

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No.43 of 2019

IN THE MATTER OF:

Roop Kishore Madan

...Appellant

Versus

Roopali Agarwal & Anr.

...Respondent

Present:

For Appellant : Ms. Malini Sut Mr. Vikas Mishra, Mr. Shashwat
Tripathi, Advocates

For Respondents: Mr. Mohd. Shahbaz, Advocate for Respodnent
Mr. Rishi Sood for IRP

ORDER

12.02.2019 Ms. 'Roopali Agarwal'-'Operational Creditor' had filed an application u/s 7 of the Insolvency and Bankruptcy Code ('I&B' Code for short) for initiation of Corporate Insolvency Resolution Process against the AIMS Sanya Developers Pvt. Ltd. ('Corporate Debtor') which has been admitted by the impugned order dated 02.01.2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, has been challenged by the Appellant - Mr. Roop Kishore Madan, shareholder and Managing Director of the 'Corproate Debtor'.

Earlier when the matter was taken up, it was submitted that before admission of the application, the matter had been settled between the parties on 29.12.2018 and a flat had been handed over by another sister concern. The Settlement Agreement dated 29.12.2018 has been brought on record by filing an additional affidavit. It was submitted that the case was heard on 17.12.2018 and the judgement was delivered on 2nd January, 2019.

In the meantime, the settlement had been reached. The matter could not be brought to the notice of the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench.

Respondent has appeared and accepts that such settlement was reached on 29.12.2018 and the flat was handed over.

Mr. Ashish Singh, Resolution Professional alongwith learned counsel has appeared and submitted that his fees and cost towards publication etc. amounting to Rs. 2.25 lacs have been paid by post dated cheque of 28th February, 2019.

Having heard learned Counsel for the parties and taking into consideration the fact that the parties have settled the matter prior to impugned order dated 02.01.2019 after the judgement was reserved but before the impugned order was delivered, we hold that as on 2nd January, 2019, the application was not maintainable. The parties had settled the claim.

For the reason aforesaid, we set aside the order dated 2nd January, 2019.

In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the Respondent under Section 7 of the 'I&B Code' is dismissed. The Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

The 'Resolution Professional' has already been paid the dues vide post-dated cheque and in case the cheque is not encashed, it will be open to the Resolution Professional to bring it to the notice of this Appellate Tribunal to take appropriate action against the Corporate Debtor.

The appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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