NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 417 of 2022

IN THE MATTER OF:

Sandeep Sood **... Appellant**
Director of M/s. Seitz India Private Limited
A-6/4, DLF, City-1, Near Qutab Plaza,
Gurgaon-122002.
Presently residing at
R/0 73, New Manglapuri,
Mehrauli,
New Delhi-110030.

Versus

1. Seitz GmbH **... Respondent No. 1**
Gutenbergstr 103,
65830 Kriftel, Germany

2. Atul Kumar Kansal **... Respondent No. 2**
Resolution Professional
of Seitz India Pvt. Ltd.,
SCO-61, 3 Floor, Old Judicial Complex,
Sector – 15. Civil Lines, Gurgoan-122001.

3. LOTUS IMPORTS **... Respondent No. 3**
Prop. Mr. Sandeep Sood,
73, New Manglapuri, Near Andheria Mor,
MG Road, New Delhi-110030.

4. SIMRAN TECHNOLOGIES PVT. LTD. **... Respondent No. 4**
Prop. Mr. Sandeep Sood,
73, New Manglapuri, Near Andheria Mor,
MG Road, New Delhi-110030/

5. PARUL SOOD **... Respondent No. 5**
W/o Sandeep Sood,
A-6/4, DLF City-1, Near Qutab Plaza,
Gurgaon- 22002

Present:

For Appellant: **Mr. Abhishek Kaushik, Mr. Ritesh Khatri, Advocates.**

For Respondents: **Mr. Swapnil Gupta, Advocate for R-1.**
Mr. R.K. Gupta, Ms. Swarlipi Deb Roy, Advocates and Mr. Arun Kumar Kansal, CA for R-2.

ORDER
(Date:05.05.2022)
(Virtual Mode)

[Per.: Dr. Alok Srivastava, (Member Technical)]

This appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short called 'IBC') challenging the order dated 12.1.2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in CA No. 574 of 2019 in CP (IB) No. 252/ND/2019 (hereinafter called the impugned order). The Adjudicating Authority has allowed CA No. 574/2019 and directed that the Appellant, an ex-Director of the Corporate Debtor, Seitz India Private Limited to transfer the money stated in CA No. 574/2019 back to the Corporate Debtor's account within two weeks.

2. The facts of the case, in brief are that an application under section 9 of IBC filed by the Operational Creditor M/s. Seitz GmbH was admitted vide order of Adjudicating Authority on 8.8.2019 and Mr. Atul Kumar Kansal was appointed as Interim Resolution Professional (IRP), who was confirmed as Resolution Professional (in short RP) by the Committee of Creditors on 26.9.2019. As the suspended Board of Directors was not cooperating with the RP in providing details of bank accounts and other financial transactions, the RP sought bank statements relating to the corporate debtor from the banks concerned. He also filed an application under section 19(2) of the IBC bearing IA No. 349/2019 regarding non-cooperation of the ex-Directors of the Corporate Debtor. Based on details provided by the concerned banks of the Corporate Debtor, the RP filed CA No. 574/2019 under sections 43, 45 and 66 of the IBC praying for the transfer of money is taken out by Mr. Sandeep Sood, ex-Director of the Corporate Debtor, back into the accounts of the Corporate Debtor within two weeks of the Impugned Order.

3. It is stated by the Appellant that certain transactions were carried out by the Corporate Debtor with Respondent No. 4/Simran Technologies, a company in which Mr. Sandeep Sood and his wife Mrs. Parul Sood are Directors and shareholders and also between

the Corporate Debtor with the company Lotus Imports, which is a sole proprietorship firm of Mr. Sandeep Sood. All these transactions amounting to Rs.63,50,000 with Lotus Imports, Rs.32,75,000 with Simran Technologies, Rs. 68,000 with Mrs. Parul Sood and Rs.17,64,785 to sundry beneficiaries was done during the period 5.2.2018 till 10.7.2018, which are within a period of 2 years prior to initiation of the CIRP on 8.8.2019 and therefore they being preferential transactions are liable to be returned to the Corporate Debtor.

