

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 28 of 2020

(Arising out of Order dated 6th December, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in CP(IB) No. 1565(PB) OF 2018)

IN THE MATTER OF:

Gopal Krishan Bathla

Appellant

Versus

Crown Realtech Pvt. Ltd. & Anr.

Respondents

Present:

For Appellant: Mr. Jeetender Gupta, Advocate.

For Respondents: Mr. Amit Goel, Advocate with Mr. Atul Kansal, RP.

Mr. Harshal Kumar, Advocate for Homebuyer.

Mr. Saurabh Gupta, Advocate for R-2.

Mr. P.K. Sachdeva, Advocate for Applicant.

J U D G E M E N T

BANSI LAL BHAT, J.

Application of Respondent No.2- Shri Mohan Agarwal ('Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) came to be admitted in terms of the impugned order dated 6th December, 2019 passed by the Adjudicating Authority

(National Company Law Tribunal), Principal Bench, New Delhi, setting in motion 'Corporate Insolvency Resolution Process' against Respondent No.1- 'M/s. Crown Realtech Private Limited'- ('Corporate Debtor').

2. Through the medium of instant appeal filed under Section 61 of the 'I&B Code', Shri Gopal Krishan Bathla, Ex-Director of the 'Corporate Debtor' seeks to assail the impugned order of admission on various grounds set out in the memo of the Appeal. However, at the hearing of this appeal, the arguments have been restricted to only one ground adumbrated herein below.

3. For better understanding of the controversy raised in this Appeal, it is apt to refer to the factual matrix of the case. It emerges from the record that the 'Corporate Debtor' is a Real Estate Company. Respondent No.2 had booked a commercial space comprised in Flat Nos. 409, 410 & 411 on the 4th Floor in Tower B-2 at Village Sarai Khawaja, Faridabad, Haryana for the total consideration of Rs. 2,08,98,830/- under the project namely "Abacus Technopark" of the 'Corporate Debtor'. Document in the form of Agreement to sell was executed in this regard with Respondent No.2 having paid an amount of Rs.2,08,60,2000/- to the 'Corporate Debtor' on various dates. The 'Corporate Debtor' had undertaken to deliver possession of the said unit to the Respondent No.2 on or before December, 2012 with a grace period of three months and upon failure to handover possession pay

interest @ 20.50% per annum compounded annually. Admittedly, there was delay in delivering the possession of the said unit as also in making payment towards interest despite repeated demands made by Respondent No. 2 culminating in filing of the application under Section 7 of the 'I&B Code' by Respondent No.2 against the 'Corporate Debtor'. It is noticed from the impugned order that the possession was not delivered till November, 2018 i.e., the date of filing of the application under Section 7 by the Respondent No.2. The Adjudicating Authority found that despite delay of almost 6 ½ years, the aforesaid unit had been completed only to the extent of 80-85% and being satisfied in respect of debt and default it proceeded to pass the impugned order which has been assailed in this Appeal.

4. The only ground pressed at the hearing for setting aside the impugned order is that the Respondent No.2 had arrived at a Settlement with the 'Corporate Debtor' on 3rd December, 2019 and since the same preceded the date of admission of the application under Section 7 vide impugned order dated 6th December, 2019 and constitution of the 'Committee of Creditors' on 3rd January, 2020, in terms of the law laid down by the Hon'ble Apex Court in **"Swiss Ribbons Private Limited and Anr. V. Union of India and Ors.- (2019) 4 SCC 17"** and followed by this Appellate Tribunal's Judgement in number of cases, this Appellate Tribunal should exercise its inherent

powers to take on record the Settlement Deed executed *inter se* the 'Financial Creditor' and the 'Corporate Debtor' and set aside the impugned order. It is submitted that the Respondent No.2- 'Financial Creditor' admitted the factum of Settlement having been arrived at between him and the 'Corporate Debtor'- a fact supported by record. However, some other allottees of the project have filed an Intervention Application being I.A. No. 425 of 2020 praying for dismissal of the Appeal on the ground that the Settlement *inter se* the 'Corporate Debtor' and the Respondent No.2 relied upon by the Appellant is designed to defraud other 'Financial Creditors' i.e., allottees who had filed separate applications under Section 7 of the 'I&B Code' and their claims are pending consideration before the 'Committee of Creditors'.

5. Heard learned counsel for the parties and perused the record.

6. While dealing with the exit mechanism during the Resolution Process under the 'I&B Code' by way of withdrawal or Settlement, the Hon'ble Apex Court observed in Paragraph 82 of the Judgement delivered in "**Swiss Ribbons Private Limited and Anr. V. Union of India and Ors.**" (Supra), as follows:

"82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the

Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.”

