

**Comp. App. (AT) (Ins) No. 1572 of 2023**  
**IN THE MATTER OF:**

## Versus

## ...Respondents

**For Appellants** : Mr. Chitranshul A. Sinha, Ms. Meghna Rao,  
Dhaval Deshpande, Harshit Goel, Adv.

**For Respondent** : Mr. Krishnendu Datta, Sr. Adv. with Puneet  
Singh Bindra, Parag Sawan, Rishabh  
Gupta, Alina Merin Mathew, Adv.

**Per: Justice Rakesh Kumar Jain: (Oral)**

**10.09.2024**: This appeal is against the order dated 02.11.2023, passed by the National Company Law Tribunal, Mumbai Bench, by which the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 for the resolution of an amount of Rs. 37,51,64,939/- has been admitted.

2. At the time of preliminary hearing on 05.12.2023, the following order was passed:-

“05.12.2023: Learned counsel for the Appellant submits that the Section 7 application was filed by the Financial Creditor for an amount of Rs.79,19,90,685/- out of which Rs.29.50 Crores was the Principal Amount. The Appellant reached out to the Financial Creditor offering the

settlement and according to the Appellant during the discussions an amount of Rs.42 Crore was agreed to liquidate the debt, however, no formal agreement could be entered between the parties due to which no payment could be made. It is submitted that even after passing of order, Appellant offered to act as per the discussion and offered to pay Rs.10 Crore by Bank Draft. It is submitted that the Corporate Debtor is a real estate developer company in the real estate project and Appellant is still ready and willing to liquidate the debt to revive the company. It is further submitted that one of the promoter (brother of the Appellant) has died on 18.11.2023.

Learned counsel for the Appellant submits that the Appellant is ready to deposit the amount of Rs.10 Crore in a Fixed Deposit Receipt in the name of Registrar, NCLAT within one week from today. It is submitted that the Appellant shall reach out to the Financial Creditor for settlement, if any, between the parties for liquidating the debt. It is submitted that subject to the aforesaid deposit, CoC may not be constituted to enable the parties to settle the matter in this proceeding.

Considering the facts of present case, specially the correspondence which has been taken place between the parties which is prior to passing of order dated 02.11.2023, we issue notice to the Respondents. Let Reply be filed by the Respondents within two weeks. Rejoinder be filed within two weeks thereafter.

List this Appeal on 08.01.2024.

In the meantime, CoC in pursuance of the impugned order dated 02.11.2023 shall not be constituted.

We make it clear that direction to make payment will be without prejudice to the rights and contentions of both the parties.

Appellant is allowed two weeks' time to file Certified Copy of the impugned order.

Application for exemption is disposed of accordingly. Application for exemption from filing of typed copies/dim/illegible of annexures is also disposed of subject to just exceptions.”

3. Thereafter, the Appellant filed an I.A No. 6133 of 2023 for condonation of delay of 7 days which was granted to the Appellant for depositing the amount of Rs. 10 Cr. The said application was disposed of on 02.01.2024 with the following order:-

This is an application praying for condonation of 7 days' delay in depositing the Fixed Deposit Receipt in pursuance of order passed by this Tribunal on 05.12.2023. Appellant has deposited the Fixed Deposit Receipt on 22.12.2023. Cause shown sufficient in the application, delay in depositing the Fixed Deposit Receipt is condoned. Application I.A. No. 6133 of 2023 is disposed of.

4. According to the Appellant, the amount of Rs. 10 Cr. was deposited on 22.12.2023 by way of FDR.

5. This case was being adjourned from time to time on the request of the Counsel for the Appellant for the purpose of settlement with the Respondent.

6. Lastly, on 28.08.2024 the following order was passed because there was no settlement and therefore the matter was fixed for arguments. The order dated 28.08.2023 is reproduced as under:-

“28.08.2024: On the last date of hearing, the parties were directed to file their written submission. The written submissions have been filed by the respondent but the appellant prays for more time to file the same. Adjourned to 10.09.2024, to be shown at No. 1 in the list of hearing matters because counsel for the respondent has submitted that in this case the only submission made by the appellant at the time of preliminary hearing was that it wanted to settle with the respondent but the said settlement did not take place. Hence, there is no possibility of any settlement between the parties and the case has to be heard on merits.”

7. Although, Counsel for the Appellant has tried to argue the appeal on the basis of the subsequent developments but could not convince this Court that the Appeal can be argued on the subsequent developments.

8. Therefore, Counsel for the Appellant has requested that this appeal may be allowed to be withdrawn and Rs. 10 Cr. deposited at the time when the order dated 05.12.2023 may be returned.

9. Counsel for the Respondent has not raised any objection in this regard.

10. Consequently, while dismissing this appeal as withdrawn as prayed, we allow the prayer made by the Appellant at the bar for release of Rs. 10 Cr. deposited by way of FDR on 22.12.2023.

11. It is submitted that the aforesaid FDR is lying with the Registrar of this Court.

12. In view of the aforesaid facts and circumstances, the Registrar with whom the alleged FDR is lying deposited is directed to release the same to Counsel for the Appellant (Ms. Meghna Rao, Adv.) within two weeks from today.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

**[Mr. Indevar Pandey]**  
**Member (Technical)**

Sheetal/Ravi