

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1065 of 2019

IN THE MATTER OF:

Sanjeev Sharma

...Appellant

Vs.

Aamir Jamal & Anr.

...Respondents

Present: For Appellant: - Mr. Himanshu Tyagi, Advocate.

For Respondents:- Mr. Vaibhav Sharma, Advocate for 1st Respondent.

Mr. G. Murali, Advocate for IRP.

Mr. Kunal Anand, Advocate for Intervenor.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Mr. Aamir Jamal, an allottee ('Financial Creditor'), moved an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) against 'Futec Shelters Private Limited'- ('Corporate Debtor'), an Infrastructure Company of which he is an allottee. The Adjudicating Authority (National Company Law Tribunal), Bench-III, New Delhi, by impugned order dated 9th October, 2019 admitted the application of Mr. Aamir Jamal (1st Respondent) being a Homebuyer.

2. The case of the 1st Respondent has been noticed by the Adjudicating Authority, as noticed below:

The 1st Respondent is an individual, as reflected in Part-I of the Application. Part-II of the Application discloses the details of the 'Corporate Debtor' from which it is seen that the 'Corporate Debtor' was incorporated on 04.07.2006 and the nominal share capital and the paid up share capital is stated to be Rs.1,20,00,000/- and Rs.3,75,000/- respectively. The registered office of the 'Corporate Debtor' is stated to be situated at R-19, 3rd Floor, Near Shakarpur, Laxmi Nagar, Vikas Marg, Delhi-110092 which address is also reflected in the Master Data as filed by the 1st Respondent annexed at Annexure-P1. The 1st Respondent in Part-III of the Application proposes the name of the Interim Resolution Professional (IRP) being one Mr. Sunil Prakash Sharma having the registration No.IBBI/IPA-002/IP-N00551/2017-2018/11726. Part-IV of the Application discloses the amount of debt granted by the 1st Respondent to the 'Corporate Debtor' which is stated to be in a sum of Rs.44,10,784/- and the details of the financial debt have also been given by way of a tabulation from which it is seen that the payment commenced from 9.7.2011 and ended on 5.8.2016. Along with the said amount of Rs.44,10,784/- claimed to be in default it is stated that a sum of Rs.1,00,85,842/- which includes interest payable computed till 10.08.2018. The date of default initially stated to have occurred on 31.12.2014 and in view of the claim being recognized of the 1st Respondent by the 'Corporate Debtor' by demanding payments from the 1st Respondent under protest on 5.8.2016, the same is reckoned as the date of default by the 1st Respondent. Part-V of the prescribed

Application, lists out the documents in support of the claim as made by the 1st Respondent against the 'Corporate Debtor'. In view of the claim being a financial debt and the amount in default, the Application by the 1st Respondent.

The claim, it is averred, arises out of Flat Buyer Agreement as executed between the 1st Respondent and the 'Corporate Debtor' on 3.8.2012 for purchase of flat being No. A2-601, Tower A having an area of 1750 sq. ft. in the project named as Gardenia Gateway being developed by 'Corporate Debtor' at Plot No.10, Eco City, Sector-75, Noida, UP. As per the Agreement, the agreed project price of the above said unit/ flat is Rs.54,16,250/-, individual break-up of which has been given by way of a tabulation and out of total consideration payable amount paid has also been given in a sum of Rs.44,10,784/-. In terms of clause 27 of the above said Agreement dated 3.8.2012, the 'Corporate Debtor' was required to deliver the possession of the flat after obtaining completion certificate from the Competent Authority in December, 2014. However, even after a delay of more than three and half years, no possession has been given by the 'Corporate Debtor' to the 1st Respondent and instead the 'Corporate Debtor' invoking clause 19 of the Agreement had been insisting upon the 1st Respondent to pay an interest @ 18% per annum for one month and at 24% per annum for next months in case of any default or delay in timely remittance of instalments.

