

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**IA No.1571/23  
In  
CP (IB) No. 248/Chd/Chd/2019  
(admitted)  
Under Section 60(5) of Insolvency  
and Bankruptcy Code, 2016**

**In the matter of:**

Kone Elevators India Pvt. Ltd.

....Petitioner/Operational Creditor

Versus

Chandigarh Overseas Pvt. Ltd.

....Respondent/Corporate Debtor

**And in the matter of IA No. 1571/23**

**Tejinder Pal Setia**

Member of Suspended Board of Directors,  
Corporate Debtor/Chandigarh Overseas Pvt. Ltd.  
R/o 131, A-Block, Meera Bagh Delhi-87,

..Applicant/Suspended Director

**Versus**

**1. Kone Elevator India Pvt. Ltd.**

Through its Director/Authorised Representative  
Regd. Office at : Plot No.396,  
Phase XI, Mohali, Punjab

**2. Chandigarh Overseas Pvt. Ltd.**

Through its IRP Mr. Arvind Kumar,  
SCO No.249, Basement,  
Sector-44 -C, Chandigarh-160047

**3. Sanjeev Chadha**

S/o Ramesh Chadha  
Resident of House No.1105, Sector 21-B,

IA Nos.1571/23  
In  
CP (IB) No. 248/Chd/Chd/2019  
(admitted)

Chandigarh

...Non-applicants

**Order delivered on: 25.07.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present through Video Conferencing :**

For applicant in  
IA No. 1571/23 : Mr. Mohit Chaudhary Advocate  
Mr. Prakhar Mithal, Advocate

For respondent  
No.2 in  
IA No. 1571/23 : Mr. Atul V Sood, Advocate

For respondent  
No.3 in  
IA No. 1571/23 : Mrs. Munisha Gandhi, Senior Advocate,  
Mr. Vaibhav Sharma,

For respondent  
No.1 in  
IA No1571/23. : None

For home  
buyers/intervenors: Mr. Puneet Bali, Senior Advocate  
Ms. Sanya Thakur, Advocate  
Mr. Veer Singh, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

**ORDER**

**IA No. 1571/2023**

This application has been filed by Tejinder Pal Setia, member of Suspended Board of Directors under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the Insolvency and

IA Nos.1571/23  
In  
CP (IB) No. 248/Chd/Chd/2019  
(admitted)

Bankruptcy Board of India (Insolvency and Bankruptcy Resolution Process for Corporate Persons) Regulations 2016, read with the order dated 14.07.2023 passed by the Hon'ble Supreme Court in Civil Appeal No. 4267/2023, seeking withdrawal of the petition CP(IB) No. 248/Chd/Chd/2019 admitted under Section 9, Insolvency and Bankruptcy Code, 2016 against corporate debtor vide order dated 27.02.2023. Further for releasing the corporate debtor from the rigors of Corporate Insolvency Resolution Process and discharging the Interim Resolution Professional from his role.

2. The brief facts of the application are that during pendency of the proceedings, the parties entered into a settlement agreement dated 27.09.2021 and agreed to the following.

- a. *“That the claim amount of Rs. 92.70 Lacs was settled for an amount of Rs. 60 Lacs out of which Rs. 25 Lacs was paid immediately.*
- b. *That in case of default OC was entitled to an amount of Rs. 92.70 Lacs [less amount received] + 12% interest.*
- c. *Other terms of Contract dated 14.03.2015 was to remain intact”.*

On 15.01.2023, ex-parte arguments were heard and petition was reserved for final judgment, in the meanwhile, Mr Sanjeev Chadha entered into a contract of assignment of business debt with the operational creditor. On 22.02.2023, corporate debtor filed an application before the bench to pay the amount as per the settlement vide IA No.529/2023, however, vide order dated 27.02.2023 IA was dismissed, Section 9, Insolvency and Bankruptcy Code,2016 petition was admitted and IRP was appointed. On 27.02.2023, an email was sent by applicant to the operational creditor to take the payment in terms of settlement, however finding no suitable response, applicant preferred an appeal before the

Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi, and vide order dated 02.03.2023 and Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi was pleased to issue notice and upon deposit of Rs.35.60, lakhs Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi passed an order, "*...in the meantime, in pursuance of the impugned order dated 27.02.2023, no further steps shall be taken*". The appeal filed by the suspended director was dismissed and further appeal before the Honourable Supreme Court was filed. The order of Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi was upheld along with order that upon payment made to the operational creditor, an application under Section 12A be moved before this Adjudicating Authority and IRP will not constitute COC for next 7 days. An amount of Rs. 80,56,300/- is being offered by the Applicant. It is submitted that pay orders/RTGS is ready and can be handed over to this Adjudicating Authority as and when required. The application cannot be moved through IRP as he needs consent of the operational creditor/assignee but the assignee is not ready to give his consent. The IRP can indicate the cost of CIRP expenses which would be paid to him immediately by the Applicant.

