

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

**Company Appeal (AT) (Insolvency) No. 1253 of 2019**

**IN THE MATTER OF:**

**Mr. Suraj Awana**

**...Appellant**

**Versus**

**Mr. Anand Prakash & Anr.**

**...Respondents**

**Present:**

**For Appellant : Mr. Abhishek Kumar, Advocate**

**For 1<sup>st</sup> Respondent: Mr. Akhil Shankhwar, Advocate**

**For 2<sup>nd</sup> Respondent : Mr. Gautam Singhal, Advocate with  
Mr. Rajesh Kumar Gupta, Interim Resolution  
Professional**

**O R D E R**

**03.01.2020** Mr. Anand Prakash (Operational Creditor), an ex-employee of 'M/s. Omega Infrabuild Private Limited' (Corporate Debtor), filed an application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016' ('I&B Code', for short) which was admitted by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No. IV) by judgment dated 17<sup>th</sup> October, 2019.

2. When the matter was taken up, the case was argued on merit and it was contended that the claim is barred by limitation and, therefore, the application under Section 9 of the 'I&B Code' was not maintainable. It is pointed out that the ex-employee has asked for the claims prior to 3<sup>rd</sup> September, 2015 whereas the Demand Notice has been issued on 11<sup>th</sup> December, 2018 i.e. beyond the period of 3 years. It was also submitted that the Appellant is ready to settle the

dues, if any, with the Respondent – ‘Mr. Anand Prakash’. The allottees will suffer, if the ‘Corporate Debtor’ goes for insolvency resolution process or liquidation.

3. *Prima facie*, having found that the application under Section 9 was barred by limitation, we issued notice and allowed the parties to settle the matter.

4. Today, it is informed that the parties have reached the settlement. A copy of the ‘Terms of Settlement’ dated 2<sup>nd</sup> January, 2020 has been produced, which is kept on record. The payment has been made in terms of the settlement to ‘Mr. Anand Prakash’, which is also accepted by Mr. Akhil Shankhwar, Advocate appearing on behalf of the Respondent.

5. Mr. Gautam Singhal, Advocate appears along with Mr. Rajesh Kumar Gupta, Interim Resolution Professional, submits that the ‘Interim Resolution Professional has functioned for about 2 months and 10 days. He further submits that the ‘Committee of Creditors’ have not been constituted and he has received 85 claims, which includes 69 allottees. He has also incurred a cost of Rs.82,190/- for publication etc.

6. Taking into consideration that the Respondent has reached settlement and on merits, we set aside the impugned order dated 17<sup>th</sup> October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi and assess the fees of the ‘Interim Resolution Professional’ at Rs.1,50,000/- per month and for 10 days Rs.75,000/- plus actual cost of Rs.82,190/- (i.e. Total of Rs.3,75,000 + 82,190 = Rs.4,57,190/-). The ‘Interim Resolution Professional’ has already received a sum of Rs. 2,00,000/- from ‘Mr. Anand Prakash’ (Operational Creditor), which has been repaid by the Appellant – Shareholder of

the Corporate Debtor, we direct the Corporate Debtor to pay rest of Rs.2,57,190/- within 3 weeks.

7. In the result, the application under Section 9 of the 'I&B Code' filed by 'Mr. Anand Prakash' is dismissed. The Adjudicating Authority will close the proceedings. The 'Corporate Debtor' is released from all the rigours of law and is allowed to function independently from immediate effect. The 'Interim Resolution Professional' will hand over the assets and records to the 'Promoter'/Directors immediately.

The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansilal Bhat ]  
Member (Judicial)

/ns/gc/