

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

**Company Appeal (AT) (Insolvency) No. 752 of 2018**

**IN THE MATTER OF:**

**Guneet Pal Singh Majitha**

**...Appellant**

**Vs.**

**Sh. Dharmendra Kumar**

**...Respondent**

**Present: For Appellants: - Mr. Harish Taneja, PCS.**

**For Respondent: -Mr. Rohit Rathi, Advocate.**

**O R D E R**

**11.04.2019—** The Appellant- 'Guneet Pal Singh Majitha' filed claim before the 'Resolution Professional' of 'IAP Company Pvt. Ltd.'- ('Corporate Debtor') and claimed to be a 'Financial Creditor'. The 'Resolution Professional' refused to recognise the Appellant as a 'Financial Creditor' which has been affirmed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench- III, by impugned order dated 23<sup>rd</sup> October, 2018.

2. Learned counsel for the Appellant referred to the 'Agreement to Sell' dated 1<sup>st</sup> March, 2017 reached between the Appellant and the 'Corporate debtor'. The aforesaid Agreement shows that 'Guneet Pal Singh Majithia' is a 'Purchaser' and 'IAP Company Pvt. Ltd.'- is the Owner of office space bearing unit no. OSF-203, OSF-204A and OSF-204B situated on 2<sup>nd</sup> Floor at, Palam Trianggle, Palam Vihar, Gurgaon, Haryana, admeasuring

Contd/-.....

5139 sq. ft. The 'Corporate Debtor' agreed to sell the said property for a sum of Rs. 3,75,00,000/- (Rupees Three Crore Seventy Five Lakhs Only), out of which, the Appellant paid Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs Only) as advance money. The Paragraph 11 of the said Agreement reads as follows:

*“11. Subject to payment of balance timely payment and fulfilment of if the SELLER is unable to transfer the property the possession of the SAID PROPERTY on the stipulated date, the PURCHASER reserves the right to get the sale deed executed through specific performance however it is specifically agreed between the parties that the seller can return the advance money to the purchaser with the time span of 120 days subject to an additional payment of 30% p.a. (to be calculated on a pro rate basis of the time lapsed) towards interest in addition to repayment of the amount advanced for purchase of property. It is also specifically agreed between the parties that in case the seller desires to refund the advance money than a minimum interest of 5.5% of the advance given by the purchaser will be paid by the seller towards opportunity cost of fund used in addition to repayment of the advance amount irrespective of the date money is being returned by the Seller. To be more specific it means that in case the Seller returns the money in 60 days then pertaining to the minimum clause above interest payable to the PURCHASER shall be 5.5% not 5% because of the minimum interest clause as mentioned above.”*

3. From the aforesaid agreement, it is clear that the Appellant is an 'allottee' and further the Agreement suggest that the amount was disbursed by him towards the consideration of time value of money.

Thus, we hold that the Appellant comes within the meaning of 'Financial Creditor'.

4. The 'Resolution Professional' has appeared and has not disputed the aforesaid fact that the Agreement was signed between the 'Corporate Debtor' and the Appellant.

5. For the reasons aforesaid, we set aside the impugned order dated 23<sup>rd</sup> October, 2018 passed by the Adjudicating Authority and direct the 'Resolution Professional' to treat the Appellant as a 'Financial Creditor' for all purposes.

The appeal is allowed with aforesaid observations and directions.

No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

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

(Kanthi Narahari)  
Member(Technical)

Ar/g