

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 569 of 2018

IN THE MATTER OF:

Bijay Kumar Garodia & Ors.

...Appellants

Vs

Anadya Properties Pvt. Ltd. & Ors.

....Respondents

Present:

For Appellants: Ms. Anne Mathew, Advocate.

For Respondents:

O R D E R

20.09.2018: This appeal has been preferred by three creditors against order dated 24th August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, whereby the Adjudicating Authority directed the Appellant to pay back the sum to the Corporate Debtor, which was paid to them after the order of moratorium.

2. Learned counsel appearing on behalf of the Appellant submits that the order of moratorium was passed on 15th January, 2018 and it was notified in newspaper on 22nd January, 2018. Person having no knowledge of the interim order creditors were paid part dues by the Corporate Debtor.

3. Such submission made by learned counsel for the Appellant is not acceptable as the order of moratorium was passed by the Adjudicating Authority after hearing the Corporate Debtor. After passing said order it came in effect from the same date i.e. 15th January, 2018. Therefore, the Corporate Debtor being under the control of the Resolution Professional, the (Suspended) Board of Directors had no jurisdiction to divert funds to the creditors. Such transfer of funds, during the period of moratorium, in favour of the Creditors namely Mr. Bijay Kumar Garodia, Mr. Nishant Garodia and Mr. Ram Goopal Garodia being illegal, the Adjudicating Authority rightly directed them to refund the amount.

4. We find no merit in this appeal. It is dismissed. The appellants are directed to refund the amount immediately to the Corporate Debtor, not beyond 30 days, failing which it will be open to the Resolution Professional to move before the Adjudicating Authority for initiating contempt proceeding. The appeal is dismissed with aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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