3. It is stated by learned counsel for respondent No.2, that he does not want to file any reply in this application as it is a dispute between the applicant and respondent No.3. The respondent No.3 has filed written submissions vide Dairy No. 724 dated 20/7/2023 wherein it is stated that the present application is not maintainable as there is no settlement between the

parties and the settlement agreement dated 27.09.2021 has already failed because the applicant did not adhere to the timelines stipulated in the said agreement.

4. This fact is highlighted by this authority by disposing of IA No.529/23 on 27.02.2023 holding that the said application for settlement is not maintainable and if at all, the applicant is interested to settle the dispute, then the same can be done even after admission of the main petition bearing CP (IB) No.248/chd/chd/2019. It is further argued by learned counsel for respondent No.3 that even Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi before which the appeal was filed by the applicant against the order dated 27.02.2023 passed by this authority, an offer of Rs.35.00 Lakhs as the full and final settlement was made by the applicant which is reflected in the order 02.03.2023 passed by Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi. But, the same was also not acted upon by the applicant.

5. Thereafter, the appellant preferred an appeal before the Hon'ble Supreme Court which was dismissed vide order dated 14.07.2007 by upholding the order dated 02.03.2023 passed by the order of Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi dated 14.07.2023. Thus, it is submitted by respondent No.3 that the present application is not maintainable.

6. On the other hand, it is contended by learned counsel for the intervenor/home-buyers by Adv. Puneet Bali, Senior Advocate that the present

application is not maintainable as the same has not been filed through IRP which is required under Section 12A Insolvency and Bankruptcy Code, 2016 read with Regulations 30A of Insolvency and Bankruptcy Board of India (Insolvency and Bankruptcy Resolution Process for Corporate Persons) Regulations 2016, which are reproduced as under for ready reference:

**“Section 12A: Withdrawal of application admitted under section 7, 9 or 10.**

*12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be prescribed. IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

**Chapter-VII Conduct of Corporate Insolvency Resolution Process  
Regulation 30A: Withdrawal of application.**

*30A. (1) An application for withdrawal under section 12A may be made to the Adjudicating Authority*

*(a) before the constitution of the committee, by the applicant through the interim resolution professional;*

*(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be”.*

7. Even on merits, no case is made out in favour of the applicant as the agreement dated 27.09.2021 relied upon by the applicant is already breached as also held by Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in order dated 02.03.2023.

8. After hearing both the parties and perusal of the facts and circumstances, we are of the considered view that on merits the application in hand is not maintainable. At the outset, it is the contention of learned counsel for respondent No.3 and learned counsel for intervenors/home buyers that the application in hand is not maintainable because it is not filed through IRP.

Learned counsel for the applicant, however, contended that the application in hand is maintainable because Hon'ble Supreme Court vide order dated 14.07.2023 had observed while dismissing the appeal of the applicant that,

*"we leave it open to the appellant Tejinder Pal Setia to move an appropriate application before the NCLT, expressing his desire to liquidate and pay off the debt due to operational creditor/respondent no. 1 - M/s. Kone Elevator India Pvt. Ltd., which stands assigned to the respondent no. 3 - Sanjeev Chadha. If any such application(s) is filed, the same would be decided in accordance with law. We express no opinion in this regard and leave all questions open."*

9. Moreover, learned counsel for the applicant has also placed the judgment of Hon'ble Supreme Court passed in **Abhishek Kumar Singh Versus Huhtamaki PPL Ltd & Anr 2023 scc OnLine SC 349**, in which it is observed by relying upon the judgment of **Swiss Ribbon** decided by the Hon'ble Supreme Court that at any stage, where creditor is not well constituted, a party can approach NCLT directly in the exercise of its inherent powers under Rule 11 of NCLT 2016 allow or disallow an application for withdrawal or settlement.

