

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 221 of 2019

IN THE MATTER OF:

Rahul Sayal

...Appellant

Vs.

S.S. Conbuild Pvt. Ltd.

...Respondent

Present: For Appellant: - Present but not marked attendance.

For Respondent: - Mr. Ashish Dholakia and Mr. Saurabh D. Karan Singh, Advocates.

O R D E R

04.12.2019— The Appellant- Mr. Rahul Sayal, an allottee ('Financial Creditor') filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'S.S. Conbuild Pvt. Ltd.'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-II, by impugned order dated 24th January, 2019, rejected the application, giving rise to the present appeal.

2. Learned counsel appearing on behalf of the Appellant submitted that a sum of Rs.1,21,26,500/- was due to be paid which has not been paid to the Appellant in spite of reminder given on 9th September, 2016.

Contd/-.....

3. However, according to the Respondent, the allottee wanted principal amount of Rs.90,12,000/- which was paid back to the Appellant and no amount is due.

4. The Adjudicating Authority noticed that against the admitted debt, the Respondent paid a sum of Rs.15,00,000/- vide Cheque No. 445884 dated 20th May, 2015. The Respondent further paid a sum of Rs.45,00,000/- to the Appellant through three different cheques dated 14th July, 2015, 23rd July, 2015 and 7th November, 2015.

5. After filing of the application before pronouncement of the order, the Respondent paid a sum of Rs.10,00,000/- vide Cheque No. 966085 and further amount of Rs.11,00,000/- and finally principal amount of Rs.91,14,500/- was paid back to the Appellant.

6. According to counsel for the Appellant, as per the Agreement, the Respondent was supposed to return amount with interest and thereby further amount of Rs.91,14,500/- was payable.

7. However, we are not inclined to accept such submissions in the matter of an Infrastructure Company, if an allottee wants to get back the money and not the flat. It is not the case of the Appellant that they were not offered a flat or a structure and therefore, the Appellant wanted back the amount paid to it. In fact, the Appellant asked for cancellation of the

allotment and thereby sought for return. In such situation, according to us, the Application under Section 7 was not maintainable as the Appellant itself never wanted flat but wanted return of its amount. The principal amount having been paid back, the Adjudicating Authority has rightly rejected the application under Section 7.

We find no merit in this appeal. It is, accordingly, dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

(Justice Venugopal M)
Member(Judicial)

Ar/g