

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 280 of 2019

IN THE MATTER OF:

Kinjal Enterprises

...Appellant

Vs.

Kamla Real Estate Hub Pvt. Ltd.

...Respondent

Present: For Appellant: - Ms. Sanjana Saddy and Ms. Sikha Raniwala, Advocates.

For Respondent: - Mr. P.V. Dinesh, Mr. Ashwini Kumar Singh and Mr. R.S. Lakshman, Advocates.

O R D E R

24.07.2019— The Appellant has challenged the impugned order dated 10th January, 2019, which reads as follows:

“O R D E R

MISC. APPLICATION NO. 565 OF 2018

- 1. The Respondent No. 8 has placed on record evidence of communication to the Resolution Professional. No affirmative reply. Hence, impleadment of R-8 by RP is incorrect. The Respondent No. 8 is delisted from the array of the Respondents.*
- 2. In respect of Respondent No.1 considering the allegations of the RP and the transactions which*

were carried out after the pronouncement of the IRP, it is hereby directed M/s. Kamla Real Estate Hub Pvt. Ltd. to redeposit the entire amount as listed in this Misc. Application totaling Rs. 2,43,20,000 to the account of the Corporate Debtor Kamla Real Estate Hub Pvt. Ltd. by 15.02.2019, otherwise liable for consequences as provided under the Insolvency Code.

3. If deem fit the RP can convene a meeting of CoC to decide whether Liquidation process to be adopted in the case of Debtor Company.
4. Misc. Application No. 565 of 2018 is disposed of.
5. Petition is adjourned to 31.01.2019.”

2. The Corrigendum of the aforesaid order was issued on 1st March, 2019, as follows:

“O R D E R

Corrigendum

1. The Applicant has sought for corrigendum in para 2 of the Order dated 10.01.2019, which has been corrected replacing the para as under:

“2. In respect of Respondent No. 1, considering the allegations of the RP and

the Transactions which were carried out after the pronouncement of the IRP, it is hereby directed M/s. Kinjal Enterprises to redeposit the entire amount as listed in this Misc. Application totalling Rs. 2,43,20,000/- to the account of the Corporate Debtor Kamla Real Estate Hub Pvt. Ltd. by 15.02.2019, otherwise liable for consequences as provided under the Insolvency Code”.

3. On 8th May, 2019, when the matter was taken up, learned counsel for the Appellant submitted that already a sum of Rs. 2,43,20,000/- has been paid back by ‘Kinjal Enterprises’ to the ‘Corporate Debtor’. However, this was denied by the counsel for the Liquidator.

4. In the aforesaid background, the Liquidator was directed to verify the claim and will pass appropriate order within two weeks.

5. Subsequently, on 9th July, 2019, when the matter was taken up, learned counsel for the Appellant submitted that the Appellant has filed the consent terms with the Liquidator and is ready to hand over the post-dated cheques.

6. In terms with the aforesaid submissions as to the payment of amount, the Appellant has given details of the post-dated cheques as

mentioned in the 'Consent Terms' dated 4th July, 2019, which reads as follows:

Consent Terms

That this present Consent Terms is being executed on _____ at _____ between

M/s. Kinjal Enterprises having its office at A-211/212, Shanti Shopping Centre, Opp. Station, Mira Road (E), Thane - 401107, hereinafter referred to as 'Appellant'.

AND

M/s. Kamla Real Estate Hub Pvt. Ltd. having its registered office at Shanti Vimal, Ground Floor, Sir P M Road, Vileparle (East), Mumbai - 400057, hereinafter referred to as 'Respondent'.

(Hereinafter the Appellant and the Respondent severally be referred to as 'Party' and collectively as 'Parties')

WHEREAS in view of the Interim Order passed by National Company Law Appellate Tribunal(NCLAT)dated 8th May 2019 with respect to a claim of Rs. 2,43,20,000/- (Rupees Two Crore Forty-Three Lakhs and Twenty Thousand Only)(hereinafter referred to as 'Claim Amount')raised by the Resolution Professional of the Respondent Company on the Appellant and subsequent meeting and discussions with the Resolution Professional of the Respondent Company, the Appellant proposed to settle the aforesaid Claim raised by the Respondent Company.