Even though substantial amounts have been paid, possession has not been given by the 'Corporate Debtor' to the 1st Respondent by way of discharge of its obligations which compelled the 1st Respondent to approach on 20.2.2018 the RERA UP seeking for the possession of the residential unit and interest for delay in possession. However, the said complaint is yet to be heard by RERA. Apart from the above complaint, the 1st Respondent has not approached any other forum, it is averred in relation to the present cause or claim.

3. The 'Corporate Debtor' brought to the notice of the Adjudicating Authority the decision of the Hon'ble Supreme Court in ***"Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors. – (2019) SCC OnLine SC 1005"*** and the obligation of the 1st Respondent-allottee, who was alleged to be a defaulter. However, the Adjudicating Authority taking into consideration the fact that there is existence of financial debt and non-delivery of the possession of the project within time prescribed and for non-refund of the amount paid, held that there is a default and admitted the application.

4. Learned counsel for the Appellant submitted that as per the terms and conditions of the 'Flat Allotment Agreement' dated 3rd August, 2012 that was signed and acknowledged by the 1st Respondent with open eyes and without any coercion or compulsion, the 1st Respondent was bound to adhere to the payment schedule as annexed with the present appeal. 1st Respondent had admitted before the Adjudicating Authority that he

paid the total amount at the time of booking i.e. Rs.2,00,000/- till 9th July, 2011, however, the booking was done on 20th May, 2011 and thereafter, the second payment after the payment of booking amount as per the payment schedule of Rs.14,25,900/- was made by the 1st Respondent on 3rd August, 2012, however, as per the payment plan the second payment of the later amount was to be made within 45 days of booking. This itself demonstrates that the 1st Respondent has mischievously and malafidely failed to adhere to the payment schedule agreed between the parties for the booking of the said flat. The 1st Respondent with the sole intention to cause financial harm and loss to the 'Corporate Debtor' has not cleared dues and failed to meet out the demands raised by the 'Corporate Debtor' from time to time as per the agreed terms and conditions and payment schedule, subjecting Respondent liable for interest on delayed payment, which is computable at the time of offer of possession.

5. It was submitted that the 'Corporate Debtor' has suffered undue delays in construction and completion process due to possession issues and restrictions imposed by the National Green Tribunal. The project was affected by 'force majeure' situation due to the state policy failure as National Green Tribunal imposed ban on construction and on transfer of title and completion process itself. The 'Corporate Debtor' is the victim of Government apathy leading to cost escalation of high proportion. This ban imposed by the National Green Tribunal could have been averted if

the State Government had formulated policy as part of national process commenced in 2002.

6. It was further submitted that the abovementioned stay directed by the National Green Tribunal was vacated vide order dated 18th August, 2015 when the Original Application was finally disposed off and that the construction at the project of the 'Corporate Debtor' came to a standstill during the period when stay was directed by the National Green Tribunal.

7. It was also submitted that to claim the benefit of zero period which all the developers working on the same plot including the 'Corporate Debtor' had suffered due to several judicial orders passed by the National Green Tribunal and other respective Courts, the main allottee of the land had claimed before the NOIDA Authority for declaration of the intermediate period as the zero period as per the policy framed by NOIDA Authority but all request met deaf ears each time. Therefore, the main allottee of the land had agitated the issue before the Hon'ble Supreme Court by way of the Appeal No. 3593 of 2018 which is still pending before the Apex Court for adjudication in which notices were already issued to the NOIDA Development Authority. In such circumstances, claiming of such huge interest on behalf of 1st Respondent validation in the eyes of law.

