

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 25 of 2019**

**IN THE MATTER OF:**

**Amit Tandon**

**...Appellant**

**Vs**

**Pramjit Singh Saini & Ors.**

**....Respondents**

**Present:**

**For Appellant: Ms. Meenakshi Arora, Sr. Advocate with Ms. Richa Narang and Mr. Hitesh Mankar, Advocates.**

**For Respondents:**

**ORDER**

**07.01.2019:** Appellant claims to be the allottee of real estate company – ‘M/s PUMA Realtors Pvt. Ltd.’ against which Corporate Insolvency Resolution Process has been initiated. He filed an application to implead him as party and with prayer to recall the order of admission dated 17<sup>th</sup> October, 2018 triggering Insolvency Resolution Process against the Corporate Debtor under Section 7 of I&B Code. It was argued that syphoning of funds has given rise to the triggering of Resolution Process or otherwise if the syphoned amount is brought back to the Corporate Debtor then the financial position of the Corporate Debtor would be solvent.

2. Learned Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned order dated 21<sup>st</sup> December, 2018 rejected the application for intervention and dismissed the same with liberty to the applicant to file appropriate application before the Interim Resolution Professional/Resolution Professional.

3. Ms. Meenakshi Arora, learned senior counsel for the Appellant submits that huge funds of the Corporate Debtor has been syphoned and forensic audit needs to be conducted.

4. The suggestion as made by learned senior counsel may be correct but on such ground triggering of the Corporate Insolvency Resolution Process cannot be recalled. We are of the view that if there is any evidence available with the Appellant to suggest that certain sums of the Corporate Debtor have been syphoned prior to initiation of Corporate Insolvency Resolution Process, the Appellant should bring it to the notice of the Resolution Professional with request to refer the matter to the Adjudicating Authority or NCLT, who may consider whether any investigation of Serious Fraud Investigation Office (SFIO) is required in terms of Section 213 r/w Section 212 of the Companies Act, 2013 to find out whether funds of the Corporate Debtor has been Syphoned or not and forensic audit needs to be conducted or not. If any such prima facie case is made out before the Resolution Professional/the Adjudicating Authority it may refer the matter to SFIO for its investigation to find out misappropriation, if any, made by the Directors and officers of the company (Corporate Debtor) and/or finances have been syphoned or not.

5. Allottees of real estate being 'Financial Creditors' in terms of the law, the Interim Resolution Professional/ Resolution Professional will also verify from the record and will nominate their representative as member(s) for Financial Creditors (Allottees), such process should be followed for the purpose of constitution of Committee of Creditors. The appeal stands disposed of with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/sk*