

Ref. No. VIPUL/SEC/FY2019-20/ 1963

January 24, 2020

The Secretary BSE Limited, (Equity Scrip Code: 511726) Corporate Relationship Department, At: 1 st Floor, New Trading Ring, Rotunda Building, PhirozeJeejeebhoy Towers, Dalal Street, Fort, Mumbai-400001	The Manager (Listing) National Stock Exchange of India Limited, (Equity Scrip Code: VIPULLTD) Exchange Plaza, BandraKurla Complex, Bandra, Mumbai-400051
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Sub: Disclosure under Regulation 30 read with Schedule III of SEBI (LODR) Regulations, 2015**Ref: Your email dated January 23, 2020 from BSE**


Dear Sir(s),

This has reference to your email dated January 23, 2020 and in continuation of our letter Ref. No. Ref. No. VIPUL/SEC / FY2019-20/1960 dated January 21, 2020, please find enclosed herewith

- Order dated January 15, 2020 passed by Hon'ble NCLT initiating CIRP
- Hon'ble NCLAT order dated 21.01.2020, directing the IRP neither to proceed with the publication nor to constitute the Committee of Creditors;
- Order dated 23.01.2020 of Hon'ble NCLT

This is for your information.

Thanking You,

Yours faithfully,
For Vipul Limited(Sunil Kumar)
Company Secretary
A-38859

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (Court-II)

(IB)-3051(ND)2019

IN THE MATTER OF:

M/s. Shambhu Agencies Pvt. Ltd.
154, Lenin Sarani, 4th Floor
Kolkata West Bengal-700013

...Financial Creditor

VERSUS

Vipul Limited,
Unit No. 201, C-50,
Malviya Nagar, New Delhi-110017

...Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 15.01.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner	:	Mr. Sandeep Bajaj and Mr. Devansh Jain, Advocates
For the Respondent	:	Mr. Ashutosh Sharma Senior Liaisoning Officer of CD



JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Shambhu Agencies Pvt. Ltd., which is a company incorporated under the Companies Act 1956, through its Authorized Representative, Mr. Samser Singh., who is duly authorized vide their Board Resolution dated 06.11.2019, with a prayer to initiate the Corporate Insolvency process against M/s Vipul Ltd. (for brevity 'Corporate Debtor').

2. The Financial Creditor namely, M/s. Shambhu Agencies Pvt. Ltd. is a Company incorporated under the provisions of the Companies Act, 1956 with CIN No. U51109WB2008PTC121300, having its registered office at 154, Lenin Sarani, 4th Floor, Kolkata-70001.

3. The Corporate Debtor, namely, M/s Vipul. Ltd. is a Company incorporated on 05.06.1991 under the provisions of the Companies Act, 1956 with CIN No. L65923DL2002PLC167607, having its Registered office at Unit No. 201, C-50, Malviya Nagar, New Delhi-110017, as per the Master Data annexed by the Financial Creditor.



4. The Authorized Share Capital of the Corporate Debtor is Rs.51,55,00,000 only and Paid-up Share Capital is Rs.11,99,84,480 only as per the averments made by the Financial Creditor.

5. It is submitted by the Financial Creditor that the present Petition arises out of the Loan acknowledgement Letter dated 28.02.2019, executed between the parties, by way of which the Corporate Debtor has acknowledged receipt of the loan amounting to Rs 50,00,000 only for a period of 181 days bearing interest @ 16% per annum with effect from 28.02.2019.

6. It is further submitted by the Financial Creditor that it had advanced the entire sum of Rs 50,00,000 to the Corporate Debtor through RTGS on 28.02.2019. It is added by the Financial Creditor that the Corporate Debtor was required to pay interest @ 16% per annum on the loan.

7. That the Financial Creditor has further annexed the Demand Promissory note dated 28.02.2019, the Loan Acknowledgement letter dated 28.02.2019 and Receipt dated 28.02.2019 duly signed by Shri. Punit Beriwal Managing Director of Vipul Ltd. as proofs of existence of the Financial Debt.

