

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

Subject: Order¹ dated 13th March 2023 of National Company Law Appellate Tribunal, New Delhi in the matter Ashmeet Singh Bhatia. Vs Sundrm Consultants Pvt. Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 557 of 2021

I. Brief Background

Mr. Ashmeet Singh Bhatia/Appellant, a homebuyer in one of the companies of the CD, namely, M/s. Granite Gate Properties Pvt. Ltd. undergoing Corporate Insolvency Resolution Process (CIRP) had filed an appeal against AA's order on an application under section 65 of the Code for malicious intention to defraud. The said application was dismissed by AA holding that application under section 65 is maintainable once the petition is admitted and CIRP has been initiated.

II. Issue

Whether an application filed under Section 65 of the Code is maintainable after the filing of the application under Section 7, 9 or 10 of the Code or could be maintainable only after the admission of such an application?

III. Observation and Analysis

NCLAT while allowing the appeal relied on the judgment of Hon'ble Supreme Court in the matter of Ramesh Kymal vs. Siemens Gamesa Renewable Power Private Limited Civil Appeal No. 4050 of 2020 and observed that in terms of section 5(11) of the Code '*initiation date*' of CIRP is the date on which FC, OC or Corporate applicant makes an application before the AA for initiation of process; and in terms of section 5(12) the '*insolvency commencement date*' is the date of the admission of the application. NCLAT held that the application under section 65 of the Code is maintainable after the filing of an application under section 7, 9 or 10 of the Code.

However, on another incidental issue of the locus standi of the appellant for filing section 65 of the Code, the matter was remanded to AA holding that such issues shall be decided by the Tribunal after giving sufficient opportunity and after due considerations of relevant facts in the given case.

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