

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 1991, 1993 of 2020

In

Company Appeal(AT) (Insolvency) No. 388 of 2020

IN THE MATTER OF:

**Rajesh Nagpal
Erstwhile Director,
M/s Straight Edge Contracts Pvt. Ltd.
B22, Swasthya Vihar,
Delhi- 110 092**

...Appellant

Vs

**1. Gupta Ji Electric Company
82, Ambedkar Marg,
Ghaziabad
Uttar Pradesh- 201 001**

**..Respondent
No.1/Operational
Creditor/Original
Applicant**

**2. M/s Straight Edge Contracts Pvt. Ltd.
Through Interim Resolution Professional
Mr. Ranjit Kumar,
Having its registered office at
Ground Floor, 4, Dayanand Vihar,
Delhi – 110 092**

**..Respondent No.
2/Corporate
Debtor/Original
Respondent**

Present:

**For Appellant: Mr. Abhishek Parmar and Mr. Ayush Beotra,
Advocates**

**For Respondents: Mr. Ritesh Agrawal, Advocate for Respondent
No. 1**

With

Contempt Case No. 23 of 2020

In

Company Appeal(AT) (Insolvency) No. 388 of 2020

IN THE MATTER OF:

**Ranjit Kumar Verma (IRP)
S/o Suresh Chandra Verma,
Office at G-129, 1st Floor,
Sector 63, Noida,
U.P. - 201301**

**...Petitioner/
Appellant**

Vs

**Rajesh Nagpal
Erstwhile Director,
M/s Straight Edge Contracts Pvt. Ltd.
B22, Swasthya Vihar,
Delhi- 110 092**

**....Contemnor/
Respondent**

Present:

**For Appellant: Mr. Shailendra Singh and Mr. Abhishek Parmar,
Advocates**

**For Respondents: Mr. Ritesh Agrawal, Advocate for Respondent
No. 1
Mr. Ayush Beotra, Advocate**

**O R D E R
(28.09.2020)**

(Through Virtual Mode)

Heard learned Counsel for the Applicant/Operational Creditor in I.A. No. 1991 and 1992 of 2020 in Company Appeal (AT) (Insolvency) No. 388 of 2020.

2. This Application has been filed by the Operational Creditor – Gupta Electric Company. The Applicant claims that Company Appeal (AT)(Insolvency) No. 388 of 2020 was filed by the Appellant Rajesh Nagpal challenging the order dated 26.02.2020 passed by the Adjudicating Authority (NCLT, Court No. IV, New Delhi) in C.P. No. IB-1071/ND/2019 – “M/s Gupta Ji Electric Company Vs. M/s Straight Edge Contracts Private Limited”. The Application was admitted by the Adjudicating Authority by an order dated 26.02.2019 which was impugned in the Company Appeal(AT)(Insolvency) No. 388 of 2020.

3. The Applicant claims that during pendency of the Appeal, the Applicant and the Appellant entered into a Memorandum of Understanding (In short ‘MoU’) dated 12.03.2020 and on 13.03.2020, this Tribunal recorded the

settlement in Appeal between the parties and accordingly, the Appeal was allowed and the impugned order was set aside. In paragraph-12 of the order dated 13.03.2020, liberty was granted to the Applicant to approach this Tribunal in case of any default by the Appellant in honouring the MoU. The Applicant claims that as per the MoU dated 12.03.2020, 18 (eighteen) post-dated cheques were given to the Applicant and the Appellant undertook to honour all the eighteen cheques. The Applicant says that due to lockdown, Mr. Rajesh Nagpal requested the Applicant to wait for some time for depositing the cheques and the Applicant had agreed with the condition that all the cheques will be honoured by May, 2020. The Applicant further states that although the Applicant accommodated the Appellant but later on when the cheques were deposited, all the cheques were dishonoured. It is claimed by the Applicant that in view of this, the order dated 13.03.2020 of this Tribunal should be recalled and the order of the Adjudicating Authority dated 26.02.2020 should be restored.

4. Contempt Case(AT) No. 23 of 2020 has been filed by the IRP claiming that the Corporate Debtor has defaulted in making the payment of the fees of the IRP as well as learned Counsel appearing for the IRP. Learned Counsel for the Original Appellant- Rajesh Nagpal states that Rs. 3.5 lakhs have been paid. Learned Counsel for the IRP disputed and stated that the fees of the Counsel have not been paid and the cheque given was dis-honoured.

