

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1016 of 2019

IN THE MATTER OF:

Vishal Gupta

...Appellant

Versus

M/s Aanav Construction & Anr.

...Respondents

Present

For Appellants: Mr. Ritesh Khare and Mr. Rahul Adlakha, Advocates.

For Respondents: Mr. Amarjit Singh Bedi with Mr. Varun Chandiok, Advocates for Tata Fin. Ltd.

Mr. Rishi Singh, Advocate with Mr. Pawan Kr., IRP.

**Mr. Saurabh Kalia, Ms. Saloni Purohit and Mr. Rajiv Malik and Mr. Mohi Gupta, Advocates for Intervener Applicant.
Mr. Akash Gupta, Advocate.**

O R D E R

23.01.2020 'M/s Aanav Construction Co'. moved an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code'), pursuant to which the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench by impugned order dated 20th September, 2019 initiated 'Corporate Insolvency Resolution Process' against 'Shri Balaji Infradevelopers Private Limited'.

2. On 1st October, 2019, when the matter was taken up, learned Counsel for the Appellant submitted that except 'Contract Agreement' with regard to

the performance, no document was enclosed in 'Form 5' by the 'Operational Creditor' to suggest that there is a 'debt' payable, neither any bill nor any Invoice was raised. However, from the record we find that the 'Corporate Debtor' has issued 'Work Order' and 'Work Completion Certificate' and parties were allowed to settle the matter in view of the fact that 'Committee of Creditors' was not constituted.

3. An application under Rule 11 of the NCLAT Rules, 2016 is filed by the Appellant, enclosing copies of certain settlement and acknowledgement. One of the record suggests that the Settlement Agreement has been reached on 13th January, 2020 with M/s Tata Motors Finance Limited (Formerly known as Sheba Properties Limited). Another Settlement Agreement reached on 13th January, 2020 with M/s Akashganga Infraventures India Limited (Formerly known as RV Akash Ganga Infrastructure Limited). Third Settlement Agreement dated 11th January, 2020 brought on record to suggest that settlement has been reached with Mr. Sourabh Aggarwal, Proprietor of M/s S S Enterprises. Fourth Settlement Agreement is dated 11th January, 2020 brought on record to suggest that settlement is made with M/s Sumit Consultant & Contractor.

4. The Appellant has also enclosed four acknowledgements signed by Mr. Hemant, Sr. Executive – Accountants; Mr. Praveen Kumar, General Manager – Civil; Mr. Rahul Jha, Head – Accounts and Taxation; and Mr. Muzaffer Hussain Ghazali, Executive Director – HR & Admin, who had also filed claims. Thereby, eight Agreement of Settlement or acknowledgement of payments have been enclosed by the Appellant.

5. Learned Counsel for the Appellant produced an email dated 22nd January, 2020 of GS Steels to suggest that the amount due to him has already been paid and appropriated by them. Another email dated 16th January, 2020, shows that SREI Equipment Finance Ltd. has arrived at settlement in view of order of this Appellate Tribunal dated 2nd January, 2020.

6. A Settlement Agreement dated 18th January, 2020 has been produced to suggest that M/s Translite Scaffolding Limited has reached 'Terms of Settlement' with one of the Directors of the 'Corporate Debtor'. So, three more documents relating to settlement has been placed before us.

7. Mr. Amarjit Singh Bedi, learned Counsel appearing on behalf of Tata Motors Finance Ltd. accepts that the settlement has been reached with the Promoters. Mr. Saurabh Kalia, learned Counsel appearing on behalf of Akashganga Infraventures India also submits that settlement has already been reached and amount has been paid.

8. Mr. Rishi Singh, learned Counsel appearing on behalf of 'Interim Resolution Professional' - Mr. Pawan Kumar Goyal informs that total 11 claims of aforesaid persons/ Companies were collated. In regard to those aforesaid claims, the Appellant has produced the Agreement(s) or acknowledgement of payment or settlement. He further submits that 'Committee of Creditors' has not been constituted as the Promoters were allowed to settle with all the Claimants.

9. Learned Counsel for the 'Interim Resolution Professional' informs that 'Interim Resolution Professional' has incurred cost of Rs.1,25,000/-

approximately towards expenditure and publication etc. and engagement of Counsel on different dates. This apart, he has also worked for about four months.

10. In view of the aforesaid submissions, we assess the total fee payable to the 'Interim Resolution Professional' at Rs.2,00,000/-, which he is entitled to receive in addition to Rs.1,25,000/- already incurred towards cost, i.e., total Rs.3,25,000/-. The 'Operational Creditor', who initiated the proceedings has already paid a sum of Rs.1,00,000/- to the 'Interim Resolution Professional', which will be adjusted against his fee. The rest of the amount of Rs.2,25,000/- is payable, which the Appellant agrees to pay. The learned Counsel for the Appellant submits that he has come with a cheque of Rs.1,00,000/- and the rest amount, if allowed, will be paid within fifteen days.

11. In view of the aforesaid facts that the Promoters have settled the claim of all the 11 Claimants and the 'Committee of Creditors' has not been constituted, we in exercise of powers conferred by Rule 11 of the NCLAT Rules, 2016 set-aside the impugned order dated 20th September, 2019 and dispose of the application under Section 9 of the I&B code preferred by M/s Aanav Construction Co. as withdrawn. Shri Balaji Infradevelopers Private Limited ('Corporate Debtor') is released from the rigour of 'Corporate Insolvency Resolution Process'. The 'Interim Resolution Professional' will handover all the premises, assets and records of the 'Corporate Debtor' to the Promoters. The Appellant is directed to pay the rest of the amount of Rs.1,25,000/- in favour of the 'Interim Resolution Professional' within 15

days. We have noticed that cheque of Rs.1,00,000/- has already been handed over to the IRP today.

12 The Appellant is directed to comply with the 'Terms and Conditions' as reached with the parties pursuant to settlement. If amount is not paid, it will be open to the parties to move before this Appellate Tribunal for revival of the 'Corporate Insolvency Resolution Process'/ initiation of contempt proceedings.

13. The Appeal is allowed with the aforesaid observations and directions. No costs. Let copy of the emails and the Settlement Agreements as produced in Appellate Tribunal today, be kept on record.

[Justice S. J. Mukhopadhaya]
Chairperson

[Shreesha Merla]
Member (Technical)

Ash/GC