

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 164 of 2020

[Arising out of Order dated 14.01.2020 passed by National Company Law Tribunal, New Delhi, Bench – VI in C.P. No. IB- 347/ (ND)/ 2019]

In the matter of:

Chand Ji Bhat

....Appellant

**S/o Shri PushkarNath Bhat,
R/o I-3, 85, Second Floor,
Sector 16, Rohini,
Delhi- 110089**

Vs.

**1. M/s Colliers International (India) Property
Services Pvt. Ltd. & Anr.
Technopolis Building, 1st Floor,
DLF Golf Course Road,
Sector- 54, Gurgaon 122002.**

...Respondents No. 1

**2. Ardee City Estate Management
Pvt. Ltd., 16th Floor, GopaldasBhawan,
28, Barakhamba Road,
New Delhi- 110001
Through its Resolution Professional**

...Respondents No. 2

For Appellant: Mr. Sandeep Bisht& Mr. B. Shekhar, Advocates.

**For Respondents: Mr. SumeshDhawan, Advocate for IRP.
Mr. PulkitDeora& Ms. SylvineSarmah, Advocates for
R-1.**

**ORDER
05.03.2020**

1. Heard Counsel for the Appellant. He states that the Appellant on behalf of the Corporate Debtor has settled the claims of Respondent No. 1 - Operational Creditor. Between the parties, full and final settlement of the outstanding liabilities has been arrived at on 27th February, 2020.

The Learned Counsel shows at Bar, the original document executed by and between the parties and tenders photocopy which is now signed by the Learned Counsel for the Appellant and the Learned Counsel for the Respondent No. 1. The document is marked 'X' for identification and taken on record. The settlement reads as under:

"FULL & FINAL SETTLEMENT OF THE OUTSTANDING LIABILITIES ARISING OUT OF AGREEMENT DATED 20/01/2016"

Reg: Letter of Intent cum agreement dated 20/01/2016 for providing facility Management Services in respect of Palm grove heights at Sector 52 Ardee city Gurugram, Haryana.

This is to confirm that we, The **Colliers International (India) Property Services Private Limited**, having its Office at 1ST Floor, Technopolis, DLF Golf Course Road Sector 54, Gurgaon, 122002(hereinafter referred to as Corporate creditor) through **Mr. Alok Tiwari (Senior Manager – Compliance)**duly authorised vide resolution dated **11th January,2019** for the purpose of determination of outstanding dues and liabilities arising out of letter of Intent cum agreement dated 20/01/2016,with respect to Facility Management Services provision to Palm Grove Heights housing complex, at Sector - 52, Ardee City, Gurugram, Haryana entered into with Ardee City Estate Management Pvt Ltd having its registered office at 16TH Floor Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001(herein after referred to as Corporate debtor) acting through its Chand Ji Bhat (Suspended Director) in the case C.P No-IB-347/(ND)2019/ titled as M/s Colliers International (India) Property Services Pvt Ltd Vs. Ardee City Estate Management Pvt Ltd, now under the appeal no- Comp. App (AT) (Ins) No 164 of 2020 titled as Chand Ji Bhat Vs. Colliers International (India) Property Services Pvt Ltd & Anr.) vide board resolution dated 20.02.2020 Corporate creditor have formally accepted the offer of settlement

made by Ardee City Estate Management Pvt Ltd vide email dated 19/02/2020 in respect of all its liabilities, and have consented to withdraw all proceedings against the Ardee City Estate Management Pvt Ltd in respect of all claims and demands of all nature arising out of Letter of intent cum agreement dated 20/01/2016 in respect of the Facility Management Services provided to Palm Grove Heights housing complex, at Sector-52, Ardee City, Gurugram, Haryana, and upon 'Corporate debtor' paying total amount of INR 70 Lakhs. The total amount of INR 70 Lakhs is to be paid by the Corporate debtor to the Corporate creditor in the following manner (1) First instalment of INR 24 Lakhs to be released by way of cheque on 10th March, 2020 (2) Second instalment of INR 23 lakhs will be paid by corporate Debtor to the operational Creditor by way of cheque on or before 10th April, 2020 (3) Third and final instalment of INR 23 Lakhs will be paid by corporate

Debtor to the operational Creditor by way of cheque on or before 10th May, 2020 in terms of the above letter of Intent cum agreement dated 20/01/2016 which corporate Creditor confirms having received in full discharge and receipt of all their claims which they may have against corporate debtor up-to-date in terms of the above letter of Intent cum agreement dated 20/01/2016. Corporate creditor hereby undertakes to deposit the necessary TDS and provide corporate debtor with the TDS certificates and indemnifies corporate debtor in all respects in this regard.

Both the parties hereby confirm that the above amount of INR 70 Lakhs is in full and final settlement of the claims filed by the Corporate Creditor before the Hon'able National Company Law Tribunal.

In confirmation of the above, both the parties have signed this letter on this day 28th February, 2020 at New Delhi."

2. Counsel for the Appellant states that the Corporate Debtor, its Directors/ Shareholders would be bound by this Agreement. They have yet to issue cheques and they will issue cheques to the Operational Creditor in terms of

this settlement. Counsel states that the Corporate Debtor would be bound to honour the settlement.

3. Counsel for the Respondent No. 1 - Operational Creditor also states that the settlement as mentioned above has been arrived at and the Operational Creditors accepts the same.

4. It is stated that COC is yet not constituted. Learned Counsel for the IRP submits that against CIRP costs including fees which are due to be paid the amount is Rs. 3,50,000/- + G.S.T. Learned Counsel for the Appellant and Respondent No. 1 state that although this is not mentioned in the written settlement, the Agreement between the Operational Creditor and the Corporate Debtor with regard to this payment is that the Operational Creditor (Respondent No.1) will pay these charges.

5. The Appeal is being disposed, in view of this settlement. The Impugned Order is quashed and set aside. Respondent No. 1 - Operational Creditor is permitted to withdraw the application under Section 9 of IBC. The said application shall stand disposed as withdrawn. The Appellant for himself and on behalf of the Corporate Debtor, its Directors and Shareholders all would be responsible for acting as per the settlement. The CIRP costs (which includes fees of the IRP) Rs. 3,50,000/- + G.S.T. shall be paid by the Respondent No. 1 - Operational Creditor within three weeks from today to IRP/RP.

6. In case of default or any cheque bouncing, the Respondent No. 1 - Operational Creditor would be at liberty to move this Tribunal seeking action of contempt and restoration of the present Appeal. If the CIRP costs as directed are not paid in the time stated, IRP would also be at liberty to move this Tribunal for action of contempt and restoration of this Appeal.

7. The Impugned Order is quashed and set aside. Actions taken by IRP/ RP in consequence of the Impugned Order are quashed and set aside. The Corporate Debtor is released from the rigour of law and is allowed to function independently through its Board of Directors. The IRP/ RP will hand back the records and management of the affairs of Corporate Debtor, to the Board of Directors.

Appeal is disposed accordingly.

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

[Justice Anant Bijay Singh]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

sim/md