8. It is submitted by the Financial Creditor that in order to secure the amounts under the Loan Transaction, the Corporate Debtor had



issued three post- dated cheques dated 28.08.2019 towards repayment of Principal and interest (net of TDS @ 10%) :

Cheque No.	Cheque date	Cheque amount(Rs)	Cheque drawn on	Remarks
334751	28.08.2019	50,00,000	Axis Bank Limited	Principal Refund
334749	28.08.2019	1,75,561	Axis Bank Limited	Interest (28.02.2019 to 27.05.2019)
334750	28.08.2019	1,81,480	Axis Bank Limited	Interest (28.05.2019 to 27.08.2019)

9. It is further submitted by the Financial Creditor that since no repayment was received, the Financial Creditor duly presented the cheque No.334751 dated 28.08.2019 for encashment, which was dishonored with the remarks "Drawers signature not as per mandate" by the Canara Bank (Branch code 700015002).

10. It is submitted by the Financial Creditor that in view of the above it had issued a Legal Demand Notice under Section 138 of the Negotiable Instrument (NI) Act 1881 and thereafter, filed Compliant under Section 138 NI Act before Ld. Addl CMM-II at Kolkata, which is pending for adjudication.



11. It is submitted by the Financial Creditor that the Corporate Debtor has committed default in terms of Section 3(12) of IBC Code 2016.

12. That the Corporate Debtor has not filed its reply despite several opportunities. That during the Course of the arguments, the Corporate Debtor has failed to give satisfactory reasons as to why the CIR process shall not be triggered against it.

13. In the light of above facts and circumstances, the Financial Creditor has been successful in establishing the 'default' of above Rs 1 Lakh. This bench is, therefore, inclined to initiate CIR process against the Corporate Debtor.

14. In the given facts and circumstances, the present Petition being complete and having established the default in payment of the Financial debt for the default amount being above Rs.1,00,000, the Petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution



of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

15. As proposed by the Financial Creditor, this Bench appoints Mr. Shashi Agarwal as IRP having Registration No. IBBI-/IPA-001/IP-P00470/2017-18/10813 (Email: shashiagg@rediffmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

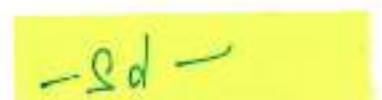
16. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.



17. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.



(L.N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (Court-II)

C.A. No. 522/2020

IN

(IB)-3051(ND)2019

IN THE MATTER OF:

M/s. Shambhu Agencies Pvt. Ltd.

154, Lenin Sarani, 4th Floor

Kolkata West Bengal-700013

...Financial Creditor

VERSUS

Vipul Limited,

Unit No. 201, C-50,

Malviya Nagar, New Delhi-110017

...Corporate Debtor

Under Rule 11 of NCLT Rules, 2016.

Judgement Delivered on: 23.01.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Sudhanshu Batra, Sr. Advocate with
Mr. Rajnish Sinha, Advocate

For the Respondent : Mr. Sandeep Bajaj and Mr. Devansh Jain,
Advocates



JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Application is filed jointly by M/s. Shambhu Agencies Pvt. Ltd. and M/s. Vipul Ltd., under Rule 11 of the NCLT Rules, 2016 for seeking the following main reliefs :

- (a) *Pass directions and permit the withdrawal of C.P. No. (IB)-3051(ND)2019 titled as "M/s. Shambhu Agencies Pvt. Ltd. Vs. M/s. Vipul Ltd., and*
- (b) *Pass directions for terminating the Corporate Insolvency Resolution Process of M/s. Vipul Ltd. initiated pursuant to order dated 15.01.2020 in C.P. No. (IB)-3051(ND)2019 titled as "M/s. Shambhu Agencies Pvt. Ltd. Vs. M/s. Vipul Ltd."*

2. The background of the case is that CIRP was initiated on an Application filed by M/s Shambhu Agencies Pvt. Ltd. under Section 7 of the IBC, 2016. The Application for initiating the CIR Process against the Corporate Debtor was admitted by this Bench on 14.01.2020.

