

NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI

Company Appeal (AT) (Insolvency) No. 166 of 2021

IN THE MATTER OF:

1. Aashray Social Welfare Society

Through its President Mr. Onkar Gupta
Having its office at Plot No. 12,
Tower P-2 ATS Green Village, Sector 93A,
Noida – 201304

...Appellant No 1

2. Onkar Gupta

P1/81, ATS Green Village, Plot No. 1, Sector 93A,
Noida – 201304

...Appellant No. 2

3. Kul Bhushan Sharma

P2/12, ATS Green Village, Plot No. 1, Sector 93A,
Noida – 201304

...Appellant No. 3

Versus

Saha Infratech Pvt. Ltd.

Through Interim Resolution Professional,
Mr. Arun Jain,
Villa No. 34, Block 4, 2nd Floor,
Eros Garden, Charmwood Village,
Faridabad, Haryana, 121009

...Respondent.

Present:

**For Appellant: Mr. Abhijeet Sinha and Mr. Raghvendra Bajaj,
Advocates.**

For Respondent: None.

**ORDER
(Virtual Mode)**

08.03.2021 Heard Learned Counsel for the Appellant. This Appeal has been filed as the Learned Counsel for the Appellant submits that on 28th February, 2020 the Adjudicating Authority (National Company Law Tribunal,

New Delhi) had admitted the CP (IB) No. 1781(ND)2018 which was filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC in short) and CIRP was initiated of the Corporate Debtor-Saha Infratech Pvt. Ltd. Said Order is Annexure A-2 – Page 33. The Learned Counsel submits that one Mr. Arun Jain was appointed as Interim Resolution Professional (IRP in short). After the Order was passed, when the Appellant noticed that no notice has been issued in terms of Section 15 of IBC, the Appellant managed to contact the IRP who was appointed and learnt from the IRP appointed namely Mr. Arun Jain that he was unable to accept the Appointment as IRP of the Corporate Debtor. The Learned Counsel submits that the Appellant thereafter filed I.A. No. 3371 of 2020 on 01st August, 2020 and sought appointment of IRP in place of Mr. Arun Jain as IRP. The Learned Counsel submits that thereafter on various dates the matter had come up before the Adjudicating Authority but the Adjudicating Authority had not passed any orders.

2. It is also stated that another set of home-buyers also filed I.A. No. 3912 of 2020 for appointing IRP in place of Mr. Arun Jain but even that I.A. has been kept pending by the Adjudicating Authority. It is stated that in the meanwhile, the promoter is still in charge of the Corporate Debtor and according to the Learned Counsel, the promoter is taking benefit of the pendency of the matter before Adjudicating Authority and the present situation where no IRP has come on record to take charge.

3. The Learned Counsel submits that the Adjudicating Authority has heard the IRP and IRP stated that he does not want to function as IRP of the Corporate Debtor but instead of appointing another IRP the Adjudicating Authority has gone into the questions as to why the said IRP is not accepting the Appointment and asking said IRP why contempt be not initiated against him.

4. The Learned Counsel for the Appellant submits that when CIRP was admitted vide Annexure A-2 on the motion by Financial Creditors Indu Kumar and Ors., there were seven applications pending by Financial Creditors who are home-buyers including Applications of Appellant Nos. 2 and 3 but as the Application of Indu Kumar and Ors. was admitted, the Appellants are in difficulty as the Applicants of IB/1781/ND/2018 are not filing Application and the Adjudicating Authority did not pass any orders on the applications of other home-buyers who are moving the Adjudicating Authority to substitute the IRP.

5. We have seen the Impugned Order Annexure A-1. We have considered the facts submitted by the Learned Counsel for the Appellant. The Respondent in the present Appeal is the Corporate Debtor. In the set of facts which we have, it is not necessary for us to call the Corporate Debtor and hear the Corporate Debtor on the issue. As such it appears to us to be in the ends of Justice that we should pass orders in this Appeal giving necessary directions to the Ld. Adjudicating Authority.

6. We dispose the Appeal with directions to the Ld. Adjudicating Authority to urgently pass whatever orders the Adjudicating Authority wants to pass with

regard to appointment of IRP in place of Mr. Arun Jain who it is stated has conveyed unwillingness to take up the assignment. If the Adjudicating Authority wants to take action of Contempt regarding the conduct of IRP Mr. Arun Jain it would be open for the Adjudicating Authority to proceed with the steps regarding Contempt but CIRP initiated on 28.02.2020 cannot be kept in abeyance. The Adjudicating Authority can consider referring matter of the IRP Mr. Arun Jain to IBBI also if it wants, but should immediately pass Orders to substitute.

7. We request the Adjudicating Authority to urgently appoint another IRP (in place of earlier IRP Mr. Arun Jain who has not taken charge it appears) within 10 days, if required by taking name from the IBBI, on urgent basis. The Appeal is disposed accordingly.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

Basant B./md