10. So far as maintainability of filing the present application directly under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency and Bankruptcy Resolution Process for Corporate Persons) Regulations 2016, is concerned without commenting upon the law laid down in **Swiss Ribbons Case**, we feel that as per observation in order dated 14.07.2023 of Hon'ble Supreme Court, the applicant has moved this application before this bench, which is maintainable. Applicant has expressed

his desire to pay the entire debt due on the basis of the settlement agreement dated 27.09.2021 and he has given the detailed calculations as under:

*“That the claim amount of Rs. 92.70 Lacs was settled for an amount of Rs. 60 Lacs out of which Rs. 25 Lacs was paid immediately. That in case of default OC was entitled to an amount of Rs. 92.70 Lacs [less amount received] + 12% interest. Other terms of Contract dated 14.03.2015 was to remain intact”.*

11. Further, it is worthwhile to note that the said terms and conditions of the settlement agreement dated 27.09.2021 have already been breached. This fact is already made clear by this authority in the order dated 27.02.2023 passed in IA No.529/23 that the present applicant has not offered full and final payment for the remaining amount of Rs.15.00 Lakhs as per the agreement dated 27.09.2021.

*“payment for the remaining amount of Rs. 15 Lakhs as per agreement dated 27.09.2021 between the parties. The present applicant-Corporate Debtor has not complied with the time-lines and schedule of payment of second installment of Rs.20 Lakhs to be paid, on or before 15.12.2021 and third installment of Rs.15 Lakhs on or before 15.03.2022”.*

12. It may be noted that even applicant had no intention to act upon the agreement dated 27.09.2021. If at all he intended to comply with it then he could have done immediately after the order of admission dated 27.02.2023 passed by this Adjudicating Authority.

13. It means that terms and conditions as well as timelines as per the agreement dated 27.09.2021 were not adhered to by the present applicant. The present applicant is now insisting upon the interest at the rate of 12% for breach of the terms and conditions to be calculated with effect from 15.12.2021 but the applicant has committed a breach of terms and conditions

of the agreement dated 27.09.2021 and thereafter, preferred an appeal against the order dated 27.02.2023 passed by this authority before the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi and thereafter, again filed an appeal before the Hon'ble Supreme Court which also failed. Now, it does not lie in his mouth that he will compel respondent No.3 for implementing agreement dated 27.09.2021, which is already discarded by respondent No.3. It is settled law that if any offer is accepted by the other side only then it will be termed as agreement and agreement cannot be unilateral or one-sided. It may be noted that vide order dated 19.07.2023, it was observed by this authority that,

*“this application has been filed by Mr. Tejinder Pal Setia-Suspended Director for withdrawal of the main petition under Section 12A of the Code read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with order dated 14.05.2023 passed by the Hon'ble Supreme Court in Civil Appeal No. 4267/2023. It is stated by learned counsel for the applicant that as per terms and conditions of Settlement Agreement dated 27.09.2021, the applicant is ready to pay the remaining amount and he has also offered the bank drafts in the sum of Rs. 80,56,300/- (Rupees Eighty Lakhs Fifty Six Thousand Three Hundred Only). But on the other hand, it is stated by learned counsel for respondent No 3 that the said Settlement Agreement dated 27.09.2021 is no more in existence as the terms and conditions have not been complied with and it has been rejected by respondent No. 3. In these circumstances, one day time is given to the applicant to settle the matter with respondent No. 3. Learned counsel for applicant is directed to supply the soft copy of the application to learned counsel for respondent No. 3. Learned counsel for respondent No. 3 is also directed to seek instructions from her client regarding the offer made by learned counsel for the applicant. Let the matter be taken up tomorrow i.e. 20.07.2023 at 11:30 a.m”.*

14. However, the parties were not in agreement with each other to the offer given by the applicant/respondent No.3. Thus, it can be safely said that the application under Section 12A of the Insolvency and Bankruptcy

IA Nos.1571/23  
In  
CP (IB) No. 248/Chd/Chd/2019  
(admitted)

Code,2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency and Bankruptcy Resolution Process for Corporate Persons) Regulations 2016 is not maintainable in absence of any settlement agreement, particularly when the terms and conditions of the earlier agreement dated 27.09.2021 are breached cannot be reinforced or imposed by the applicant upon respondent No.3.

15. In the light of the discussion foregoing, it is safely concluded that the present application is without merits and deserves dismissal. Accordingly, the present application is rejected and disposed of, however, no order as to costs.

sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

July 25 , 2023  
SD/TBG