3. That the Applicant has annexed to the application, a Settlement Deed dated 15.01.2020 by which the Parties have reportedly come to an agreement to settle all their *inter se* disputes.



4. While arguing their case, the Ld. Sr. Counsel for the Corporate Debtor, Sh. Sudhanshu Batra has placed reliance on the Judgement dated 25.01.2019 of the Hon'ble Supreme Court of India in the matter of **Swiss Ribbons Pvt. Ltd. Vs. Union of India in Writ Petition (Civil) No. 99 of 2018**, as per which at any stage where the Committee of Creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement.

5. At this stage, the Ld. Counsel for the Financial Creditor in IB No. 541/(ND)/2019 entitled M/s Vipul Green Residents Welfare Association Vs M/s Vipul Ltd., Mr. Rajiv Virmani opposed the Application on the grounds emanating from the same Judgement of the Hon'ble Supreme Court of India namely, (a) the proceeding under Section 7 and 9 before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem, and (b) the Application should be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case. He stated that by virtue of the Order of this Tribunal in IB No. 3051(ND)/2019 in the matter of M/s Shambhu Agencies Pvt. Ltd. Vs M/s Vipul Ltd., their Application vide IB No. 541/ND/2019 (M/s Vipul Green Residents Welfare Association Vs M/s Vipul Ltd.) has been ordered to be infructuous. Hence, they have become a 'concerned party' for the Application under consideration, for which they need to be heard. For



better appreciation of the argument, he read over the Para 52 of the aforesaid Judgement of the Hon'ble Supreme Court, which is reproduced below :

"52. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case."



6. He further pointed out that as per the Regulation 30A(1)(a) amended vide Notification of the IBBI dated 25.07.2019, an application for withdrawal of CIR Process, before the constitution of the Committee of Creditors (CoC), is required to be filed through Interim Resolution Professional only.

7. The Amended Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) regarding the "Withdrawal of Application" reads as below :

**30A. Withdrawal of application.*

(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:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-



(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.....”

8. After hearing submissions of both the Parties, I am of the view that as per the provisions contained in Regulation 30A(1)(a), post initiation of CIRP and before constitution of the CoC, an Application for withdrawal is needed to be made by the Applicant through the Interim Resolution Professional. Further, the Application is required to be made in the Form FA of the Schedule (under Regulation 30A) accompanied by requisite Bank Guarantee.

9. It is observed that the present Application is neither filed through the Interim Resolution Professional (IRP) nor is in Form FA as prescribed under the Regulations 30A.

10. Later, on 22.01.2020, the Parties have brought to our notice that the Hon’ble NCLAT in the Company Appeal (AT) (Insolvency) No. 104 of 2020 in the matter of Punit Beriwal (Appellant) Vs. M/s Shambhu Agencies Pvt. Ltd. & Ors. (Respondents) have *inter alia*, ordered the following :

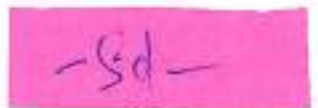
“.....In the meantime, the ‘Interim Resolution Professional’ will not issue any publication nor constitute any ‘Committee of Creditors’. The Appellant and the Promoters will hand over the records and the project to the ‘Interim Resolution Professional’ if not yet handed over.



The 'Interim Resolution Professional' will ensure that the company remains going concern and will take assistance of the (suspended) Board of Directors and the officers/Directors/employees. The person who are working will perform their duties including the paid Directors. The person who is authorized to sign the bank cheques may sign cheques only after authorization of the 'Interim Resolution Professional' with counter signature of the 'Interim Resolution Professional' at the back side of the cheques. In such case, the Bank shall release the payment. The 'Interim Resolution Profession' will place this order before the Banks, in which accounts of 'Corporate Debtor' are maintained. The Bank Account(s) of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of Current Bills of the Suppliers, Salaries and Wages of the employees'/workmen, electricity bills etc.

It will be also open to the Appellant to take up the matter with the Resident Welfare Association to settle the matter if any amount is due from one or other person in whose favour the flats/apartments have been transferred and if any amount is payable to the Resident Welfare Association from the 'Corporate Debtor', they may negotiate and settle the same."

11. In view of the above, the Application bearing No. 522/ND/2020 is dismissed as being not maintainable.



(L. N. Gupta)
Member (T)

Observation of Ms. Ina Malhotra, Member(J)

The CA-522/2020 for termination of the CIR process had come up for disposal on 16th January, 2020. On account of difference of opinion, the said CA was kept pending. While the Hon'ble Member(T) had his reservation about accepting the prayer of the Financial Creditor and Corporate Debtor, my opinion on this point was a little different. With due deference to the opinion expressed by the Hon'ble Member Technical, while adjourning the matter I was in respectful disagreement as that the prayer had to be disposed off expeditiously in view of the facts of the case. Since the decision was deferred on 16th January, 2020, the parties have since approached the Hon'ble NCLAT.

2. Brief facts on which I have based my observation are as under:

(1) Five petitions were pending adjudication against the Corporate Debtor before this Bench having been filed by Financial Creditors. The Corporate Debtor is engaged in the Business of Development of Real Estate and is stated to be a public listed company. While 4 petitions were filed by disgruntled financial claimants, the 5th petition was filed by the Resident's Welfare Association and stood.

(2). On 15th January, 2020, IB-3051(ND) 2019 filed by M/s. Shambhu Agencies Pvt. Ltd. was listed for pronouncement. At the time of pronouncement, a joint request for deferring the same was made by the ld. counsels for both the parties as a settlement had been arrived at between them. Since this Bench was

in the process of pronouncing the Admission of the petition, it was considered that an appropriate application be filed. However, the factum of the settlement was taken due note and of the following order was passed:

The matter is listed for pronouncement today. The Petition (IB)-3051(ND)/2019 stands Admitted. However, prior to the pronouncement, counsels of both sides present in court have prayed for deferment of the pronouncement on the grounds of possible settlement within 2 days. The same is not allowed.

3. On 16th instant, the present CA-522/2020 was listed praying for termination of the CIR process directed by the previous day's order. Simultaneously 4 other cases were also listed for pronouncement and were disposed off on grounds of having become infructuous granting them liberty to seek restoration of their petition in the event of the CIR process being terminated in IB-3051/2019. The 4-petitions disposed of were:

- 1 **IB-3084/ND/2019 M/s. Kashmir Motor & General Finance Pvt. Ltd. Vs. Vipul Ltd.**
- 2 **IB-2712/ND/2019 Tristar Boster Pvt. Ltd. Vs. Vipul Ltd.**
- 3 **IB-3046/ND/2019 M/s. Arissan Power Ltd. Vs. Vipul Ltd.**
4. **IB-541/ND/19 M/s. Vipul Green Residents Welfare Association Vs. Vipul Ltd.**

4. It would not be out of place to mention that counsels in IB- 2712/ND/19, IB-3046/ND/19 and IB-3084/ND/19 also brought the factum of their settlement to our notice, praying for liberty to withdraw their individual petitions.

The main resistance to the termination of the CIR process was by the Petitioner in IB-541/ND/19, being M/s. Vipul Green Residents Welfare Association. This petitioner stood on a different footing. It was brought to our notice that the Hon'ble NCLAT had in its order dated 8th January, 2020 had directed this Bench to just consider whether their claim could be considered as a Financial debt or not. Given the facts of this case, in my humble opinion, and respectful dissent with the Hon'ble Member Technical, the prayer for termination of the CIR process initiated at the instance of M/s. Shambhu filed by way of the present CA-522/2018 did merit consideration as per the law laid down by the Hon'ble Apex Court in the matter of Swiss Ribbons Vs. Union of India, Writ Petition (Civil) 99/2018 which squarely covered the facts of this case. This Bench had taken note of the settlement on 15th January 2020 itself when the matter was listed and a prayer for deferring the pronouncement was made. The formal application for termination CA-522/2020 was listed on 16th January, 2020 before commencement of any proceeding in rem. No publication was effected, no claims received, muchless the constitution of any CoC. The discretion of not using the inherent powers under Rule 11 of the NCLT rule in a situation as this, was in my humble opinion, a judicial failing. When an endeavour is being made by a Corporate Body to settle with its creditors, the prayer for termination should be considered expeditiously, law permitting. Reliance on the regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) does not impede termination of the CIR before the CoC is constituted and it certainly does not prevail upon the law laid down by the Hon'ble Apex Court in the matter of Swiss

Ribbons (Supra). Regulations are procedural guidelines and cannot surmount the law on the point of termination. Facts of every case require application of judicial discretion within the four corners of law and failing to exercise the same would be a failure to advance the cause of justice. Every case has to be considered on its merits and a rigid approach may well spell doom for a corporate body. In the present case, the Corporate Debtor is a listed public entity and the petitioners in three other cases, IBs -2712/19, 3084/19 & 3046/19 also wished to withdraw the proceedings in view of a settlement. No right had been created in rem as no publication has been made and therefore to proceed towards Corporate Insolvency Resolution Process when both parties in each individual case did not want it would be contrary to the real intent of saving the Corporate Person from its doom. Needless to observe that several other flat owners, who are not involved in this process would also get effected. Sending a Real Estate Development Company into Resolution by a decision not to terminate the CIR process when the law permits termination in the facts of the case would perhaps lead to multiplicity of legal proceedings. Further to reject a settlement on grounds that the regulations required a particular format or should be filed by the IRP is an aberration of the procedure and a curable defect. The Adjudication Authority is vested with the authority to direct that the procedure be adopted as per the regulation 30A of the IBBI rules, but to reject a settlement before constitution of the CoC on this ground, in my considered opinion is harsh and unjustified.

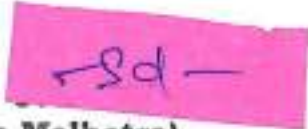
5. It would also be apt to mention that this very Bench has been permitting termination in several other cases in terms of the dictate of the Hon'ble Apex

Court in the matter of Swiss Ribbons Vs. Union Of India. I find it difficult to have an inconsistent view in this particular case when the factum of a settlement had been brought to our notice at the time pronouncement of Admission itself. The stage for praying for withdrawal/termination in this particular case was on a far better footing than in most cases where this Bench has permitted termination of the CIR process on facts permissible under the law as laid down in the matter of Swiss Ribbons and upon use of judicial discretion vested in the Tribunal (Adjudication Authority) under the NCLT rules. In my humble opinion failure to exercise inherent powers vested with the tribunal when the situation demands would be judicial indiscretion.

6. Having observed the above, I also take note of the vehement opposition by Mr. Rajiv Virmani, Ld. Counsel appearing for the petitioners in IB No. 541/2019, in the matter of M/s. Vipul Green Residents Welfare Association Vs. Vipul Ltd. Even at the time of the settlement between the parties being noted, ld. counsel had opposed it tooth and nail, though his locus to do so was questionable. He has sought to intervene in the present application (no application has been filed so far) on grounds that on Admission of the CIR process in the present case i.e. IB-3051/19, his petition was disposed of with directions to file their claim with the IRP. However, all connected cases were disposed off with the liberty to seek restoration of their petitions in the event of the CIR being terminated for reasons whatsoever. While the parties in IB-2712, 3046 & 3084 all of 2019, in addition to the petitioner in the present case, i.e. IB-3051/19 preferred a settlement, the case of the Resident's Welfare Association stands on a different footing. The

proceedings in IB-541/19 was impugned by the Corporate Debtor before the Hon'ble NCLAT. Mr. Virmani, ld. counsel for the petitioner had placed the order dated 8th January 2020 of the Hon'ble NCLAT before this Bench. In terms of the said order, this Bench was directed to first consider whether the claim of the petitioner qualifies to be considered as a "Financial debt". Since the order of Admission in IB-3051/2019 was passed, his vehement resistance towards for termination of the CIR process on ground of any settlement between the Corporate Debtor and other petitioners is understandable. Having brought the order of 8th January, 2020 to our notice, judicial propriety demands that we first adjudicate on this point before proceeding further in IB-541/2019, should the CIR process be terminated.

7. As observed above, the Corporate Debtor has now approached the Hon'ble NCLAT for consideration of their prayer for termination of the CIR process. Further directions are awaited. Interim Directions have already been given. With the above observations, I hold that CA-522/2020 has now become infructuous and is accordingly disposed off. Copy of the order be given Dasti to both parties.


(Ina Malhotra)
Member(J)

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 104 of 2020

IN THE MATTER OF:

Punit Beriwalla

...Appellant

Vs.

M/s. Shambhu Agencies Pvt. Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Sudhanshu Batra, Senior Advocate with Mr. Sarojanand Jha and Mr. Tushar Kumar, Advocates.

**For Respondents:- Mr. Rajender Gupta, Senior Advocate with Mr. Sandeep Bajaj, Mr. Devansh Jain, Advocates for R-1.
Mr. Hemant Kumar, Advocate for R-3.**

O R D E R

21.01.2020— ‘M/s. Shambhu Agencies Pvt. Ltd.’- (Financial Creditor’) moved an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘M/s. Vipul Limited’- (Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, by impugned order dated 15th January, 2020 admitted the application.

2. Learned counsel for the Appellant submits that no publication has been made by the ‘Interim Resolution Professional’ nor any ‘Committee of Creditors’ has been constituted. In the meantime, the Appellant has reached settlement with ‘Financial Creditor’.

3. Mr. Rajiv Virmani, Advocate prays for time to file intervention application on behalf of Resident Welfare Association and submits that

Contd/-.....

the flats/ apartments have been completed and already allotted as back as in the year 2007, but there are certain amounts payable to the Resident Welfare Association towards maintenance. In this regard, learned counsel for the Appellant submits that the Resident Welfare Association cannot come within the meaning of 'allottees', they having already been allotted the flats/ apartments.

4. However, we intend to hear the said issue on the next date and allow two days' time to the Resident Welfare Association to file an intervention application.

5. Mr. R.K. Gupta, Advocate appears on behalf of 'M/s. Shambhu Agencies Pvt. Ltd.' ('Financial Creditor') and accepts that the settlement has been reached.

6. Mr. Hemant Kumar, Advocate appears on behalf of the 'Interim Resolution Professional' and accepts that no publication has been made and no 'Committee of Creditors' has been constituted.

7. The Respondents are allowed two days' time to file their respective reply-affidavit along with Vakalatnama and intervention petition as ordered above.

Post the case 'for admission (fresh case)' on 29th January, 2020. The appeal may be disposed of on the next date.

In the meantime, the 'Interim Resolution Professional' will not issue any publication nor constitute any 'Committee of Creditors'. The Appellant and the Promoters will hand over the records and the project to the 'Interim Resolution Professional' if not yet handed over. The 'Interim Resolution Professional' will ensure that the company remains going concern and will take assistance of the (suspended) Board of Directors and the officers/ Directors/employees. The person who are

working will perform their duties including the paid Directors. The person who is authorised to sign the bank cheques may sign cheques only after authorisation of the 'Interim Resolution Professional' with counter signature of the 'Interim Resolution Professional' at the back side of the cheques. In such case, the Bank shall release the payment. The 'Interim Resolution Professional' will place this order before the Banks, in which accounts of 'Corporate Debtor' are maintained. The Bank Account(s) of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of Current Bills of the Suppliers, Salaries and Wages of the employees'/ workmen, electricity bills etc.

It will be also open to the Appellant to take up the matter with the Resident Welfare Association to settle the matter if any amount is due from one or other person in whose favour the flats/ apartments have been transferred and if any amount is payable to the Resident Welfare Association from the 'Corporate Debtor', they may negotiate and settle the same.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

(Justice Anant Bijay Singh)
Member(Judicial)

Ar/RR