

6. We have gone through the MOU, copy of which is at Page 53 of the appeal.

The term 6(c) of this reads as follows:

***“The first party has agreed to get released the two properties of Second party which are in the name of Mr. S. Janakiraman, the first one being an individual house at 13/6, 37<sup>th</sup> Street Nanagnallur, Chennai-61 and the second one at INDORE, being a Residential Flat at C-401 4<sup>th</sup> Floor, Elite Anmol, Village Piplaynha, Indore MP, which has been mortgaged as collateral security with Punjab National Bank (PNB) Shalimar Bagh, Delhi for loan granted to M/s Nava Healthcare Private Limited. The first party undertakes to complete this process in next 6 months i.e. before 30<sup>th</sup> June. 2016.”***

7. Learned counsel for appellant insisted that the respondent was required to get released the two properties and it was the respondent who had to complete the process. The counsel then referred the term 10 which reads as follows:

***“In case any of the parties do not carry out the terms of this Memorandum of Understanding/ Compromise Deed, it will be incumbent upon him to bear all the losses occurred and compensate Rs. 2,00,00,000/- (Rupees two crore) to the other party.”***

8. Based on this, his argument for compensation which has been calculated at Page 51 with the appeal, is being made.

9. Going through the reply which was filed by the respondent in NCLT and which has been commented upon by the NCLT in its order dated 13.7.2017 referring to the certificate/letter dated 15.9.2016 of the Bank and the present impugned order passed by the NCLT we find that the appellant does not make out a case in appeal for us to interfere. Reply filed in appeal of the Respondent is that Respondent submitted another property furnished by Respondent Nos 2 to 4 and bank issued sanction letter dated 30.3.2016 as at Annexure R-2. This

is clearly before 30.6.2016. Respondent No.2 appears to have done what was in his capacity. Considering the observations of Learned NCLT in Order dated 13.7.2017 based on letter of the Bank and considering reasons recorded in impugned order we agree with NCLT. In fact, in our view the NCLT was benevolent in assisting the appellant vide order dated 13.7.2017 because if the basic order which was passed in company petition is seen, (copy of which is at Annexure P-1 Page 50) the operative portion reads as under:

***“Ld. Counsel for the respondent has placed on record a photo-copy of amicable settlement signed by the Petitioners as well as Respondent Nos 1 to 3 dated 17.12.2015 which has been duly notarized on 19.12.2015. Ld. Counsel for the Respondents duly identified the signatures of Respondents No. 2 & 3, namely Mr. Hemant Kulbir Suri and Ms. Vani Suri Ld. Counsel for the petitioners has also identified the signatures of petitioners Srinivasan Janakiraman, Mrs. Janakiraman Priya and Venkataraman Narayani. According to the statements in the amicable settlement all the cases filed by the parties against one another shall be withdrawn. Accordingly the present petition is dismissed as withdrawn.”***

10. Thus basically the company petition was dismissed as withdrawn because of the compromise and if that is kept in view it was not an order which required execution as such. Still the Learned NCLT tried to help the appellant, in interest of justice and passed orders dated 13.7.2017. Finding recorded therein with regard to Respondent doing needful was not challenged. The final impugned order could naturally not be different.

11. With these observations we do not find any merit in this appeal to interfere in the impugned order. The appeal is accordingly dismissed. No order as to costs.

(Justice A.I.S. Cheema)  
Member (Judicial)

(Mr. Balvinder Singh)  
Member (Technical)

Bm/nn