

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 572 of 2018

IN THE MATTER OF:

**P.R. Earnarst, Director of
M/s. Green Peace Construction Pvt. Ltd. ...Appellant**

Vs.

M/s. Ajantha Flat Owners Association & Anr. ...Respondents

**Present: For Appellants: - Mr. P.V. Yogeswaran, Mr. Babul Kumar,
Mr. A.K. Udhayay and Mr. Y. Lokesh, Advocates.**

For Respondents:- Mr. Swaroop George, Advocate.

O R D E R

07.05.2019— This appeal has been preferred by the Appellant- 'P.R. Earnarst, Director of 'M/s. Green Peace Construction Pvt. Ltd.'- ('Corporate Debtor') against the order dated 27th August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, admitting the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by the Respondent- 'M/s. Ajanta Flat Owners' Association'.

2. The application under Section 9 was filed by 'M/s. Ajanta Flat Owners' Association' on the ground that certain correctional measures which were to be taken by the Builder, namely— 'M/s. Green Peace

Contd/-.....

Construction Pvt. Ltd.’- (‘Corporate Debtor’) were not taken by the ‘Corporate Debtor’.

3. Later on, ‘M/s. Green Peace Construction Pvt. Ltd.’- (‘Corporate Debtor’) asked ‘M/s. Ajanta Flat Owners’ Association’ to take correctional measures from their side and whatever the cost incurred will be paid to them. In this way, ‘M/s. Ajanta Flat Owners’ Association’ incurred a cost of Rs. 40 Lakhs and other amount for purchase of two generators.

4. Initially, plea was taken by the Appellant that for the action as alleged, ‘M/s. Ajanta Flat Owners’ Association’ cannot claim to be ‘Operational Creditors’ having not supplied any goods nor given any services. In fact, the services were to be given by the ‘Corporate Debtor’ and, therefore, Section 9 application was not maintainable.

5. However, it was submitted that the Appellant intends to settle the matter with ‘M/s. Ajanta Flat Owners’ Association’. In view of such submissions, on 26th September, 2018, when the notice was issued, this Appellate Tribunal framed question as to whether ‘Association of Flat Owners’ can claim to be ‘Operational Creditor’ within the meaning of Section 5(20) read with Section 5(21) of the ‘I&B Code’ for filing an application under Section 9 of the ‘I&B Code’. The Adjudicating Authority and the ‘Interim Resolution Professional’ were directed not to publish any

notice in the newspapers and 'Interim Resolution Professional' was allowed to ensure that the company remains a going concern.

6. Today, a 'Terms of Settlement' dated 25th February, 2019 has been filed by the parties and it is stated that the expenditure incurred by the Respondent- 'M/s. Ajanta Flat Owners' Association' for correctional measures and installation of generator has already been paid. It is also accepted by Mr. Swaroop George, learned counsel appearing on behalf of 'M/s. Ajanta Flat Owners' Association'.

7. Having heard learned counsel for the parties, we are of the view that the claim made by 'M/s. Ajanta Flat Owners' Association' having not supplied any goods nor given any services, cannot claim to be 'Operational Creditor' and thereby, the application under Section 9 was not maintainable.

8. Further, the Adjudicating Authority and the 'Interim Resolution Professional' having been asked not to publish any notice in the newspaper normally the 'Committee of Creditors' should not have been constituted by the 'Resolution Professional' though it was informed it has been constituted.

9. However, as we have held that the application under Section 9 was not maintainable and the parties have settled the matter, we set aside the

impugned order dated 27th August, 2018 and dismiss the application under Section 9 filed by the Respondent- 'M/s. Ajanta Flat Owners' Association'.

10. In effect, order (s), passed by the Adjudicating Authority appointing any 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the 'I&B Code' is dismissed. Learned Adjudicating Authority will now close the proceeding. The appellant 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

11. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

12. Let photocopy of the 'Terms of Settlement' be kept on record.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g