8. It was submitted by the counsel for the Appellant that the project of the 'Corporate Debtor' hit the road block due to the order of status quo passed by the Hon'ble High Court of Judicature at Allahabad, on the land

where the project of the Appellant is situated, in Writ Petition No. 61567 of 2015 titled as ***“Omveer Singh & Anr. v. State of U.P. & Ors.”*** vide order dated 3rd March, 2016 in which Petitioner therein were claiming to be the co-share with transferable rights of certain plots situated in Village Baraula, Pargana and Tehsil Dadri, District Gautam Budh Nagar. The allegation was made against the Noida Development Authority that without acquisition of land and without any authority of law it has transferred the said land in favour of the ‘Corporate Debtor’ herein and accordingly, the Hon’ble Allahabad High Court directed the Noida Authority to maintain status quo with regard to nature and possession over the plots in dispute.

9. It was submitted that in accordance with the order passed in the abovementioned Writ Petition the Noida Authority directed the ‘Corporate Debtor’ vide letter dated 10th March, 2016 and the construction/development on the entire land came to a standstill. However, the ‘Corporate Debtor’ was made to suffer for none of his fault and such condition was beyond the control of the developer, hence was covered under the “force majeure” clause which was duly agreed part of the Agreement executed between 1st Respondent and the ‘Corporate Debtor’.

10. It was further submitted that in the interest of the project the main allottee of the land had purchased the above said disputed khasras i.e., “Khasra no.215 to 220, 223, 224, 226 to 230, 282 and 283 at Village Baraula, Pragana and Tehsil Dadri, Gautam Budh Nagar” from Omveer

Singh which are falling within the four corners of the project as no steps were taken by the Noida Authority to resolve the controversy and due to which the 'Corporate Debtor' project suffered road block. On 20th July, 2017, based upon the settlement, Writ Petition No. 61567 of 2015 titled as ***"Omveer Singh & Anr. v. State of U.P. & Ors."*** was withdrawn by the Petitioners therein in the light of the abovementioned sale deeds and the status quo order was then vacated by the Hon'ble High Court.

11. It was stated that the 1st Respondent on 20th February, 2018 had preferred a complaint before the RERA, U.P. which was decided vide order dated 12th April, 2019 by way of which RERA was pleased to direct the 'Corporate Debtor' to provide possession along with occupancy certificate on or before September, 2019 and further it was directed to provide delay possession charges to the 1st Respondent i.e. 31st December, 2014 upto 30th April, 2016 computing from Rs.5 per sq. feet and thereafter from 1st May, 2016 till the date of occupancy certificate the delay possession charges shall be payable to 1st Respondent computed with MCLR plus 1%.

12. Thereafter, the 1st Respondent moved an amendment application before the RERA for the amendment of order dated 12th April, 2019 whereby the RERA vide its order dated 21st August, 2019 was pleased to allow the amendment application whereby it was directed to the 'Corporate Debtor' to provide the possession of the Flat upto September,

2019 and failing which the deposit amount of the 1st Respondent shall be refunded back with interest.

13. It was alleged that the 1st Respondent had been continuously and persistently breaching the terms and conditions of the allotment agreement entered into between the 1st Respondent and the 'Corporate Debtor' and had further defaulted in making timely payment. The Clause 18 of the flat allotment agreement specifically provides that timely payment is the essence of the agreement.

14. During the pendency of this appeal, the parties have settled the matter by Agreement dated 24th October, 2019 which is brought on record.

15. Though the parties have settled the matter, it is desirable to notice the relevant facts, which the Adjudicating Authority has failed to notice.

16. The 'Flat Allottee(s)'s Agreement' dated 3rd August, 2012 was not referred by the Adjudicating Authority which stipulates cause of default of payment by allottees. As per Clause 55, the default in making payment by any of the Flat Allottees in case of allotment in joint names shall be treated as default by both/ all the Flat Allottee/s and they shall be jointly and severally liable and responsible for all the consequences.

17. Admittedly, the 1st Respondent defaulted to pay amount as detailed above. The project was affected by 'force majeure' due to imposition of ban by the National Green Tribunal by order dated 17th September, 2013

restraining the different projects which are within 10 Km from the Okhla Bird Sanctuary including NCR areas. The 'Flat Owners' Agreement' relates to development of the project in Eco City in Sector-75, Noida.

