

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 104 of 2020

IN THE MATTER OF:

Punit Beriwal

...Appellant

Versus

M/s. Shambhu Agencies Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant :

**Mr. Sudhanshu Batra, Senior Advocate with
Mr. Rudreshwar Singh, Mr. Sarojanand Jha, Mr.
Aditya Mishra and Mr. Tushar Kumar, Advocates**

For 1st Respondent:

**Mr. R. K. Gupta, Mr. Sandeep Bajaj and Mr. Devansh
Jain, Advocates**

O R D E R

30.01.2020 'M/s. Shambhu Agencies Pvt. Ltd.' – (Financial Creditor) moved an Application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016 (**I&B Code**', for short) against 'M/s. Vipul Limited' – (Corporate Debtor), an infrastructure company constructing apartments/flats/premises for allottees.

2. The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, New Delhi by impugned order dated 15th January, 2020 admitted the Application.

3. On 21st January, 2020, learned counsel for the Appellant submitted that neither the publication has been made by the 'Interim Resolution Professional' (IRP) nor the 'Committee of Creditors' has been constituted. In the meantime,

the Appellant – ‘Punit Beriwalla’, Director of the ‘Corporate Debtor’ has reached a settlement with the ‘Financial Creditor’.

4. Mr. R.K. Gupta, Advocate appeared on behalf of the ‘M/s. Shambhu Agencies Pvt. Ltd. on the said date and accepted that the settlement had been reached on 15th January, 2020 i.e. on the same date when the application under Section 7 of the ‘I&B Code’ was admitted.

5. Mr. Hemant Kumar, Advocate for the ‘Interim Resolution Professional’ also appeared on 21st January, 2020 and accepted that no publication had been made and ‘Committee of Creditors’ has also not been constituted. Both of them are allowed two days’ time to file their respective reply-affidavits along with their Vakalatnama, which they have filed.

6. One Mr. Rajiv Virmani, Advocate prayed for time to file intervention application on behalf of the Resident Welfare Association and submitted that the flats/apartments have been completed and allotted as way back in the year 2007 but certain amount has been remained to pay to the Association.

7. In reply, learned counsel for the Respondent submitted that the Resident Welfare Association’s claim does come within the meaning of ‘financial debt’ as defined under Section 5(8) of the ‘I&B Code’. The allottees have already been allotted flats/apartments. It is also accepted that the common area has been completed.

8. Mr. Gaurav Mitra, Advocate intended to intervene on behalf of some of the creditors. He submits that he appears on behalf of ‘Solitaire Capital India’ (Financial Creditor). However, learned counsel for the Appellant submits that the matter is pending for arbitration before the Arbitral Tribunal.

9. In the present case, we find that the flats/apartments have been completed and allotted to the allottees as back as in the year 2007, as stated by the learned counsel for the 'Resident Welfare Association'. It is also accepted by the 'Resident Welfare Association' that the common area has also been completed.

10. In the circumstances, in absence of any evidence on record for the present, we are not inclined to decide whether the amount, if any, deposited by the 'Resident Welfare Association' or any individual allottee, can come within the meaning of 'financial debt' as defined under Section 5(8) of the 'I&B Code'. We are also not deciding if any amount deposited by any of the allottees and Association can move an application or the individual allottee can move the application, which will be decided by the appropriate Forum.

11. In the present case, as we find that the application under Section 7 of the 'I&B Code' was admitted on 15th January, 2020 and the parties have reached settlement on the same date i.e. 15th January, 2020 and all the allottees have been allotted the flats/premises as back as in the year 2007 along with common area etc., we by exercising our inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, allow the settlement and set aside the impugned order dated 15th January, 2020 and dispose of the application under Section 7 of the 'I&B Code' as withdrawn. The Appellant is directed to comply with the 'Terms of Settlement', failing which it will be open to the first Respondent to move an appropriate Application before this Appellate Tribunal for initiation of contempt proceedings against the Appellant or the Directors/shareholders and for revival of the 'corporate insolvency resolution process'.

12. The Appellant is also directed to pay a sum of Rupees One Lakh to the 'Interim Resolution Professional' towards his fees within 15 days.

13. In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium and all other order (s) passed by Adjudicating Authority pursuant to the impugned order and action taken by the 'Resolution Professional' are set aside. The Application preferred by the Respondent under Section 7 of the 'I&B Code' is disposed of as withdrawn. The Adjudicating Authority will now close the proceedings. The Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

The appeal stands disposed of. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Shreesha Merla]
Member (Technical)

/ns/gc/