

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 259 of 2019

IN THE MATTER OF:

**Sukhbeer Singh,
Ex-Director, Maple Realcon Private Limited** **...Appellant**

Vs.

**Mr. Dinesh Chandra Agarwal
Resolution Professional,
Maple Realcon Pvt. Ltd. & Ors.** **...Respondents**

**Present: For Appellant: - Mr. Mrinal Harsh Vardhan and Mr. Kartik Sarin, Advocates.
Mr. Johnson Subba and Mr. Nakul Mohta, Advocate for Resolution Applicant.**

**For Respondents: - Ms. Anju Jain, Ms. Namita Jose, Ms. Prachie Jain and Ms. Riya Dhingra, Advocates for R-3.
Mr. Prabhat Kumar, Mr. Rajesh Kumat, Advocates.
Mr. Shobhan Mahanti, Advocate.**

O R D E R

04.09.2019— The ‘Corporate Insolvency Resolution Process’ against ‘M/s. Maple Realcon Pvt. Ltd.’- (‘Corporate Debtor’), a Real Estate Company, was initiated on 18th July, 2018. Public announcement was made on 27th July, 2018 and the claims were verified on 14th August, 2018. In the said case, the Appellant- Mr. Sukhbeer Singh, Director of the ‘Corporate Debtor’ jointly filed an application along with the ‘Operational Creditor’ praying for termination of the ‘Corporate Insolvency Resolution Process’ in view of the settlement arrived at between the parties.

2. It was brought to the notice of the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, that the said settlement was reached on 30th July, 2018. However, it is not disputed that while the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code:” for short) was admitted on 18th July, 2018, no such plea was taken by the ‘Corporate Debtor’ at that point of time.

3. Learned counsel for the Appellant submits that the said order was passed *ex parte*. However, it is not in dispute that the ‘Operational Creditor’ appeared but he had not stated that already matter has been settled. In any case, the Adjudicating Authority taking into consideration the fact that there are large number of allottees who have filed the claims and by impugned order dated 22nd February, 2019, refused to exercise inherent power under Rule 11 of the National Company Law Tribunal Rules, 2016 and allowed the Appellant to take advantage of Section 12A of the ‘I&B Code’ to enable the ‘Operational Creditor’ to withdraw the application if the ‘Committee of Creditors’ with 90% of the voting shares approved the proposal.

4. The present appeal was kept pending for decision by the ‘Committee of Creditors’ and it is informed that the ‘Committee of Creditors’ has not approved the proposal under Section 12A as at least 90% of the voting shares is required.

5. Learned counsel appearing on behalf of the Appellant submits that the ‘Committee of Creditors’ has not explained the viability and feasibility

about Section 12A proposal, but we are not inclined to accept such submissions for the following reasons:

(i) The question of going into the viability, feasibility and the conditions as prescribed by the 'Insolvency and Bankruptcy Board of India' relates to 'Corporate Debtor'; and

(ii) Such question of viability and feasibility and other condition prescribed by the Board relates to 'Resolution Plan' and not the proposal for settlement under Section 12A.

6. The case in hand do not relate to 'Resolution Plan' but relates to application under Section 12A, therefore, the aforesaid question of viability and feasibility not required to be mentioned while approving or rejecting the proposal under Section 12A.

7. For the aforesaid reasons, we are not inclined to remit the matter to the 'Committee of Creditors' for reconsideration of the same.

8. This apart, as more than 330 days have already crossed after initiation of the 'Corporate Insolvency Resolution Process' (admitted on 18th July, 2018), we are not inclined to grant any relief as sought for. The appeal is dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

Ar/g