

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.794 of 2019

IN THE MATTER OF:

Manish Saxena

...Appellant

Versus

Pushpanjali Realms and Infratech Ltd.

...Respondent

For Appellant: Shri S.N. Gautam, Advocate

For Respondent: None

O R D E R

16.12.2019 The learned Counsel for the Appellant states that the Respondent has been served by public Notice but still nobody is present.

2. We have heard the learned Counsel for the Appellant. The Appellant filed Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC – in short) before the Adjudicating Authority (National Company Law Tribunal, Allahabad Bench, Allahabad) claiming that he had booked Holiday Home in the project of Respondent - Pushpanjali Realms and Infratech Ltd. It is stated that towards this purpose, the Appellant transferred Rs.10 Lakhs vide RTGS dated 25th August, 2015 as can be seen from Statement of Account of the Appellant maintained with the Yes Bank (copy of which has been filed with the Appeal at Page – 46). It is stated that towards the same purpose another payment was made of Rs.15 Lakhs by RTGS on 27th August, 2015 to the Respondent Company for the aforesaid project. The Counsel states that as the Appellant did not get possession of the Holiday

Home, the Appellant filed the Section 7 Application before the Adjudicating Authority. The Counsel states that the Appellant had earlier on 21st August, 2018 through e-mail and also speed post, sent Notice to the Corporate Debtor (copy of which has been filed at Page - 54). It is stated that the Notice was received but the Corporate Debtor did not return the money which is clear from letter from Yes Bank, copy of which has been filed.

3. The Adjudicating Authority in the Impugned Order observed as under:-

- “12. Heard the arguments of the learned counsel for applicant and perused the documents filed with the petition. The applicant has filed proof of RTGS of 10 Lakhs on 25.08.2015 and 15 Lakhs on 27.08.2015 to Corporate Debtor and statement of bank account in addition to a confirmation from the bank that the amount has not been refunded by the Corporate Debtor. Further, unsigned payment plans of Corporate Debtor for a scheme called Orchid Park has been filed which prescribes the payment plan. Petitioner has charged interest @ 24% for computing total amount of outstanding dues. However, letter of allotment of flat or any letter of agreement between applicant & Corporate Debtor or any acknowledgement of debt by Corporate Debtor has not been filed. Learned counsel for the applicant stated that there is no written agreement and money was transferred on the basis of oral agreements.
13. The Date of Default is stated to be 24.08.2018. It is not clear how the Date of default is arrived at in absence of an agreement of allotment/agreed date of completion of construction or the agreed date of handing over the possession of flat.
14. The petitioner did not produce any relevant document/ Agreement entered between the parties to show that the money advanced to buy Holiday Homes/ Flat was deposited at the demand and for formal request of Corporate Debtor Company and it stipulates such express

terms and conditions. It is left open to the applicant to withdraw himself from such deal at his own and still demand refund of money invested with commercial rate of interest. Therefore, it is not clear that such deposit of money towards purchase of Holiday Home is having effect of commercial borrowing or an advance to agreement to sale. In case of breach of the term of a sale agreement, the remedy of applicant lied elsewhere and this Adjudicating Authority is not expected to enforce specific performance of the contract under the discipline of the I & B Code which is meant for resolution of Corporate Debtor and not necessarily to act as a Recovery Forum.

15. Therefore, applicant has failed to furnish any documentary proof that the debt is due and payable and to establish that corporate debtor owes petitioner a financial debt against consideration for time value of money and there is a default.”

4. For the above reasons, the Adjudicating Authority did not find that the Petition was maintainable. Before us also, we find that the Appellant is unable to show anything other than the RTGS entry of transferring of money to the Corporate Debtor. The money sent by RTGS can be for any or various purposes and does not necessarily go to prove that a Holiday Home was booked and for that purpose, the money was paid. Ordinarily, one would expect the party making any such big payments to have some agreement or some receipt or any such document showing booking of the Holiday Home. However, nothing of that sort is coming on record. As such, we find the above reasons recorded by the Adjudicating Authority are well founded. In the circumstances, we are unable to take any other view than what has been taken by the Adjudicating Authority.

There is no substance in the Appeal. The Appeal is dismissed.

The Appellant would be at liberty to pursue any other legal remedy available to the Appellant.

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

[Kanthi Narahari]
Member (Technical)

/rs/sk