NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 26 of 2022

IN THE MATTER OF:

Bela Gujrati & Ors. **...Appellants**

Versus

Gajesh Labhchand Jain & Anr. **...Respondents**

Present:

For Appellants: **Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms. Geetika Sharma and Mr. Sujal Gupta, Advocates.**

For Respondents: **Ms. Khushboo Shah Rajani and Mr. Ayush J Rajani, Advocates for R-1.**

With

Company Appeal (AT) (Insolvency) No. 67 of 2022

IN THE MATTER OF:

Dyaneshwar Chaudhari & Anr. **...Appellants**

Versus

Gajesh Labhchand Jain & Ors. **...Respondents**

Present:

For Appellants: **Mr. Aman Varma, Mr. Kunal Tandon and Ms. Richa Sandilya, Advocates.**

For Respondents: **Ms. Khushboo Shah Rajani and Mr. Ayush J Rajani, Advocates for R-1**

Mr. Sumesh Dhawan, Ms. Vatsala Kak and Ms. Geetika Sharma, Advocates for R-2 to 5.

Mr. Gaurav Shrawat and Ms. Bhavika Thakkar, Advocates for Intervenor.

O R D E R
(Virtual Mode)

08.03.2022: Both these Appeals have been filed against the same judgment of the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court No. V dated 17.11.2021 passed in I.A. No. 107/2021 which was filed by the Resolution Professional. By the order dated

Cont'd..../

17.11.2021, the Adjudicating Authority while disposing I.A. No. 107/2021 following directions have been passed in Para 37:-

> *"37. In view of the above the Bench directs the following:*
>
> *a. Removal of R3 to R7 form CoC and also as financial Creditor/ Home-Buyer, as there is no debt own to them by the Corporate Debtor company and purported infusion of funds by each of these Respondent were retuned back to them through their related parties (relatives) on the same day of the next day by Respondent Number 1 and 2 who are suspended directors of the Corporate Debtor company.*
>
> *b. These transactions of purported creditors are vitiated by fraud, therefore all these transactions are declared as null and void.*
>
> *c. The Resolution Professional (RP) to reconstitute the CoC after cancelling the entire voting rights of R3 to R7 in view of the fraud committed by these Respondents with an intention to defraud the Corporate Debtor company"*

2. We may first notice the facts in the Company Appeal (AT) (Ins.) No. 26 of 2022. This Appeal has been filed by four Appellants who are arrayed as Respondents in I.A. No. 107/2021. The Appellants' case in the Appeal is that all Appellants are Homebuyers and they have paid different amounts to the Corporate Debtor. Appellant No. 1 has submitted claim for amount of Rs.30,55,000/- in Form CA while Appellant No. 2 has filed claim of

Rs.15,00,000/-, Appellant No. 4 has filed claim of Rs.31,55,000/- and Appellant No. 4 has filed claim for Rs.31,55,000/-. The aforesaid all claims of the Appellants were admitted by the Resolution Professional. Committee of Creditors (CoC) was formed in which Appellants were assigned different voting rights in value of the amount admitted. I.A. No. 107/2021 was filed by the Resolution Professional praying that the Appellant alongwith one other should be removed from the CoC and entire voting rights of the Appellants be cancelled. The Appellants' case is that in I.A. No. 107/2021 notices were issued and they had filed their replies on 29.05.2021, 31.05.2021 and 01.06.2021. It is submitted that written submissions were also filed by the Appellants' on 19.07.2021 after the order was reserved on 16.07.2021. The Adjudicating Authority by the impugned order has directed for removal of Respondent Nos. 3 to 7 from the CoC and also as Financial Creditor – Home Buyer. The reason given by the Adjudicating Authority in the impugned order is with regard to an amount of Rs.10 Lakhs which was paid by the Appellant, that there is circuitous transaction by which the amount was returned back to the relatives of the Appellant.

3. Learned counsel for the Appellant challenging the order impugned submitted that the findings recorded by the Adjudicating Authority are without considering the reply filed by the Appellants and the Adjudicating Authority has committed error in observing that no reply has been filed by these Appellants. It is submitted that without there being reply, the Adjudicating Authority committed error in returning findings against the Appellants. Learned counsel for the Appellants further submitted that the

amount which was admitted by the Resolution Professional was much more than Rs.10 Lakhs as noted above and on the alleged ground of circuitous transaction of Rs.10 Lakh they should not have been removed from the CoC.