18. It is not denied that the order passed by the National Green Tribunal was not binding on this project. The Hon'ble High Court at Judicature at Allahabad in Writ Petition No. 61567 of 2015 **"Omveer Singh & Anr. v. State of U.P. & Ors."** by order dated 3rd March, 2016 passed certain order on the petition filed by persons claimed to be the co-sharers with transferable rights of certain plots situated in Village Baraula, Pargana & Tehsil Dadri District Gautam Budh Nagar. It is stated that the 'Corporate Debtor' also suffered, due to such interim order passed by the Hon'ble High Court.

19. In **"Pioneer Urban Land and Infrastructure Limited & Anr."** (Supra), the Hon'ble Supreme Court noticed the relevant provisions of the RERA including 'rights and duties of allottees' as mentioned in Section 19 and quoted therein, as follows:-

"19. Rights and duties of allottees.— (1) *The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made*

thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.

(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of

agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment

towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.”

20. As per Section 19(4) of the RERA, the allottee is entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under the Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, ***in accordance with the terms of agreement for sale*** or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of the Act.

21. As per sub-section (6) of Section 19 of the RERA, every allottee, who has entered into an agreement or sale to take an apartment, plot or building, as the case may be, under Section 13, is ***responsible to make necessary payments*** in the manner and within the time as specified in the said agreement for sale and is also required to pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

22. In terms of sub-section (7) of Section 19 of the RERA, the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in making payment towards any amount or charges to be paid under sub-section (6).

23. In terms of sub-section (10) of Section 19 of the RERA, it is also the duty of the allottee to take physical possession of the apartment, plot or

building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be. Thereafter, in terms of sub-section (11) of Section 19 of the RERA, the allottee is also required to participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be.

24. The Hon'ble Supreme Court also noticed the Rules framed by 'Andaman and Nicobar Islands Real Estate (Regulation and Development) (General) Rules, 2016' which includes 'interest payable by promoter and allottee' and the 'timelines for refund' and observed:

“57. It can thus be seen that just as information utilities provide the kind of information as to default that banks and financial institutions are provided under Sections 214 to 216 of the Code read with Regulations 25 and 27 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, allottees of real estate projects can come armed with the same kind of information, this time provided by the promoter or real estate developer itself, on the basis of which, prima facie at least, a “default” relating to amounts due and payable to the allottee is made

out in an application under Section 7 of the Code. We may mention here that once this *prima facie* case is made out, the burden shifts on the promoter/real estate developer to point out in their reply and in the hearing before the NCLT, that the allottee is himself a defaulter and would, therefore, on a reading of the agreement and the applicable RERA Rules and Regulations, not be entitled to any relief including payment of compensation and/or refund, entailing a dismissal of the said application. At this stage also, it is important to point out, in answer to the arguments made by the Petitioners, that under Section 65 of the Code, the real estate developer can also point out that the insolvency resolution process under the Code has been invoked fraudulently, with malicious intent, or for any purpose other than the resolution of insolvency. This the real estate developer may do by pointing out, for example, that the allottee who has knocked at the doors of the NCLT is a speculative investor and not a person who is genuinely interested in purchasing a flat/apartment. They can also point out that in a real estate market

which is falling, the allottee does not, in fact, want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and really get back, by way of this coercive measure, monies already paid by it. Given the above, it is clear that it is very difficult to accede to the Petitioners' contention that a wholly one-sided and futile hearing will take place before the NCLT by trigger-happy allottees who would be able to ignite the process of removal of the management of the real estate project and/or lead the corporate debtor to its death."

25. Apart from the fact that there are 'force majeure' due to which the 'Corporate Debtor' could not complete the project, we find that the 1st Respondent knocked the doors of the RERA and instead of waiting there, moved application under Section 7 not for Insolvency Resolution to get the Flat/ Apartment or liquidation, but for refund of the amount already paid.

