

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 669 & 689 of 2019**

**IN THE MATTER OF:**

**1. Rajesh Kumar Agarwal, Son of  
Ramjilal Agarwal, Residing at Flat No. 3E,3,  
Lower Rowdown Street, Police Station:  
Ballygunge, Kolkata – 700020;**

**2. Smt. Kavita Agarwal, Wife of Rajesh  
Kumar Agarwal, Residing at Flat No. 3E, 3  
Lower, Rowdown Street, Police Station:  
Ballygunge, Kolkata – 700020;**

**3. Chayank Agarwal, a minor represented  
By his father and natural guardian Rajesh  
Kumar Agarwal, residing at Flat No. 3E,3,  
Lower Rowdown Street, Police Station:  
Ballygunge, Kolkata-700020;**

**...Appellants**

**Versus**

**1. M/s Srivani Merchants Pvt. Ltd.,  
A company incorporated under the  
Companies Act, 1956 and having its  
Registered office at 12/2, Sovaram Bysack  
Street, 1<sup>st</sup> Floor, Police Station:  
Burrabazaar, Kolkata-700007**

**2. M/s RLA Holdings Pvt. Ltd.,  
A company incorporated under the  
Companies Act, 1956 and having its registered  
Office at 545, G.T.Road, 1<sup>st</sup> Floor,  
Howrah-711101.**

**...Respondents**

**For Appellant: Mr. Indranil Ghosh, Mr. Palzer Moktan and  
Mr. Akash Yadav, Advocates**

**For Respondent: Mr. Nikhil Jain, Advocates for R-1**

**ORDER**

**18.03.2020** Heard Learned Counsel for the Appellants and for Respondent No. 1. This Appeal has been filed by the Appellants and they have challenged two orders passed by the Adjudicating Authority (NCLT) Kolkata Bench, in CP (IB) No. 616/KB/2017. One order is dated 16<sup>th</sup> May, 2019 (Annexure A1) by which order the Adjudicating Authority passed orders of Liquidation and the other order is dated 17<sup>th</sup> May, 2019 passed by the Adjudicating Authority by which the Liquidator was changed who had been earlier appointed vide order dated 16<sup>th</sup> May, 2019.

2. The grievance of the Appellants is that they had filed three applications before the Adjudicating Authority. One was for impleadment, the second was to consider them as Resolution Applicants and the third claimed that the Appeal Proceedings of 'CIRP' were vitiated because of fraud attracting Section 65 of Insolvency and Bankruptcy Code, 2016 (IBC In Short). The Learned Counsel submits that without deciding the applications of the Appellants, the Adjudicating Authority proceeded to pass orders of Liquidation as period for completing 'CIRP' had come to an end and no Resolution Plan had been received.

3. The Learned Counsel for the Appellants states that the controversy revolves around Flat No. 3E, 3 Lower Rowdon Street, Police Station – Ballygunge, Kolkata. According to Learned Counsel, this property belonged to the father of the Appellants namely Mr. Ramjilal Agarwal and he had incorporated the Corporate Debtor M/s RLA Holdings Pvt. Ltd.. It is stated that subsequently, there was oral family arrangement in 2013 and this Flat was allotted to the

Appellants and the Appellants are in possession since the time of allotment. The Appellants are neither shareholders nor directors of the Corporate Debtor.

4. The Learned Counsel has argued that the Application under Section 7 of Insolvency and Bankruptcy Code, 2016 was filed by Original Financial Creditor 'M/s Srivani Merchants Pvt. Ltd.' against the Corporate Debtor- M/s R.L.A. Holdings Pvt. Ltd.. Subsequently, the Application came to be admitted and when public notice was issued by the IRP, the Appellants had come to know about the admission of such Application under Section 7 of IBC. It is stated that when the IRP sought possession of the Flat from the Appellants, the Appellants had resisted and claimed that the Flat did not belong to the Company and had moved Application before Adjudicating Authority. Learned Counsel states that the Application remained pending and the 'CIRP' continued and ultimately Liquidation orders have been passed and it is stated that now Liquidator wants to take over the property.

5. When we ask the Learned Counsel for Appellant to show as to how the property is claimed to be belonging to the Appellants, the Learned Counsel merely referred us to Annexure A7 page 316 which is copy of Plaint of Title Suit No. 85 of 2015 filed in the Court of Second Civil Judge Sr. Division at Alipor. It is stated that the Suit is still pending.

6. The Learned Counsel states that the Application which was filed by the Financial Creditor was a collusion between the Financial Creditor and Directors of the Corporate Debtor as they are aware that the only asset of the Company is the concerned Flat. The Learned Counsel states that one Uttam Chand Choudhary had signed the Application under Section 7 as authorised representative of the said Financial Creditor 'M/s Srivani Merchants Pvt. Ltd..

This aspect is not disputed. The Learned Counsel has then referred to page 61 of the Appeal, where there is Directors report for the year ending 31<sup>st</sup> March, 2014 (Annexure A4) to point out that the Directors report accompanied by the Auditor's Report shows that the same Mr. Uttam Chand Choudhary has been the Chartered Accountant of the Corporate Debtor. It is thus, claimed that there was collusion between the Original Financial Creditor and the Directors of the Corporate Debtor.

7. The Learned Counsel for the Respondent submits that this Mr. Uttam Chand Chaudhary is CA also of the Original Financial Creditor 'M/s Srivani Merchants Pvt. Ltd.' and is not any shareholder or director of M/s Srivani Merchants Pvt. Ltd. and it is stated that there is no question of any collusion and the said Mr. Uttam Chand Choudhary was only acting due to profession.

8. The Learned Counsel for Respondent further claims that the property concerned is property of the Corporate Debtor and thus, the Appellants have no cause to hold on to the property.

9. Having gone through the matter, we refer to the Title Suit filed by the Appellants themselves where in Para 9 'c', it is clearly stated by these Appellants that the concerned Flat mentioned above is standing in the name of defendant No. 10 (In that Suit) i.e. is the present Corporate Debtor. The said paragraph reads as under:

“c.The property situated at Flat No. 3E, 3, Lower Rowdon Street, Police Station- Ballygunge, Kolkata- 700020, within the aforesaid jurisdiction standing in the name of the defendant No. 10 would stand exclusively allotted to the plaintiff no. 1 exclusively. The said property is morefully mentioned and described in Schedule A hereto.”

10. The Appellant in that Suit sought decree of declaration that they are in lawful possession in terms of the family arrangement and the same can not be disturbed. The Learned Counsel for the Appellant adds that in the Suit Interim Order is passed in favour of the present Appellants.

11. The Learned Counsel for Respondent No. 1 states that the Balance-sheets of the Company for the last so many years shows the concerned Flat as the property of the Corporate Debtor.

12. Having heard, Learned Counsel for both the sides, we do not find that only because Mr. Uttam Chand Chauodhary was CA of the Corporate Debtor and happens to be CA also of the Original Financial Creditor who filed Application under Section 7 of the IBC, one can jump to a conclusion of collusion especially, when nothing is shown that the said Uttam Chand Choudhary has any shares or is Director of the Original Financial Creditor. Still, further material would be required to be shown to claim collusion between the Said Financial Creditor and the Directors of the Corporate Debtor. Merely on assumption, fraud can not be said to have been prima facie indicated for the Adjudicating Authority to further take cognizance of the averment made. When the property belongs to the Company, (which the suit filed by Appellants itself shows) we do not find that there was any sufficient cause for the Appellants to resist the Resolution Professional when the Resolution Professional in discharge of duties under IBC wanted to proceed against the property and take it over. Same is the position with regard to the Liquidator.

13. The Learned Counsel for the Appellant is referring to the Judgment in the matter of “Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta and Others” (2019) 2 SCC and referred to Para 86 and Para 116 to submit that considering

the object of the provisions of IBC, efforts should be made to save the Company and if there is a Resolution Applicant opportunity should be given to the Resolution Applicant for submitting the Resolution Plan and effort should be made to save the Company. The Learned Counsel states that the Appellant had filed Application before the Adjudicating Authority to consider Appellants as Resolution Applicants. It is stated that the Adjudicating Authority did not pass orders even on that application. It appears to us that the Provisions of IBC require that a prospective Resolution Applicant must approach the Resolution Professional by filing expression of interest and then following the procedures of IBC and the Regulations and complete compliances regarding the tendering of the Resolution Plan. Nothing of this sought has admittedly been done. Without moving Resolution Professional & CoC filing of application to Adjudicating Authority is not the solution. The learned counsel for Appellant states that as 180 days were already over the Appellants could not follow this procedure. When admittedly, the necessary procedure was not followed during the course of 'CIRP' as required by the Provisions of IBC and the Regulations, such belated offer can not be said to be bona fide. Merely expressing that I am ready to file Resolution Plan is not sufficient for taking cognizance of such offer.

14. There is no substance in the claim of Appellants when it is stated that Section 7 filed was collusive as no challenge to admission order was ever made. Appellants have failed to show that the flat does not belong to the Company. There are no bona fides in the claim that Appellants should be treated as Resolution Applicants.

15. Considering the facts of the present matter, we do not find that we have any reason to interfere in the Impugned Order by which the Liquidation Orders have been passed. There is no substance in the Appeal. The Appeal is dismissed.

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

[V.P. Singh]  
Member (Technical)

Basant B./md/