For Kamla Real Estate Hub Pvt. Ltd. (In Liq)

 Liquidator

For KINJAL ENTERPRISES

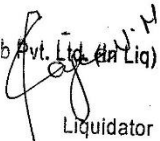

 PARTNER

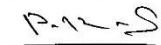
WHEREAS the Appellant proposed the payment terms to the Liquidator of the Respondent Company and the Liquidator agreed to the same and decided to enter into the present Consent Terms outlining the terms and conditions of the aforesaid settlement.

Accordingly, the Parties agreed to the following Consent Terms:

- 1) Considering the liquidity position of the Appellant and its obligations towards the stakeholders of its business, the Parties agree that the Appellant shall make payment of the aforesaid Claim Amount in 8 (Eight) monthly instalments as detailed out below, and the Appellant shall issue Post Dated Cheques (PDCs) towards each of the said monthly instalments:

Instalments	PDC No.	Due Date	Amount (Rs.)
1 st	000531	15 th July 2019	30,00,000/-
2 nd	000532	15 th August 2019	30,00,000/-
3 rd	000533	15 th Sept. 2019	30,00,000/-
4 th	000534	15 th Oct. 2019	30,00,000/-
5 th	000535	15 th Nov. 2019	30,00,000/-
6 th	000536	15 th Dec. 2019	30,00,000/-
7 th	000537	15 th Jan. 2020	30,00,000/-
8 th	000538	15 th Feb. 2020	33,20,000/-
Total			2,43,20,000/-

For Kamla Real Estate Hub Pvt. Ltd. (In Liq.)

 Liquidator

For KINJAL ENTERPRISES

 PARTNER

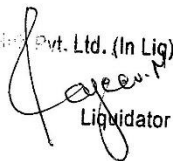
- 2) The Parties agree that subject to realization of the respective PDC amount and upon final payment of the entire outstanding Claim Amount, there shall be no more or further claims or dues or rights or liabilities that may accrue or arise out against the Appellant by the Respondent Company in future and all rights, claims, interest and entitlement in the captioned matter shall stand satisfied and settled and no rights of whatsoever nature shall subsist in favour of the Respondent Company.
- 3) It is further agreed between the Parties that in case of default in clearance of any of the PDC ("Date of Default"), the Respondent shall immediately notify the Appellant about the same and the Appellant shall within 7 days of such notification ("Cure Period") make payment to the Respondent.
- 4) If the payment has not been made by the Appellant even on completion of the Cure Period, the Respondent shall have right to file application with the Hon'ble National Company Law Tribunal and / or National Company Law Appellate Tribunal, as the case may be or to seek other legal remedy under the law such as filing of criminal case under the Negotiable Instruments Act, 1881, filing of civil case for recovery, etc.
- 5) The Parties undertake that they shall do all such acts deeds and things as may be necessary to give full and complete force and effect to these Consent Terms.

For KINJAL ENTERPRISES

P. J. S

PARTNER

For Kamla Real Estate Pvt. Ltd. (In Lig)


 Liquidator

IN WITNESS WHEREOF, the Parties above named hereby set and subscribed our respective hands to this writing at Mumbai, on this 04 day of July, 2019.

For Kinjal Enterprises



Authorised Signatory



Witness:

For Kamla Real Estate Hub Pvt. Ltd.



Authorised Signatory

Witness:

7. Since the post-dated cheques have been handed over today to the learned counsel for the Liquidator, we dispose of this appeal with direction to the Appellant to comply with the 'Consent Terms of Settlement' as made on 4th July, 2019. If any of the post-dated cheques is bounced, apart from other penal order and 'Terms of Consent', this Appellate Tribunal may initiate Contempt proceeding for non-compliance of this order against all the partners of 'Kinjal Enterprises'.

8. If the amount is paid within time and none of the post-dated cheques is bounced, in such case, the impugned order dated 1st March,

2019 relating to consequences under the 'I&B Code' shall stand quashed. However, if any of the cheque is bounced or the 'Consent Terms' is not complied, the Appellant will be liable for consequences as provided under the 'I&B Code'

The appeal stands disposed of with aforesaid observations and directions. No costs.

(Justice S.J. Mukhopadhyaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

Ar/g