4. Learned counsel for the Appellants in Company Appeal (AT) (Ins.) No. 67 of 2022 also submits that he was also one of the Respondent in the Application filed by the Resolution Professional where serious allegations have been made that they have rooted back money to the relatives of Respondent no. 3 to 7 which amounts to Rs.70 lakhs. Further, it is submitted that they have filed their reply on 07.05.2021 and also filed written submission on 19.07.2021.

5. Learned counsel for the Resolution Professional refuting the submissions made by counsel for the Appellants submits that reply in so far as Appellants in Company Appeal (AT)(Ins) No. 26 of 2022 is concerned a copy of the written submission and an unsigned copy of reply was served to the Resolution Professional. He, however, does not dispute that the claim of the Appellants was admitted, submits that the Adjudicating Authority passed order on the basis of circuitous transaction of Rs.10 Lakhs. With regard to Company Appeal (AT)(Ins) No. 67 of 2022, learned counsel for Resolution Professional submits that ex-directors have no locus to challenge the order impugned and the Company Appeal (AT)(Ins) No. 67 of 2022 which deserves to be dismissed having lack of locus.

6. We have considered submissions of learned counsel for the parties and perused the record.

7. From perusal of the order passed by the Adjudicating Authority, it is clear that Adjudicating Authority has made observations against the

Appellants and one of the premise on basis of which the order has passed recording finding against the Respondents (Appellants herein) that they have not filed any reply. In para 35 of the judgment following has been observed:

> *"35. The Bench also notes that from amongst these alleged home buyers/ Respondents only R7 (Meena Gokhle) has submitted a reply to this fraudulent application. The Bench note that the contention of R7 are feeble and baseless. R7 mentions that the allegations against them is devoid of any corroborative evidence and that no material of conclusive evidence has been put up against the aforesaid mentioned allegation"*

8. We further notice that in para 22 of the judgment the Adjudicating Authority proceeded on the premise that entire money invested by the Appellants – home buyers have been rooted back to the relatives of Respondent No. 3 to 7. The discussion is only with regard to alleged Rs.10 Lakhs which finding has been recorded without considering the reply. The Resolution Professional who was also before the Adjudicating Authority, it was his duty to point out that Rs.10 lakhs is not the total amount paid by the Appellants and claim admitted by the Resolution Professional was also larger amount as claimed by the Appellants. The Adjudicating Authority from the observations in the impugned order noted in Para 22 indicate that Adjudicating Authority was under impression that the entire money invested by the Home Buyers have been rooted back to the relatives of Respondent No. 3 to 7, which is

obviously not the position and the same ought to have been cleared by the Resolution Professional before the Adjudicating Authority.

9. In so far as Company Appeal (AT) (Ins.) No. 67 of 2022 is concerned, we also do not agree with the submission of the Resolution Professional that Ex-Directors have no locus to file the Appeal. In the Application I.A. No. 107/2021 which was filed by the Resolution Professional it was clearly sought that Respondent No. 1 and 2, who are the Ex-Directors, be directed to contribute Rs.70 Lakhs back to the Corporate Debtor. When order was sought for contribution of Rs.70 Lakhs form the Ex-Directors and the Adjudicating Authority in the impugned order has made observations against the Suspended Directors also, we see no reason to accept the submission that Ex-Directors have no locus to challenge the order. Observation that transactions are vitiated have serious consequences which can very well be questioned by the aggrieved person.

10. We make it clear that we have not entered into the merits of the allegations made or claim made in the application of the Resolution Professional or Reply which was submitted by the Appellants before the Adjudicating Authority. At this stage, we are of the view that the Adjudicating Authority should reconsider the application after considering the reply submitted by the Appellants and after hearing them afresh. The order passed by the Adjudicating Authority which is also passed on the ground that no replies have been submitted by the Appellants deserves to be set aside and is hereby set aside. The matter is remitted to the Adjudicating Authority to pass fresh order in I.A. No. 107/2021 in CP (IB) 2995/MB/2019 after considering

the replies filed by the Appellants as well as after giving fresh opportunity of hearing to both the parties. We make it clear that we may not understood to be expressing opinion on the merits of the matter and it is for the Adjudicating Authority to take appropriate decision on the application. Both Appeals are allowed accordingly.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Archana/nn