4. We heard the arguments submitted by the Learned Counsel for Appellant and Learned Counsels for Respondent No. 1 and Respondent No.2 and also perused the record.

5. The Learned Counsel for Appellant has submitted that the case was proceeded ex-parte against the Appellant (who was Respondent in CA No. 574 of 2019 before the Adjudicating Authority) even though the Appellant had valid reasons regarding his absence before the Adjudicating Authority and could file his written reply detailing how the transactions were genuine and carried out in the ordinary course of business vide reply affidavit dated 10.2.2021 which was not taken on record and the matter was

thereafter listed on 26.2.2021 and subsequently on 8.4.2021 when the Adjudicating Authority recorded that 'pleadings are complete, List for hearing on 8.4.2021'. Thereafter the matter was taken up on 22.7.2021, which was during the second wave of Covid-19 pandemic, whereafter order was reserved without affording an opportunity to Appellant to make submissions regarding his defense.

6. The Learned Counsel for Appellant has argued that the Seitz GmbH provided technical knowhow, and information about the products and materials to Seitz India Private Limited. Seitz GmbH also entered into a confidentiality agreement with Simran Technologies Pvt. Ltd. under which it provided data, materials, products and technologies etc. to Simran Technologies Pvt. Ltd. Seitz GmbH as Operational Creditor filed a section 9 application against Simran Technologies Pvt. Ltd., wherein the Adjudicating Authority vide order dated 3.7.2019 in CP(IB) No. 293/ND/2018 rejected the application of Seitz GmbH. Thereafter the appeal of Seitz GmbH bearing CA AT(INS)No. 776 of 2019 was also rejected on the basis of pre-existing dispute between Seitz GmbH (Operational Creditor) and Simran Technologies Pvt. Ltd. (Corporate Debtor). He has, therefore, argued that there are disputed transactions and

payments and the monies sought to be returned from Mr. Sandeep Sood and his companies Lotus Imports and Simran Technologies Pvt. Ltd. are covered by valid business transactions and without considering the reply of Mr. Sandeep Sood in CA No. 574/2019, the correct position would not come out. He has further stated that in CA (AT) (INS) No. 776/2019, this Tribunal, the NCLAT has found that there are various business transactions between the Seitz GmbH and Simran Technologies Pvt. Ltd., which need to be looked into and are the basis of the dispute between the parties, and therefore Mr. Sandeep Sood should not be burdened with returning the money as prayed for by the RP in CA No. 574/2019.

7. The Learned Counsel for Respondent No 1 has submitted that the RP had addressed an e-mail on 13.9.2019 to Mr. Sandeep Sood and (attached at pp. 152-153 of the appeal paper book) and Mr. Alexander Seitz requesting for information regarding transactions mentioned in e-mail, which had also been sought vide RP's e-mail dated 17.8.2019 and which covered 25 transactions amounting to Rs.1,14,57,785. He has stated that Mr. Alexander Seitz through his Legal Counsel, sent a reply dated 20.9.2019 (attached at pp. 156-157 of the appeal paper book), wherein he has clearly stated that since 5.2.2018 all records, documents, assets etc. of Seitz India Pvt.

