

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1503 of 2022 &
I.A. No. 4915 of 2022 & I.A. Nos. 122, 123,
124, 126, 127 of 2023

(Arising out of Order dated 11.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court - II in C.P.(IB)-1108(MB)/2019)

IN THE MATTER OF:

Rajendra Pandurang Barde
R/o Flat No.2, C/10,
Jeevan Terrace CHS Jeevan Bima Nagar,
Behind Karnataka Bank Borivalli (West)
Madapeshwar, Mumbai, Maharashtra – 400013 ... Appellant

Vs

1. Amit Steels
A Proprietary Firm, Having Registered Office at:
189/191, 505, Ravi Building,
Dr. D.N. Road, Mumbai – 400001.
2. Mr. Ranjan Garg, Resolution Professional of
Truly Creative Developers Pvt. Ltd.
Through Resolution Professional
Having its Registered Office at:
Flat No.202, Wing B, 2nd Floor, Safal Twins,
Block Punjabwadi, Sion Trombay Road, Deonar,
Mumbai Suburban, Maharashtra-400088.
3. Truly Creative Developers Pvt. Ltd.
Through Resolution Professional,
Having its registered office at:
Flat No.202, Wing B, 2nd Floor,
Safal Twins, Block Punjabwadi,
Sion Trombay Road, Deonar,
Mumbai Suburban, Maharashtra-400088. ... Respondents

Present:

For Appellant: Mr. Abhijeet Sinha, Advocate.

For Respondents: Mr. Kunal Godhwani, Advocate for R-1.

**Mr. Saurabh Kalia, Mr. Madhav Goel for
Applicant Intervenor**

Mr. Dhaval Deshpande, Adv. for Intervenor

**Mr. Anuj Singh, Mr. Gaurav H Sethi,
Mr. Anant Bajpai, Advocates for RP/R-2.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by a Suspended Director of the Corporate Debtor, challenging the order dated 11.11.2022 passed by National Company Law Tribunal, Mumbai Bench, Court – II, admitting Section 9 Application filed by the Operational Creditor – Amit Steels.

2. Brief facts of the case necessary to be noted for deciding this Appeal are:

- (i) Respondent No.1 supplied certain goods to the Corporate Debtor – Truly Creative Developers Pvt. Ltd. . The Operational Creditor gave a Demand Notice dated 09.04.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) claiming principal amount of Rs.11,23,651/- with interest. The Demand Notice was not replied. Another detailed notice dated 30.11.2018 was issued seeking total amount of Rs.18,73,937/-. Thereafter, the Operational Creditor filed Section 9 Application, claiming total claim of Rs.18,73,937/- adding interest only till 30.11.2018.
- (ii) Notices were issued by the Adjudicating Authority on Section 9 Application to the Corporate Debtor and granted time to file reply. By an order dated 26.09.2022, the Corporate Debtor was proceeded *ex-parte*. The matter was reserved on

26.09.2022 and thereafter the impugned order dated 11.11.2022 was passed admitting Section 9 Application. Challenging the said order, this Appeal has been filed by the Appellant – suspended Board of Director of the Corporate Debtor.

3. When the Appeal was taken up on 14.12.2022, learned Counsel for the Appellant submitted that the Appellant has entered into settlement with the Corporate Debtor and Rs.8.5 lacs has already been paid. On 14.12.2022, the following order was passed by this Tribunal:

“14.12.2022: Learned Counsel for the Appellant submits that after the order was passed, parties had entered into Settlement and the amount to be paid by the Appellant as per the Settlement and Rs. 8.5 Lacs has already been paid. Learned Counsel for the Operational Creditor does not dispute the same. The Application filed was only for an amount of Rs.11,23,651/-. Learned Counsel for the Appellant submits that there are also several issues pertaining on merits of the order. Submissions need scrutiny.

2. Issue Notice. Mr. Kunal Godhwani, Learned Counsel accepts notice on behalf of Respondent No.1. Let Reply be filed within three days. Rejoinder, if any, may be filed within three days thereof.

3. Learned Counsel for the Appellant submits that the Committee of Creditors has already been constituted.

4. List the Appeal on 22.12.2022.

In the meantime, no further steps be taken in pursuance of the impugned order.”

4. In the Appeal, reply has been filed by Respondent No.1 – Operational Creditor to which a rejoinder has also been filed by the Appellant. Reply

has also been filed by the Resolution Professional (“**RP**”). Several Intervention Applications have been filed in this Appeal by different Applicants claiming to be creditors of the Corporate Debtor, seeking intervention. I.A. No.4915 of 2022 was filed by M/s. Western Habitat alleging that the Applicant is a Member of the Committee of Creditors (“**CoC**”) to the Corporate Debtor with a voting share of 24.60%, which CoC was formed on 02.10.2022. I.A. No.122 of 2023 has been filed by Chetan V. Keer and Ors.; another IA No.123 of 2023 has been filed by Gunawanta Shivram Godhankar & Ors.; I.A. No.124 of 2023 has been filed by PVG Enterprises; I.A. No.126 of 2023 has been filed by Chandrakant B. Gupta and Ors.; and I.A. No.127 of 2023 has been filed by Ramesh Khimji Dedhia and Anr. All the Applicants claimed to be creditors of the Corporate Debtor and claimed to have submitted their claims to the Interim Resolution Professional (“**IRP**”) in pursuance of the publication issued by Interim Resolution Professional (“**IRP**”) on 14.11.2022 inviting claims, wherein last date of inviting claims was 25.11.2022.

5. We have heard learned Counsel for the Appellant; learned Counsel for the RP and learned Counsel for the Intervenors.

6. The learned Counsel for the Appellant challenging the order contends that the Appellant had entered into a settlement with the Operational Creditor on 07.12.2021, where the parties settled the dues. There being settlement entered into by the parties on 07.12.2021, which was acted upon, there was no occasion to admit the Company Petition and the Operational Creditor did not bring into the notice of the Adjudicating

Authority about the settlement, due to which the order was passed on 11.11.2022, admitting Section 9 Application. It is further submitted that after the order dated 11.11.2022, settlement dated 30.11.2022 has been entered between the parties, which was executed on 08.12.2022 in pursuance of which the Appellant has made payment of Rs.8,50,000/- to the Operational Creditor. The Appellant further contended that he is ready to clear all dues of the Operational Creditor.

7. The learned Counsel for the Appellant further submits that Application filed by Operational Creditor was not competent, since the Power of Attorney holder who filed the Application was not competent to file the Application as he being Power of Attorney Holder of only a sister concern.

8. The learned Counsel for the RP refuting the submissions of learned Counsel for the Appellant contends that there being no settlement between the parties nor any settlement was brought before the Adjudicating Authority, the Adjudicating Authority has rightly admitted Section 9 Application. It is submitted that in pursuance of the order dated 11.11.2022, public announcement was made by the IRP on 14.11.2022 where the last date of receiving the claims were 25.11.2022. The RP received claims from the creditors. The RP constituted the CoC on 02.12.2022 and filed the Report for the constitution of the CoC before the Adjudicating Authority vide mail dated 06.12.2022. Claim forms have been filed in Form-CA, Form-C and Form-B. It is submitted that till 03.12.2022, when the first CoC Meeting was held on 10.12.2022 and before the holding

of the first CoC Meeting, the RP has received the claims upto value of INR 1067.97 crores.

9. The learned Counsel for the Intervenor submitted that the total claims received as on date is INR 6521.18 crores. The learned Counsel for the Intervenor submitted that the Intervenor are both Unsecured Financial Creditors and Secured Financial Creditors and Financial Creditors belonging to class of Creditors as well as the Operational Creditors. Some of the Intervenor are Unsecured Financial Creditors, who have been given vote sharing in the CoC. The learned Counsel for the Intervenor submitted that the Corporate Debtor has committed serious default in completing the various projects and the CIRP of the Corporate Debtor needs to be completed. The learned Counsel for the RP as well as Intervenor submitted that any settlement with the Operational Creditors can be recognized only when it is approved by the CoC as per Section 12A of the Code read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the “**CIRP Regulations**”) by ninety per cent vote share of the CoC, since the CoC was constituted even before filing of this Appeal.

10. Insofar as, the competence of Section 9 Application by a person not authorised to file Section 9 Application is concerned, it is contended that it is a technical objection and Corporate Debtor never appeared before the Adjudicating Authority or raised any objection. The learned Counsel for Respondent No.1 has further referred to the Power of Attorney and General

Power of Attorney issued on 08.12.2018 executed in favour of Amit Ramswaroop Khemani and it was contended that inadvertently the Power of Attorney executed in respect of Amit Steels was not filed before the Adjudicating Authority and the Power of Attorney executed in respect of Bhagwati Steel Enterprises was filed before the Adjudicating Authority. No such objection has been raised before Adjudicating Authority and Mr. Amit Ramswaroop Khemani is the valid power of attorney holder of Shri Ramswaroop Gurudeo Khemani. Hence, there was no incompetency in the Application.

11. We have considered the submissions of the learned Counsel for the parties and have perused the record.

12. From the order of Adjudicating Authority, which is impugned in the present Appeal, it is clear that no reply was filed by the Corporate Debtor to both Section 8 Notice or Section 9 Application, which is noted in paragraph 4 of the impugned order, which is to the following effect:

“4. Subsequently, the Operational Creditor issued a Demand Notice dated 9th April 2018 and another detailed Notice dated 30th November 2018 was sent by the Operational Creditor demanding repayment of the entire amount due. As no payments were received, the Operational Creditor filed this Petition on 15th March 2019. No replies were filed by the Corporate Debtor to both the Notices and to this Petition.”

13. In the Appeal, reliance has been placed on some settlement with Operational Creditor dated 07.12.2022. We find that Operational Creditor

proceeded with the Application even after 07.12.2022, which indicates that Operational Creditor was not fully satisfied with the settlement, if any reached. Even according to the Appellant's case, full payment under the said settlement was never made before admission of Section 9 Application. The Corporate Debtor does not appear before the Adjudicating Authority, nor raised any defense and the debt and default is proved as held by the Adjudicating Authority, no error was committed by the Adjudicating Authority in admitting Section 9 Application.

14. In the Appeal, the Appellant has relied on another settlement entered vide Minutes of Meeting dated 30.11.2022 with Agreement dated 08.12.2022 under which the Appellant has claimed to have paid the amount of Rs.8.5 lakhs by 08.12.2022. From the facts which have been brought on record, it is clear that CoC was constituted on 02.12.2022 by the RP and the first Meeting of the CoC has also been held on 10.12.2022. After constitution of the CoC, settlement if any, needs to be approved by the CoC with 90% of vote share as per Section 12A read with CIRP Regulation 30A. Any settlement after passing of the impugned order and after constitution of the CoC is only permissible when the same is approved with 90% vote share of CoC. Hence, the settlement dated 08.12.2022, which is relied by the Appellant in this Appeal can be of no ground to interfere with the impugned order dated 11.11.2022.

15. Insofar as submission of the Appellant that Power of Attorney for Amit Steels was not filed along with Section 9 Application, suffice it to say that Power of Attorney was duly executed for Amit Steels also, which due

to inadvertent mistake was not brought on record of the Application, but has been filed in this Appeal and further Corporate Debtor did not appear before Adjudicating Authority and not raised any objection. The defect, if any, stood removed.

16. The RP has brought on record the claims received in pursuance of public announcement and the RP has stated in his reply that before holding of the first CoC Meeting, the claims upto INR 1067.97 crores were received. Some of the Intervenors are the Members of the CoC, who have filed Intervention Applications opposing the Appeal. We, thus, are satisfied that there are no grounds made out in this Appeal to interfere with the impugned order.

17. In the result of the foregoing discussions, we do not find any ground to interfere with the impugned order dated 11.11.2022. The Appeal is dismissed. Interim order passed on 14.12.2022 stands discharged.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

19th April, 2023

Ashwani