

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 698 of 2018

(Arising out of Order dated 23rd August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, in T.C.P. (IB)377(MB)/2017)

IN THE MATTER OF:

Gammon India Ltd.

...Appellant

Vs

Neelkanth Mansions and Infrastructure Pvt. Ltd.

....Respondent

Present:

For Appellant: Mr. Rudreshwar Singh, Mr. Anirudh Singh and Ms. Awantika Manohar, Advocates.

For Respondent: Mr. Arun Kathpalia, Senior Advocate with Mr. Mahesh Agarwal and Ms. Aastha Mehta, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant- 'Gammon India Ltd.' filed petition under Section 433 (e) & (f) read with Section 434 of the Companies Act, 1956 before the Hon'ble High Court of Bombay for winding up of 'Neelkanth Mansions and Infrastructure Pvt. Ltd.'- ('Corporate Debtor') on the ground that the 'Corporate Debtor' defaulted in making repayment of Rs. 54,86,09,635 with interest @ 15% p.a. as on 15th August, 2016 till its realization.

2. After the enactment of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short), the case was transferred from the Hon'ble High Court

of Bombay to the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, pursuant to Rule 5 which relates to “Transfer of pending proceedings of Winding up on the ground of inability to pay debts”.

3. The Appellant thereafter, filed Form-5 under Section 9 of the ‘I&B Code’ for initiation of ‘Corporate Insolvency Resolution Process’ against the ‘Neelkanth Mansions and Infrastructure Pvt. Ltd.’, the Adjudicating Authority by impugned order dated 23rd August, 2018, dismissed the application under Section 9 on the ground that the application under Section 9 is not maintainable against the partnership firm.

4. The case of the Appellant is that by an agreement dated 17th June, 2005, they entered into partnership to be known as ‘M/s. Gammon Neelkanth Realty Corporation’ between the ‘Neelkanth Mansions and Infrastructure Pvt. Ltd.’ and two other entities namely— ‘M/s. Neelkanth Realtors Pvt. Ltd.’, a company under the Companies Act, and ‘Gammon Housing and Estates Developers Ltd.’, a group company of the Appellant.

5. Subsequently, a contract was entered between the partnership firm and ‘Gammon Neelkanth Realty Corporation’ and the Appellant herein for completing construction of seven residential buildings with facilities and amenities (being Phase-I of the ‘Neelkanth Kingdom Project’ of ‘Gammon Neelkanth Realty Corporation’) for a tender price of Rs. 88.75 crores stating completion date as 31st December, 2007. Thereafter, on 23rd April, 2008, another supplementary agreement was entered into mentioning that the Appellant completed work of the value of Rs. 29,76,08,230. Subsequently, on 1st April, 2009, another supplementary agreement was arrived at

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determining increase of rates mentioning the timeline of 12 months within which that work should be completed. While this work was in progress, the 'Neelkanth Mansions and Infrastructure Pvt. Ltd.' filed Suit No. 830/2010 on 17th March, 2010 before the Hon'ble High Court of Bombay against various persons including the Appellant as Defendant No-10 seeking relief against the Appellant in respect to 22 flats wrongly transferred by 'Treetop' (the company belonging to the Appellant).

6. Further, the case of the Appellant was that during the suit was pending, these three partners i.e. 'Neelkanth Mansions and Infrastructure Pvt. Ltd.' and other two partners including the company belonging to the Appellant on 2nd and 18th July, 2011 entered into consent terms with a covenant that balance work to be executed is podium, club house, swimming pool, etc. valued at Rs. 41.49 crores. However, according to the Respondent, the Appellant abandoned the work incomplete.

7. On behalf of the 'Corporate Debtor' it was contended that the amount of bill raised against a firm by stating that the Appellant has started working in the site since January, 2013, though the Appellant did not carry out the work in satisfactory manner, the firm was compelled to take charge of the incomplete work.

8. It was also submitted on behalf of the Respondent that various complaints have been received from the customer for inferior work carried out by the Appellant. In view of the same, it was contended by learned counsel for the Respondent that the bills sent by the Appellant to the Respondent about the abandoned work, were not entertained as the

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Appellant did not attend to the quality disputes raised in the partnership firm against the Appellant.

9. As noticed, the Adjudicating Authority on going through the record held that the Respondent is a partnership firm by associated companies of the Appellant of which the Respondent is one of the partner. Therefore, it was held that the application under Section 9 of the 'I&B Code' against the Respondent, one of the partner of the partnership firm is not maintainable.

10. Learned counsel appearing on behalf of the Appellant relied on definition of firm under Section 79 (16) of the 'I&B Code' and submitted that the firm means a body of individuals carrying on business in partnership whether or not registered under Section 59 of the Indian Partnership Act, 1932, therefore, according to him, a definition make it abundantly clear that only when a firm is comprised of individuals, that is to say natural persons only, the provisions of Part III of the 'I&B Code' will get attracted. In case, two or more persons (whether artificial or legal) and who are not individuals, are carrying on a business in partnership, then application for insolvency resolution against such partnership cannot be entertained by the Adjudicating Authority due to lack of jurisdiction. In that view of the matter, the application under Section 9 was filed against one of the partner which is a legal entity (corporate body) and not an individual.

11. It is not in dispute that the amount due to the Appellant is from 'M/s. Gammon Neelkanth Realty Corporation'. The bill was raised against the said partnership firm namely— 'M/s. Gammon Neelkanth Realty Corporation'. 'M/s. Neelkanth Realtors Pvt. Ltd.', 'Gammon Housing and

Estates Developers Ltd.’ and ‘Neelkanth Mansions and Infrastructure Pvt. Ltd.’ are the partners, therefore, even if one of the partners or more than one partner is the ‘Corporate Debtor’ as the amount is due from the partnership firm, the application under Section 9 of the ‘I&B Code’ against one of the partners of such partnership firm will not be maintainable.

12. In view of the aforesaid position of law, we hold that the Adjudicating Authority has rightly held that the application under Section 9 was not maintainable against one of the members of the partnership firm (Respondent herein) and rightly rejected the said application. We find no merit in this appeal. It is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

19th December, 2018

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