7. The dictum of the Hon'ble Apex Court is loud and clear. The National Company Law Tribunal can exercise inherent powers vested in

it under Rule 11 of the National Company Law Tribunal Rules, 2016 to allow or reject an application for withdrawal or settlement prior to the constitution of the 'Committee of Creditors'. However, such exercise of power would depend on consideration of all relevant factors in each individual case, after providing an opportunity of hearing to all concerned parties. A similar power is vested in this Appellate Tribunal under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 and it is not disputed that such power can be exercised in appropriate cases on similar consideration as delineated by the Hon'ble Apex Court. The question arises for consideration is whether the instant case is a fit one for exercise of such power.

8. The project, in question, is a Housing Project which has missed its deadline leaving the allottees high and dry. Despite inordinate delay exceeding 6 years, the project is incomplete, as noticed by the Adjudicating Authority. Other allottees clothed with the status of 'Financial Creditors' through a subsequent Amendment in the 'I&B Code' have virtually been dragged from pillar to post. This fact is clearly borne out from the application filed by several allottees seeking intervention through I.A. No. 425 of 2020. It emerges that during the hearing of CP(IB) No. 1565 (PB)/ 2018 i.e., the application filed by Respondent No.2 against the 'Corporate Debtor' under Section 7 of the 'I&B Code' and until the pronouncement of the impugned order, neither

of the parties approached the Adjudicating Authority to lay intimation about Settlement of the claim of the Respondent No.2 and seek exit from 'Corporate Insolvency Resolution Process' by allowing Settlement *inter se* the parties. There is not even a whisper in the memo of the Appeal that Respondent No.2 had arrived at a Settlement with the 'Corporate Debtor', manifesting in reducing of the Settlement to an instrument i.e., the Settlement Deed. There is not an iota of evidence on record to establish that the Respondent No.2 had arrived at a Settlement with the 'Corporate Debtor' prior to order of admission of application of Respondent No.2 in terms of the impugned order or before the constitution of the 'Committee of Creditors'. Had such development taken place, nothing would have prevented either of the Respondents from bringing this fact to the notice of the Adjudicating Authority even after passing of the impugned order and until constitution of the 'Committee of Creditors'.

9. In the backdrop of this factual position, the only conclusion deducible is that the factum of Respondents having *inter se* arrived at a Settlement prior to passing of the impugned order and constitution of the 'Committee of Creditors' is nothing but a ploy designed to defeat the legitimate interests of other stakeholders. This factual position is clearly borne out by the sequence of events unfolded by record.

10. One Sh. Puneet Kumar Jindal' had filed CP No. (IB)-769(PB)/2018 under Section 7 of the 'I&B Code' in respect of the same project. The application of Respondent No.2 herein i.e. Shri Mohan Agarwal under Section 7 of the 'I&B Code' was disposed of by the Adjudicating Authority vide order dated 3rd December, 2018 with direction to file claim in the 'Corporate Insolvency Resolution Process' set in motion by Sh. Puneet Kumar Jindal through CP No. (IB)-769(PB)/2018. However, such order came to be set aside by this Appellate Tribunal in terms of the order dated 7th March, 2019 in Company Appeal (AT) (Insolvency) No. 797 of 2018. As already stated, none of the parties reported any development in regard to Settlement of claim of Respondent No.2 before the Adjudicating Authority prior to passing of the impugned order or even thereafter until constitution of the 'Committee of Creditors' on 3rd January, 2020. It further appears from I.A. No. 425 of 2020 filed by the Intervenor that as many as seven matters including the application of the Respondent No.2 were pending when the impugned order was passed by the Adjudicating Authority. As the 'Corporate Debtor', despite commitments, failed to settle with all seven Applicants, this could probably be the reason for the Respondents not to seek exit from the 'Corporate Insolvency Resolution Process' before passing of the impugned order as the Settlement *inter se* them, though not proved to have manifested in the form of a Settlement Agreement, was not all encompassing. This factual position would not warrant exercise of

inherent powers under Rule 11 to allow exit of the 'Corporate Debtor' from 'Corporate Insolvency Resolution Process' as the legitimate interests of all other stakeholders, including the Intervenor whose claims have been admitted and the 'Committee of Creditors' is in seisen of the same would be seriously jeopardised. This is apart from the fact that in the event of settlement being entertained the Intervenor whose claims have been admitted will have to face the prospect of garnering the support of threshold limit for initiating *de novo* 'Corporate Insolvency Resolution Process' against the 'Corporate Debtor' in terms of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 dated 28th December, 2019.

11. Viewed in this background, we have no doubt in our mind that the ground urged, apart from not being established by any supporting evidence, does not warrant exit from 'Corporate Insolvency Resolution Process' on the projected ground of Settlement *inter se* the Respondents, having been arrived at prior to the constitution of the 'Committee of Creditors'. Public interest would not warrant such course to be adopted.

12. We find no merit in this appeal. No ground for exercise of inherent powers under Rule 11 of the NCLT Rules, 2016 by the Adjudicating Authority or Rule 11 of the NCLAT Rules, 2016 by this Appellate

Tribunal is made out. We accordingly decline to interfere. The appeal lacks merit and is accordingly dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

NEW DELHI
22nd May, 2020

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