Ltd. are in the sole custody and possession of Mr. Sandeep Sood. He has also stated that the bank transactions carried out by Mr. Sandeep Sood during the period 5.2.2018 till 10.7.2018 involving M/s. Lotus Imports, Simran Technologies Pvt. Ltd. and Mrs. Parul Sood were challenged in a suit before the Delhi High Court in CS (COMM)/513/2018, IA No. 8701/2018 wherein the Hon'ble Delhi High Court vide order dated 10.7.2018 had restrained Mr. Sandeep Sood (Defendant No. 2) from withdrawing money from the two bank accounts, namely A/c no. 11450500598 and A/c no. 103705000218 (order of Hon'ble Delhi High Court attached at pp. 158-159 of the appeal paper book). He has mentioned that the order of Delhi High Court shows that Mr. Sandeep Sood had been withdrawing monies amounting to Rs.1,14,57,785 covering 25 transactions from the bank accounts of the Corporate Debtor Seitz India Pvt. Ltd. and upon receiving a restrained order of Hon'ble Delhi High Court, he stopped withdrawing monies from the said accounts. Thus, it is clear the monies were withdrawn by Mr. Sandeep Sood for which he has not provided complete and satisfactory information about their being related to business dealings. The Learned Counsel for Respondent No. 1 has also mentioned that the Appellant's Learned Counsel sought two weeks' time from the Adjudicating Authority to file his reply in CA No. 574/2019 vide order dated

16.12.2020 (attached at pp. 177-178 of appeal paper book), but did not submit the reply on time. He later submitted the reply after the case had been ordered to be heard ex-parte vide order dated 21.1.2021 (attached at page 179 of the appeal paper book). He has argued that in the absence of permission neither sought from the Adjudicating Authority nor granted, the said reply was not taken on record and vide order dated 22.7.2021 (orders were reserved in the case which were pronounced on 12.1.2022).

8. The Learned Counsel for Respondent No.1/RP has referred to the e-mail dated 19.9.2019 (attached at page 160 of the appeal paper book) to show that he had given ample opportunity to the Appellant Mr. Sandeep Sood to explain debited amounts communicated vide e-mail dated 13.9.2019 (attached at pp.152-153 of the Appeal paper book). He has also argued that the ledger account of Seitz India Pvt. Ltd. maintained by Simran Technologies Pvt. Ltd. (attached at pp 163-164 of the appeal paper book) show that monies were debited from the account of Corporate Debtor, but the purpose is not clear. He has also stated that Mr. Sandeep Sood has kept a genset purchased by the Corporate Debtor at his own and no proof of consideration paid for acquiring the genset from the Corporate Debtor has been submitted by Mr. Sandeep Sood. He has

finally argued that in the absence of any satisfactory explanation provided by Mr. Sandeep Sood regarding the transactions in question, it is clear that he debited these amounts from the bank accounts of the Corporate Debtor into his companies M/s. Lotus Imports and Simran Technologies Pvt. Ltd. and also his wife Mrs. Parul Sood and these amounts were certainly not transacted in the normal course of business as has been claimed by the Appellant.

9. The Learned Counsel for Respondent No. 2 has adopted the arguments presented by the Learned Counsel for Respondent No. 1 and urged that the money is siphoned off by the Appellant from the accounts of the Corporate Debtor should be justly returned to the Corporate Debtor as has been directed by the Adjudicating Authority vide the Impugned Order..

10. A perusal of the records submitted by the Appellant shows that vide e-mail dated 13.9.2019 addressed by the RP to Mr. Sandeep Sood and Mr. Alexander Seitz, information was sought for a list of 25 transactions amounting to Rs.1,14,57,785 whose details were given in the said e-mail (attached at pp. 152-153 of the appeal paper book). The reply from Mr. Alexander Seitz dated 20.9.2019 (attached at pp. 156-157 of the appeal paper book) states that since

5.2.2018, all records, documents, assets etc. of Seitz India Pvt. Ltd.(Corporate Debtor) are in the custody and possession of Mr. Sandeep Sood. He has also admitted that a few laptops and mobile phones submitted to Mr. Seitz by the employees of Seitz India Pvt. Ltd. who were fired by Mr. Sandeep Sood are in Mr. Alexander Seitz's custody, which he is ready to return to the RP. Mr. Sandeep Sood has not clearly replied to the e-mail dated 13.9.2019 of the RP, but has asked a counter question vide his e-mail dated 19.9.2019 (attached at pg. 154 of the appeal paper book) asking as to whom the Demand Draft for Rs.3,64,785 dated 13.12.2017 and the RTGS dated 7.5.2018 for Rs.1,400,000 were issued. He has again sent a short reply vide e-mail dated 27.9.2019 to the RP (attached at pg. 160 of the appeal paper book) submitting a ledger showing statement of accounts related to withdrawals and stating that these payments were received against supplies of goods. It is noted that the ledger submitted by Mr. Sandeep Sood was maintained by Simran Technologies Pvt. Ltd. (attached at pp.163-164 of the appeal paper book), which do not make it clear as to the purpose for which such transactions were made. Moreover, Mr. Sandeep Sood has not given any proof or evidence to the RP to establish that these payments were made against supply of goods. Similarly his e-mail dated 4.10.2019 (attached at pp.167-168 of the appeal paper book), he has stated that the Genset lying at his home has been purchased by him against value consideration from Seitz India Pvt. Ltd., but there is no mention about the consideration or any proof thereof.

11. Regarding the non-submission of reply by Mr. Sandeep Sood, we note that the proxy Counsel undertook to file reply within two weeks, when the matter in CA No. 574/2019 was taken up on 16.12.2020. But the reply was not filed and the case was listed for ex-parte hearing on 16.2.2021. While it is correct that a copy of the reply was sent to Mr. Alexander Seitz, it is clear from the order-sheet dated 22.7.2021 that the case had already been proceeded ex-parte vide order dated 21.1.2021 and no reply has come on record nor any relief is sought from the court. Thus, it is clear that the Appellant was completely remis in seeking permission of the Adjudicating Authority for taking its reply on record and hence the matter was finally adjudicated ex-parte.

12. The Learned Counsel for the Appellant has referred to the judgment of NCLAT in the matter of CA(AT)(INS) No. 776 of 2019, with Seitz GmbH as Appellant and Simran Technologies Pvt. Ltd. as Respondent to urge that there was a confidentiality agreement dated 23.3.2012 under which Seitz GmbH agreed to disclose all data,

material, product, technology etc. to Simran Technologies to enable it to manufacture and market the sale of chemical products for dry cleaning, industrial and commercial laundry etc. and it was as a result of this agreement that a settlement of accounts inter-se Seitz India Pvt. Ltd., Seitz GmbH and Simran Technologies Pvt. Ltd. was entered into through an MoU dated 25.4.2017 and thus there were certain business dealings and transactions, which were sought to be settled through this MoU. Therefore, he has urged that the monies debited from the accounts of Seitz India Private Limited/Corporate Debtor are in relation to the supplies of goods and business dealings between Seitz GmbH and Simran Technologies Pvt. Ltd. and Lotus Imports. While it is correct that the NCLT has held in CA No. 776 of 2019 that there was a pre-existing dispute between the Operational Creditor Seitz GmbH and the Corporate Debtor Simran Technologies Pvt. Ltd., it is also true that the monies taken out from the accounts of the Corporate Debtor in the present appeal were done by Mr. Sandeep Sood after 5.2.2018 when Mr. Alexander Seitz had handed over the management of the company and taken over by Mr. Sandeep Sood. The transactions that are the subject of Impugned Order were all done after 5.8.2018 and therefore, in the absence of any reply/clarification/ explanation by Mr. Sandeep Sood to explain the transactions. We do not think that the Adjudicating Authority has committed any error in inferring that the said transactions were hit by section 46 of the IBC.

13. We, therefore, come to the conclusion that the Adjudicating Authority has correctly directed Mr. Sandeep Sood, ex-Director of the Corporate Debtor to transfer the monies which are stated in paragraph 4 of the Impugned Order back to the Corporate Debtor account. He shall do so within two weeks from the date of this judgment.

14. In view of the aforesaid discussion, we find that the appeal is devoid of any merit and is, therefore, dismissed. There is no order as to cost.

(Justice Ashok Bhushan)
Chairperson

(Dr. Alok Srivastava)
Member (Technical)

(Ms. Shreesha Merla)
Member (Technical

New Delhi
05th May, 2022

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