

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 92 of 2018

IN THE MATTER OF:

Rajneesh Nagar

...Appellant

Versus

Anuj Saxena & anr.

...Respondents

Present:

For Appellant :

**Mr. Virendra Ganda, Senior Advocate assisted by
Mr. P.K. Mittal, Ms. Nibruti Samal and Ms. Shreya
Jain, Advocates**

O R D E R

26.03.2018 This appeal has been preferred by Mr. Rajneesh Nagar, Director of M/s. Bulland Realtor Pvt. Ltd. (Corporate Debtor) against order dated 6th March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench whereby and whereunder an application preferred by 1st Respondent Mr. Anuj Saxena under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ' I&B Code') has been admitted, order of moratorium has been passed and the Resolution Professional has been appointed with certain directions.

2. Earlier, when the matter was taken up learned counsel for the appellant submitted that the application under Section 7 was not maintainable. There

being no default, as the 'Corporate Debtor' had earlier handed over post-dated cheques in favour of the 1st Respondent.

3. On notice, Mr. S. N. Gautam, Advocate appeared on behalf of 1st Respondent. It is accepted that the post-dated cheques were handed over to the 1st Respondent prior to filing of the application under Section 7. The aforesaid fact was not brought to the notice of the Adjudicating Authority. In the meantime, one Mr. Sunil Kumar Pathak, Resolution Professional has been appointed and taken charge of the 'Corporate Debtor'.

4. A joint affidavit has been filed by the parties showing therein 'the terms of compromise', relevant portion of which reads as follows:

"3. That the Appellants shall pay total of Rs.32,75,000/- (Rupees Thirty Two Lakh Seventy Five Thousand only), Rs. 7,00,000/- (Seven Lakh Only) in terms of the settlement deed dated 08th March, 2018, which is on record at page No. 112 of present Appeal. Respondent has already in possession of Cheque of Rs. 25 lacs being cheque No. 000104 payable at Bank of India Deoli Khanpur Branch, New Delhi. That the Appellant and its Directors undertake that aforesaid cheque of Rs. 25 lacs shall be cleared on or before 30.04.2018. Another cheque of Rs. 75000/-, being Cheque No. 000564 dated 29.03.2018, payable at

Bank of India Branch – Deoli Khanpur, Delhi is given to the Respondent.

4. *That Appellant and Respondent based on the compromise and the undertaking, which has been given before this Hon'ble Appellant Tribunal by the Director of the Appellant Company, through affidavit, now wishes that the appeal may kindly be allowed by setting aside order dated 6.3.2018 but, however, without prejudice to the rights of the Respondent No. 1 Mr. Anuj Saxena to receive a total sum of Rs. 25,75,000 (Rs. Twenty Five Lacs Seventy Five Thousand only) on or before 30.04.2018 from the appellant No. 1 and/or M/s. Bulland Realtors (P) Ltd.*
5. *All the payments, cost etc. which is to be made to Insolvency Resolution Professional shall be borne and paid by M/s. Bulland Realtors (P) Ltd.*
6. *That the present Joint Application is made in the interest of justice and is bonafide.*

5. Having heard the learned counsel for the parties and taking into consideration the fact that the 1st Respondent had received the post-dated cheques prior to filing of application under Section 7, we are of the view that the application preferred by the respondents was not maintainable.

6. For the reasons aforesaid and in view of the joint compromise petition filed by the parties, we set aside the order dated 6th March, 2018 passed by the Adjudicating Authority. The terms of the compromise be treated to be directions of this Appellate Tribunal. On failure it will be open to the 1st Respondent to file an application under Section 7 as also a petition for initiating contempt proceedings.

7. As agreed by Mr. Virendra Ganda, learned Senior Counsel for the appellant and Mr. Sunil Kumar Pathak, Resolution Professional, the Corporate Debtor will pay a lump sum of Rupees Five Lakhs towards fee of the Resolution Professional and additional sum of Rs. One Lakh towards expenses within ten days. The appeal stands disposed of with the aforesaid observation and directions. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc