

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

I.A. No. 4657 of 2022

IN

Comp. App. (AT) (Ins.) No. 1382 of 2022

In the matter of:

Sudhanshu Tripathi

....Appellant

Vs.

RBCL Projects Pvt. Ltd. & Anr.

...Respondents

For Appellant: Mr. Abhijeet Sinha, Mr. Kaushik Poddar, Mr. Nitish K. Sharma, Advocates.

For Respondents: Mr. Devashish Bharuka, Mr. Saurabh Jain, Mr. Prayag Jain Godha, Advocates for R1.

ORDER

07.12.2022: This Appeal has been filed against the order passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) dated 14.11.2022 by which Application under Section 9 of the IBC was admitted. An Interim Order was passed on 18.11.2022. I.A. No. 4354 of 2022 was filed claiming that Settlement Agreement has entered between the parties on 15.11.2022, which may be taken on record. On 01.12.2022, when I.A. No. 4354 of 2022 came for consideration, Counsel appearing for the Operational Creditor submitted that Application I.A No. 4354 of 2022 be not proceeded further since free consent was not obtained. This Tribunal on 01.12.2022 passed following order:-

“01.12.2022: I.A. No. 4354 of 2022: This is an application filed by Operational Creditor and Suspended Director of the Corporate Debtor for disposal of this Appeal in terms of the settlement agreement dated 15.11.2022.

An affidavit has been filed by Shri Deepak Bannsal stating that settlement has not been made by free consent.

In view of the aforesaid, we are of the view that I.A. No. 4354 of 2022 need not be proceeded any further and the application is closed. We make it clear that we are not entering into allegations made by either of the parties and law will take its own course. I.A. No. 4354 of 2022 stands disposed of.

Learned counsel for the Appellant submits that the impugned order dated 14.11.2022 has been passed by the Adjudicating Authority admitting the CIRP on the basis of findings recorded in Para 25. Para 25 is as follows:

“25. In our considered view, the aforesaid e-mails raising alleged disputes are in respect of the projects Astaire Garden and Discovery Park only. There is no pre-existing dispute placed on record or produced by the Respondent with respect to the Project – Sentosa (Faridabad). As we have already noted above, the claim of the Applicant in respect of the Project – Santosa (Faridabad) is Rs.1,07,59,307/-. Since the present petition was filed on 17.05.2019, when the minimum threshold applicable was Rs 1 (one) Lakh only, we are

inclined to initiate CIR Process against the Corporate Debtor.”

Learned counsel for the Appellant submits that Appellant is ready to deposit the amount of Rs.1,07,59,307/- by way of a Bank Draft. It is submitted that there is no other claim in consideration in the Section 9 application except the one noticed in Para 25 of the impugned order.

Learned counsel for the Respondent submits that the claim of the Operational Creditor is more than Rs.1,07,59,307/-.

Be that as it may. In view of the findings in Para 25 and offer made by the Appellant, we are of the view that the Appellant be allowed to deposit the amount of Rs.1,07,59,307/- by way of a Demand Draft drawn in favour of ‘The Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi’ during course of the day before the Registrar, NCLAT.

Interim order already passed shall continue to operate.

Respondents may file Reply within two weeks. Rejoinder may be filed within two weeks thereafter.

*List this Appeal on **10.01.2023.***

In the Settlement Agreement, it has been mentioned that RTGS of Rs.2.5 Crores was made to the Operational Creditor. Learned counsel for the Operational Creditor submits that the said amount shall be deposited.

The Operational Creditor to deposit the amount of Rs.2.5 Crore by way of a Demand Draft drawn in the name of 'The Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi' within one week."

2. Now another Application I.A. No. 4657 of 2022 has been filed on behalf of Respondent No.1 stating that Respondent No.1- Operational Creditor shall abide by the Settlement dated 15.11.2022. It is to be noted that under the said Settlement, Rs.2.5 Crore was already transferred to Respondent No.1 by RTGS. In the Application, it has been stated that before the Arbitral Tribunal, the Settlement was already taken note and arbitration proceeding has been dropped. An Affidavit has been filed in support of the Application by Shri Deepak Bannsal who is present in the Court.

3. Learned Counsel for the Respondent No.1 submits that the Affidavit has been filed by the Respondent No.1 by his free will and voluntary.

4. Learned Counsel appearing for the Appellant submits that the Appellant has no objection in giving effect to the Settlement Agreement dated 15.11.2022.

5. Considering the aforesaid, we allow this I.A. No. 4657 of 2022. Settlement Agreement is taken on record. The amount deposited by the Appellant under the order dated 01.12.2022 be refunded to the Appellant.

6. In view of the order passed today, the Respondent No.1 need not deposit the amount of Rs. 2.5 Crores as directed on 01.12.2022.

7. In result, the order dated 14.11.2022 is set aside. The Appeal is disposed of accordingly.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Barun Mitra]
Member (Technical)**

Anjali/nn