26. However, we find that the Settlement Agreement has been reached by the 1st Respondent on 24th October, 2019, as quoted hereunder:



उत्तर प्रदेश UTTAR PRADESH

FD 099200

SETTLEMENT AGREEMENT

This Settlement Agreement is made at New Delhi on this 24th day of October, 2019;

BETWEEN

SANJEEV SHARMA *suspended* Director of M/s. Futech Shelters Pvt. Ltd., R-19, 3rd Floor, near Shakarpur, Laxmi Nagar, Vikas Marg, Delhi (hereinafter referred to as "First Party", which expression shall mean and include its successors, legal heirs, legal representatives and permitted assigns) on the ONE PART;

AND

AAMIR JAMAL, A- 407, Priyadarshani Apartment, I.P. Extension Patparganj, New Delhi, (hereinafter referred to as "Second Party", which expression shall mean and include his/her successors, legal heirs, permitted nominees and assigns), of the OTHERPART



WHEREAS the First Party is *suspended* Director of M/s Futech Shelters Pvt. Ltd., which company is engaged in developing a real estate project known as Futech Gateway (Early known was as Gardenia Gateway), situated at Plot No. GH10, Sector-75, Noida .

AND WHEREAS vide a booking applications dt. 24.05.2011 the second party applied for an apartment with M/s Futech Shelter (P) Ltd. and also along with the booking form the second party also paid a booking amount

* 1 NOV 2019

of Rs.200000/- to the said company. Subsequently, vide an Apartment Buyer's Agreement dated 03.08.12 an apartment bearing no. A-2, 601, Type 3BHK, admeasuring 1750.00 sq.ft. in the project Gardenia Gateway also know as 'Futec Gateway' was agreed to be purchased by the second party with M/s Futec Shelter (P) Ltd. for a total sum of Rs. 54,16,250/- (Rupees fifty four Lacs Sixteen Thousand two Hundred fifty Only) payable as per construction link payment plan.

And whereas, against the total sale consideration of Rs.54,16,250/-, the second party has paid a sum of Rs.46,56,752/-, receipt of which is admitted and acknowledged by the First Party.

AND WHEREAS, as per Clause 27 of the Apartment Buyer's Agreement, the possession of the Said unit was to be handed over to the Second Party, in December 2014, but the First Party failed to provide the possession of the said unit for the reasons best known to them. Thus being aggrieved by such default Second party initiated various Legal Proceedings against the First Party as mentioned herein below:

1. District Forum Delhi case no. 769/2014
2. Allahabad High Court Writ Petition no. 62800/2015
3. Allahabad High court Contempt Application no.1116/2017
4. Rera Authority Greater NOIDA complaint no. 220187220/2019
5. NCLT IB 1598 (ND) 2018
6. Representation before NOIDA Authority

The Hon'ble NCLT vide it's order dated 16.10.2019, was pleased to allow the application of the Second Party under section 7 of IB Code and appointed Shri Sunil Prakash Sharma, as an IRP of M/s Futec Shelter Against the said order dated 16.10.2019, the first party approached the NCLAT wherein notice has been issued and the next date is fixed as 19.11.2019.

The Parties have agreed to settle the dispute and differences amicably/mutually, on the following terms and conditions:



NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. That in order to put the aforementioned dispute at rest the first party shall pay to the second party a lump sum settlement amount of Rs. 80,00,000/- (Eighty Lakh Only) towards refund of entire principal amount and interest along with compensation in the following manner-

[Signature]

Aamir Patel

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- (i) 30,000,00/- (Thirty Lakh Only) vide Demand Draft dated 19/10/2019 being handed over on execution of the settlement agreement, the said amount has been paid to the second party vide Demand Draft No. [042712]
- (ii) 20,000,00/- (Twenty Lakh Only) vide Demand Draft dated 21/10/2019 being handed over on execution of the settlement agreement, the said amount has been paid to the second party vide Demand Draft No. [042715].
- (iii) 15,000,00/- (Fifteen Lakh Only) shall be paid by the First Party to the Second party on or before 02.11.2019
- (iv) 15,000,00/- (Fifteen Lakh Only) shall be paid by the First Party to the Second party on or before 09.11.2019.

