

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI  
Company Appeal (AT) (Insolvency) No. 82 of 2021**

**In the matter of:**

**Kamal Uttamchand Jain & Anr. Erstwhile Directors of  
Goodwill Theaters Pvt. Ltd. ....Appellant**  
**Vs.**  
**Sunteck Realty Ltd. & Anr. ....Respondents**

**Present:**

**Appellant: Mr. Chirag Kamdar, Mr. Bipin Joshi, Mr. Tishampati  
Sen, Ms. Abhisree Saujanya, Advocates.**  
**Respondents: Mr. Pranaya Goel, Ms. Jasmine Sheth, Mr. Deepu  
Jojo, Mr. Utkarsh Kulvi, Ms. Apoorva Kaushik,  
Advocates for R1.  
Mr. Ravi Prakash Ganti, IRP**

**ORDER**

**(Through Virtual Mode)**

**11.02.2021:** The only issue raised in this appeal preferred against the impugned order dated 7<sup>th</sup> January, 2021 passed by the Adjudicating Authority (National Company Law Tribunal), Court-V, Mumbai Bench, admitting the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“I&B Code” for short) filed by the Respondent No.1 (Operational Creditor) is that the Respondent No.1 did not qualify as Operational Creditor as the debt in question did not fall within the purview of the operational debt.

2. Mr. Chirag Kamdar, Advocate representing the Appellant submits that as a sequel to the order of admission passed by the Adjudicating Authority, Interim Resolution Professional (IRP) has been appointed and Committee of Creditors (CoC) has been constituted. He submits that the parties have arrived

Contd/-.....

at settlement as Respondent No.1 happens to be the sole member constituting the COC and the Settlement Terms have been reduced to writing. If that be so, the appropriate course for the Appellant would be to approach the IRP to put the Settlement Terms before the COC for seeking exit from the Corporate Insolvency Resolution Process (CIRP).

3. Mr. Pranaya Goel, Advocate appears on behalf of the Respondent No.1. He admits the factum of the settlement having been arrived at and Settlement/ Consent Terms having been recorded yesterday.

4. Mr. Ravi Prakash Ganti, IRP appearing in person admits that the Respondent No.1 is the Sole Creditor of which the COC is comprised of. He also submits that there are seven Financial Creditors also but since they are related parties they do not qualify to be the members of the COC. His statement is taken on record.

5. In view of the factual position placed before us, we find that there is no legal impediment for the COC to entertain the Settlement Terms if they are mutually acceptable to both the parties i.e. Appellant and Respondent No.1. If IRP is approached by the Appellant and Respondent No.1 by filing the Settlement Terms in proper format, he will place the same before the COC for consideration. This may be done within two weeks.

6. At this stage, Mr. Ravi Prakash Ganti, IRP submits that the COC meeting is scheduled for tomorrow and the Settlement Terms will be placed before the COC for consideration.

7. In view of the aforesaid, this appeal does not survive for further consideration. We accordingly dispose off the appeal with liberty to the Appellant to come back if the settlement is not allowed by the Committee of Creditors. In the event of Settlement being allowed by the COC, the Adjudicating Authority will close the case and make proper provision for CIRP costs including the fee and expenses of the IRP.

Copy of this order be communicated to the Adjudicating Authority for information.

**[Justice Bansi Lal Bhat]  
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]  
Member (Technical)**

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

**AR/g**