5. Learned Counsel for the Original Appellant Mr. Rajesh Nagpal refers to the reply filed (diary No. 21913) and submits that the Original Appellant had

difficulties when Covid-19 problems started and had requested the Original Applicant to accommodate. Learned Counsel submits that the Operational Creditor was in financial difficulties due to global Pandemic. However, the Operational Creditor states that several opportunities were given Corporate Debtor and it had accommodated the Appellant and the Operational Creditor is not ready to give further time to the Corporate Debtor.

6. Learned Counsel for the Applicant submits that after the order was passed by this Tribunal, there had been only two payments, one on 26.06.2020 for Rs. 15 lakhs and another on 31.08.2020 for Rs. 10 lakhs. Learned Counsel for the Applicant is submitting that the Corporate Debtor has no intention to clear the debt of the Operational Creditor and that considering the default and non-compliance of the order of this Tribunal, the Appeal should be dismissed restoring the order passed by the Adjudicating Authority.

7. Learned Counsel for the Appellant- Corporate Debtor is referring to various difficulties being faced by the Corporate Debtor and the Appellant- Rajesh Nagpal submits that one more opportunity may be given to the Corporate Debtor to clear the debt of the Applicant/Operational Creditor.

8. We had passed the order dated 13.03.2020 accepting the settlement. In paragraphs 11 to 13 we had observed as under:

...

“11. The Appellant and the Directors of Shareholders of the Corporate Debtor/Respondent No. 2 – M/s Straight Edge Contracts Pvt. Ltd. shall remain bound by

MoU/Agreement. In the case of default, they would be liable for action of contempt.

12. Liberty is also given to the Respondent No. 1 as well as IRP to move this Tribunal in case of any default on the part of Corporate Debtor in honouring the MoU/Agreement or non-payment of fees/CIRP costs of IRP for which cheque is stated to have been issued. If the Respondent No. 1 or IRP moves this Tribunal complaining default, this Tribunal may recall the present order and restore the Impugned Order.

13. In view of our Order in paragraph 10 supra, 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.”

...

9. Admittedly, the cheques which were issued under the MoU have bounced and there is default on the part of the Corporate Debtor which breached the MoU/Agreement filed before this Tribunal. Submissions of both the sides show that in spite of the MoU, the Operational Creditor did give time to the Corporate Debtor to make payments and did not immediately rush to deposit the cheques. The cheques when ultimately deposited got dis-honoured.

10. In view of the directions we had recorded in paragraph-12 of our order reproduced above, we find no reason why the Application as filed by the Operational Creditor should not be allowed. On the face of the record, the

Corporate Debtor is unable to clear its dues. Now, when the unlock periods are going on, still the Corporate Debtor is not in a position to say that the debt will be paid by a particular date. Though learned Counsel for Original Appellant for Corporate Debtor seeks one more opportunity to pay and claiming that Annexure-R3 of Reply shows it had moved Mentioning Application to extend time to pay, no sincerity to pay Rs. 1.46 Crores is demonstrated. Again, in a settlement between parties, this Tribunal will not on its own extend periods, not agreed.

11 (A) For the above reasons, we allow the Application I.A. Nos. 1991 and 1992 of 2020 and recall the orders which we had passed in Company Appeal (AT)(Insolvency) No. 388 of 2020 and restore Company Appeal (AT)(Insolvency) No. 388 of 2020.

(B) Considering the records and orders as noted in paragraph -12 of the order dated 13.03.2020, we dismiss Company Appeal (AT)(Insolvency) No. 388 of 2020 and restore the impugned order dated 26.02.2020 as was passed in C.P. No. IB-1071/ND/2019 – “M/s Gupta Ji Electric Company Vs. M/s Straight Edge Contracts Private Limited”.

(C) I.A. No. 1993 of 2020 filed by IRP seeking correction of the statement in the order dated 13.03.2020 does not survive and the same is also disposed of.

(D) Considering that we have already recalled our earlier order dated 13.03.2020 and restored the order passed by the Adjudicating

Authority, although the IRP is seeking order for contempt, we do not wish to use the said power. The Contempt Case(AT) No. 23 of 2020 stands disposed of.

- (E) IRP & RP shall proceed with the CIRP from the stage it was when Order in Appeal was passed.

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

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn