

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 114 of 2021

IN THE MATTER OF:

Sudhir Agarwal

....Appellant

Vs

CHD Developers Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Shivek Trehan, Ms. Freha Ahmad Khan and Mr. Pranay Mohan Govil, Advocates.

For Respondents: Mr. C. S. Gupta and Mr. Anand Shukla, Advocates for R-1.

Mr. Jatin Mongia, Advocate with Mr. Jaswant Singh, IRP for R-2.

O R D E R
(Through Virtual Mode)

15.02.2021: I.A. No. 265 of 2021 is disposed of with direction to file certified copy of the impugned order within two weeks of same being made available, if the appeal survives for consideration.

2. I.A. No. 266 of 2021 stands disposed for with direction to produce legible copies of the Annexures to appeal paper book within two weeks, in case, the appeal survives for consideration.

3. The issue raised in this appeal against admission of application of Respondent No.1 under Section 9 of the Insolvency and Bankruptcy Code, 2016

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(for short 'I&B Code') by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench Court I, vide impugned order dated 5th February, 2021 is that SLP was pending against dismissal of appeal in respect of Arbitral Award before the Hon'ble Apex Court and that an Execution Petition was also pending in respect of the Arbitral Award. Besides, the application was hit by limitation.

4. Issue notice upon Respondents. Notice on behalf of Respondent No. 1 is waived and accepted by Shri C. S. Gupta, Advocate. Notice on behalf of Respondent No. 2 is waived and accepted by Shri Jatin Mongia, Advocate. Service being complete, no further notice be served upon Respondents.

5. It is submitted by learned counsel for the Appellant that the claim of the Operational Creditor has been settled and the Settlement/Consent Terms have been reduced to writing. Learned counsel for the Appellant seeks a brief adjournment to file the Settlement/Consent Terms. Mr. C. S. Gupta, learned counsel representing Respondent No. 1 (Operational Creditor) supports this proposition of fact and submits that Respondent No. 1 has accepted the default amount in terms of the Settlement and nothing remains outstanding. Mr. Gaurav Mittal, Managing Director of the Operational Creditor (Respondent No.1) is also present in person. He also confirms the factum of outstanding payment having been received under the Settlement Terms with no claim pending against the

Corporate Debtor. Mr. Jatin Mongia, Advocate representing the Interim Resolution Professional (Respondent No. 2) informs us that though the Interim Resolution Professional has been appointed, Committee of Creditors is yet to be constituted. Interim Resolution Professional appearing in person also confirms that the Committee of Creditors has not been constituted.

6. In view of this development, we are of the considered opinion that there is no requirement of filing the Consent Terms as the Respondent No. 1 (Operational Creditor) has accepted the amount offered in terms of the settlement arrived at as full and final payment to satisfy its claim. Since Committee of Creditors is yet to be constituted and no claims have been received by the Interim Resolution Professional, there is no legal impediment in entertaining the settlement and disposing off this appeal in terms thereof.

7. Shri Jatin Mongia, Advocate representing the Interim Resolution Professional submits that CIRP costs and fee of the Interim Resolution Professional has been paid and nothing remains outstanding on account of fee of Interim Resolution Professional and CIRP costs.

8. We accordingly dispose off this appeal by setting aside the impugned order dated 5th February, 2021 passed by the Adjudicating Authority and direct release of the Corporate Debtor from rigour of law. The Adjudicating Authority is directed to close the case.

9. A copy of this order be sent to the Adjudicating Authority for information and compliance.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

am/gc