

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 649 of 2020

IN THE MATTER OF:

Brig. E. S. Krishnamurthy & Ors.

...Appellants

Versus

M/s Bharath Hi-Tech Builders Pvt. Ltd.

...Respondent

Present:

For Appellants: Mr. Srijan Sinha, Advocate

For Respondent:

ORDER
(Through Virtual Mode)

30.07.2020: Appellants claiming to be Financial Creditors on the basis of having been Lenders of the Corporate Debtor, are aggrieved of the impugned order dated 28th February, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by virtue whereof the Adjudicating Authority disposed of the Company Petition with certain directions incorporated in Para 8 of the impugned order which reads as under:-

“8. In view of the above narrated facts and circumstances of the case, C.P. (IB) No. 188/BB/2019 is disposed of with the following directions:

a. The Corporate Debtor is directed to settle the remaining claims as expeditiously as possible, but not later than

3 months, and communicate this decision to all the concerned parties.

- b. If aggrieved by the settlement process of the Corporate Debtor, the remaining Petitioners, if any, would be at liberty to approach the Adjudicating again, in accordance with law.*
- c. No order as to costs.”*

2. After hearing learned counsel for the Appellant we find that the subject matter being a Housing Project with stakeholders, inter alia, being the Allottees and the Investors, the Company Petition came to be disposed of on the basis of Joint Consent Terms dated 12th February, 2020 filed by the parties to the Company Petition. Having regard to the Consent Terms, the Adjudicating Authority observed that claims of 140 Investors have been fully settled by the Corporate Debtor and an amount of Rs.27.25 Crore has been paid to them and 13 claims of the Petitioners before the Adjudicating Authority have been settled, whereas 40 are in the process of settlement and remaining 39 are pending settlement. The Adjudicating Authority was of the view that the process of settlement appeared to be progressing in all seriousness. So instead of examining all individual claims in detail, the Adjudicating Authority deemed it appropriate to direct the Corporate Debtor to

settle all the remaining claims within a definite time frame. It further appears that three months' time was allowed for settlement of the claims by the Corporate Debtor. The Adjudicating Authority observed that if any of the claimants be aggrieved of the settlement process, they would be at liberty to approach the Adjudicating Authority again.

3. It is manifestly clear that the application under Section 7 of the I&B Code came to be disposed of at the pre-admission stage and no order of admission or rejection of application was passed by the Adjudicating Authority keeping in view the nature of claims which admittedly were relatable to a Housing Project. The Adjudicating Authority appears to have been influenced by the fact that claims of the maximum number of stakeholders have been settled which included some claims settled at pre-admission stage before the Adjudicating Authority. In so far as the remaining claims were concerned, the Adjudicating Authority allowed a definite time frame viz. 3 months giving liberty to the claimant(s) whose claims would remain unsettled after expiry of the given time frame, to come back and re-agitate the matter.

4. Viewed in these circumstances, it cannot be said that the impugned order is of such a nature which is prejudicial to the rights and interests of any of the

stakeholders. The claimant(s) who may be dissatisfied or whose claims remain unsettled during the given time frame can approach the Adjudicating Authority who has not shut its doors. Assailing of the impugned order in appeal would not be the appropriate course.

5. It is a fact that the given time frame has already elapsed but we take judicial notice of the fact that normal business operations had been adversely affected by the imposition of lockdown due to outbreak of COVID-19 which has been declared pandemic. Even after unlocking, the pace of business operations is far from normal. In these circumstances, some concession has to be given in adherence to the timelines set in terms of the impugned order. Be-that-as-it-may, this situation may also have to be addressed by the Adjudicating Authority, if approached by a claimant whose claim has not been settled so far. It is not disputed that the resolution of disputes relating to claims, more particularly of Allottees in Housing Projects, has to be given primacy and pushing the Corporate Debtor into liquidation would only be the last option.

6. In view of the foregoing discussion and also bearing in mind that the settlement process set in motion at the pre-admission stage is supported by the Consent Terms filed by some of the stakeholders, though it may not be all encompassing, this appeal would not lie. We accordingly hold that the appeal is

not maintainable. There being no legal infirmity in the impugned order, the appeal is dismissed.

7. The dismissal of this appeal, however, will not preclude the Appellants from approaching the Adjudicating Authority in terms of the impugned order, if their claims are not settled by the Corporate Debtor.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Kanthi Narahari]
Member (Technical)**

am/gc