2. On receipt of the entire aforesaid amount, the first party shall collect and second party shall handover all original documents including the Flat Buyer Agreement pertaining to the aforesaid Subject Unit. It is made clear and understood between the parties, that the lien of Second Party over the subject allotted unit shall continue to remain in force untill the entire amount of Rs.80 Lakhs is paid to the Second Party by the First Party and/or M/s Futech Shelters.

3. That simultaneously upon receiving the entire amount as stipulated hereinabove, the Parties shall jointly approach the NCLT and NCLAT to withdraw their respective application and appeals in terms of this settlement seeking withdrawal of CIRP.

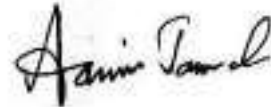
4. That the Second Party hereby agrees that after receiving the entire settlement amount of Rs.80 Lakh on or before 09.11.2019, as mentioned in para one above, the Second Party shall have no lien on the said Unit or any claim whatsoever against first party or M/s Futech Shelters Pvt. Ltd.



5. That, if the first party fails to make the balance payment of Rs. 30 lakh on or before the 09.11.2019 (in the manner as envisaged before), then the present settlement agreement shall be treated as automatically cancelled (on account of material breach by the first party), without any further act or notice by the Second Party.

6. That, in the event of such automatic cancellation (as stipulated above), the second party shall not be liable to file joint application seeking withdrawal of CIRP, on the contrary, in the event of such

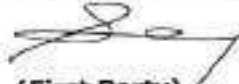

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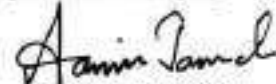
automatic cancellation (on account of breach by the first party), the amount remaining unpaid out of the total admittedly payable debt of Rs.80 lakh, shall remain a financial debt carrying an interest of 18% per annum, and the second party shall accordingly file its claim before the IRP/RP (already appointed by the NCLT).

7. This settlement deed is being executed in two counter parts each of which shall be deemed to be Original, but both of which together shall constitute one and the same instrument. Both the Parties to this agreement shall retain one original copy each.
8. That Courts at Delhi only shall have the jurisdiction.

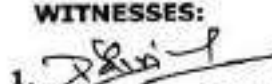
(Sanjeev Sharma)


(First Party)

(Aamir Jamal)


(Second Party)

WITNESSES:

1.  Prekash Nautiyal
2.  C-1233, Nautiyal Exh. Redwood Vihar N.D.

(Shivraj Singh Chopra)
(Vill. Bello Mandya)
(Post - Kasru, Distt. G.B. Nagar)



ATTESTED

OM PRAKASH SINGH
Notary, Ghaziabad

- 1 NOV 2019

27. For the aforesaid reasons, we hold that the application under Section 7 was fit to be rejected. We, accordingly, set aside the order dated 9th October, 2019 and dismiss the application under Section 7 filed by the 1st Respondent- Mr. Aamir Jamal. The Appellant is directed to adhere to the 'Terms of Settlement'. The 'Interim Resolution Professional' is entitled for fees and costs, as it is not determined in the Agreement. The Adjudicating Authority will determine the same and whatever the amount payable, it will be borne by the 'Corporate Debtor'.

28. In the result, the 'Corporate Debtor' (company) is released from all the rigours of 'Moratorium' and is allowed to function through its Board of Directors from immediate effect. The 'Interim Resolution Professional' will hand over the assets and records to the Board of Directors.

The appeal is allowed with aforesaid observations and directions.

No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

30th January, 2020

/AR/