

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH V

(IB)1548 (ND)/2019

In the matter of :

1. Anuradha Bhardwaj
2. Atul Bhardwaj

Both residents of:  
Flat No. 601, Krishna Kunj Apartment,  
Plot No.-14, Sector-7, Dwarka,  
New Delhi-110075, India

.....*Financial Creditors*

**VERSUS**

**G S Promoters Private Limited**  
Having its registered office at:  
C-60, Sikka House, Preet Vihar,  
Vikas Marg,  
Delhi-110092, India

.....*Corporate Debtor*

**ORDER DELIVERED ON: 27.05.2020**

**CORAM :**

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)  
Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

**For the Applicant/ Financial Creditor:** Adv Akshay  
**For the Respondent/ Corporate Debtor:**

**ORDER**

**AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**CA-168/2019-**

1. The present application is filed on behalf of Financial Creditors praying



therein to initiate proceedings of contempt of court against the directors of the respondent and subject them to a punishment in terms of the provisions of Section 73(b) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016.

2. We have heard the Ld. Counsel for Financial Creditors and perused the averments made in the application.
3. Ld. Counsel for Financial Creditors in course of arguments submitted that there was amicable settlement of disputes between the Financial Creditors as well the Corporate Debtor and in terms of settlement the Corporate Debtor was obligated to pay a settled amount of Rs. 84,35,820/- and financial creditors presented a third cheque bearing no. 002222 dated 25.11.2019 and fourth cheque bearing no. 002223 dated 11.12.2019 for an amount of Rs. 14,05,970/- each but the same was dishonoured. He further submitted that since the Corporate Debtor has failed to comply the settlement agreement and violated the order of the Adjudicating Authority therefore, liable to be punished.
4. He further submitted that in terms of settlement the matter was disposed of by this adjudicating authority on 16.09.2019, since, the terms of settlement has violated, so, the directors of respondent may be punished in terms of the provisions of Section 73(b) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016.
5. Ld. Counsel for Financial Creditors has also referred the decision of NCLAT in Company Appeal (AT) Insolvency No. 219 of 2019 and by placing reliance upon this decision he submitted that this court is competent to initiate the criminal proceedings against the directors of the Corporate Debtor.



6. At this Juncture, we would like to refer Section 236 of the IBC and the same is quoted below:-

*236: Trial of offences by Special Court:*

*236. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.*

*(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central Government or any person authorised by the Central Government in this behalf.*

*(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.*

*(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-section (2), the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial.*

7. From the plain reading of the said provision, we find that it is clearly mentioned in Section 236(2) of I B Code that no court shall take cognizance of any offence punishable under this act save a complaint made by the Board or Central Government or any person authorized by the Central Government in this behalf. We also find that trial of offence committed under this code shall be conducted by the Special Court established under Chapter XXVIII of the Companies Act, 2013.
8. Therefore, on the basis of that when we shall consider the case in hand, we are of the considered view that the offence committed under IB Code shall only be tried by special court established under Chapter XXVIII of the Companies Act, 2013 and Special Court can take cognizance to the



complaint made by the Board or Central Government or any person authorized by the Central Government in this behalf.

9. In light of that provision and the decision upon which the applicant placed reliance when we shall consider the case in hand then we find that amicable settlement has been arrived between the parties and in terms of settlement some cheques were handed over to the applicant and same was dishonoured and in terms of settlement the main application bearing no. IB-1548/ND/2019 was disposed off.
10. At this juncture, we have gone through the order dated 16.09.2019 by which main application was disposed of, and we find that liberty is given to applicant to restore the main application in the event of default of cheque getting dishonoured and with this liberty the main application stands disposed of, but instead of filing the restoration application in the event of default of cheque getting dishonoured, applicant filed this application to initiate proceedings of contempt of court against the directors of the respondent and subject them to a punishment in terms of the provisions of Section 73(b) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 but applicant fails to convince us that the violation of terms of settlement in this case comes under the disobedience of the order passed by this adjudicating authority specially when liberty was given to applicant to restore the main application in the event of default of cheque getting dishonoured. In our considered view that settlement is in between the parties, in other words, settlement agreement in between two persons and adjudicating authority never directed the persons to enter into the settlement agreement rather both the parties entered into settlement agreement and seeks permission to withdraw the main application, considering this, the permissions was granted and liberty was given to restore if there is default of payment.



11. For the reasons discussed above, in our considered view, it is not the case in which we shall refer the matter for investigation to the Central Government, therefore, decision upon which applicant placed reliance under the facts and circumstances of the case in hand is not applicable and we do not find any reason to refer the matter for investigation against the directors of the Corporate Debtor and initiate the proceedings against the Corporate Debtor who are in default in making the payment. Accordingly, CA-168/2019 stands dismissed.
12. However, liberty is given to petitioner to move an application for restoration of the main application in accordance with the provisions of law.

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**K. K. Vohra**

**(Member Technical)**

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27-05-22  
**Abni Ranjan Kumar Sinha**

**(Member Judicial)**