

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 476 OF 2023

GREEN AVENUE SOCIAL WELFARE SOCIETY ...Appellant(s)

Vs.

SANJAY KUMAR CHAUDHARY & ORS. ...Respondent(s)

O R D E R

1. Applications for Substitution and Impleadment are allowed.
2. This Civil Appeal is against the decision of the National Company Law Appellate Tribunal (NCLAT) setting aside the order of Special Bench, NCLT comprising of Single Member (Judicial), acting as the adjudicating authority admitting an application under Section 9 IBC 2016, on the solitary ground that the said Member (Judicial) has not been authorized by the President under Proviso Section 419(3) to exercise the powers of the Tribunal.
3. The appellant is an association consisting of home buyers who have invested in a real estate project called Green Avenue promoted by JBK Developers Pvt. Ltd., the corporate debtor. An operational creditor, M/S Creative Infraheights Pvt. Ltd. initiated proceedings under IBC by filing an application under Section 9 of the Code for resolution of

insolvency of the corporate debtor.

4. The application under Section 9 was listed before Court No. IV, a Special Bench of a Member (Judicial), acting as the adjudicating authority from 10.02.2020 to 14.02.2020. The Bench heard the petition on 14.02.2020 and reserved it for orders. Orders were pronounced on 17.08.2020 admitting the Section 9 application, thereby commencing the insolvency resolution process.

5. Following the initiation of Corporate Insolvency Resolution Process (CIRP), the Resolution Professional (RP) and Committee of Creditors (CoC) were appointed, and even resolution plans were submitted.

6. It is at this stage that Respondent No. 1 filed the appeal before NCLAT against the order passed by the adjudicating authority dated 17.08.2020 on the ground that it is without jurisdiction and as the Member (Judicial) could not have exercised jurisdiction of the Tribunal.

7. The NCLT by its order impugned before us allowed the appeal for the following reasons.

"11. A bare reading of Section 419(3) of the Act provides that the powers of the Tribunal is to be exercised by benches having strength of two members out of whom one shall be a Judicial Member and the other a Technical Member. However, in order to meet the exigency, there is a proviso to this section which says that, a member of the Tribunal, who is authorized by the President to function as a bench, consisting of single Judicial Member bench, in order to exercise the powers of the Tribunal in respect of a particular class of cases or

particular matters pertaining to such class of cases. However, it has to be only by a general or special order passed by the President and not otherwise. Nothing has been brought to our notice during the course of hearing that the President of the Tribunal had issue any general or special order to give power to the single member (Judicial Member) to function as a bench and nothing has been brought to our notice that the case filed by the Operational Creditor has been treated as a class of cases for the purpose of a decision by a single bench to function as a division bench."

8. We have heard Ms. Neena Nariman, Advocate for the appellant and Mr. Mukul Rohtagi and Mr. S. Niranjan Reddy, Sr. Advocates assisted by many Advocates for the respondents.

9. Section 419(3) of the Act along with its proviso is as follows:

"Section 419: Benches of Tribunal.(1) There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.

(2) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.

(3) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special, order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may

deem fit..."

10. By virtue of proviso to sub-Section 3 of Section 419, it is competent for a Member of the Tribunal to function as a Bench consisting of Single Judicial Member for exercising powers of the Tribunal. The power and competency of Single Judicial Member to exercise powers of the Tribunal shall be as authorized in this behalf by the President of the Tribunal through a general or a special order.

11. In exercise of the powers under proviso to Section 419(3) of the Act, the President of NCLT, New Delhi constituted a Special Bench of a Single Judicial Member for Court No. IV by order dated 12.02.2020. The entirety of this order is extracted herein below for ready reference.

***"File No. 10/03/2020-NCLT  
NATIONAL COMPANY LAW TRIBUNAL  
6<sup>th</sup> Floor, Block-3.  
CGO Complex, Lodhi Road,  
New Delhi-110003***

***Dated: 12<sup>th</sup> February, 2020***

***ORDER***

***There shall be Special Bench at New Delhi on 13.02.2020 & 14.02.2020 to attend the matters listed before Dr. Deepti Mukesh, Member (Judicial) and Shri Hemant Kumar Sarangi, Member (Technical). Shri Hemant Kumar Sarangi, Member (Technical) is on leave The Special Bench shall comprise of:***

***Special bench at NCLT, New Delhi-Court No. IV  
Dr. Deepti Mukesh, Member (Judicial)***

***The constitution of Bench is as per section 419(3) of the Companies Act, 2013.***

***This is in partial modification of Order of even number dated 25.7.2019 for 13.2.2020 & 14.2.2020 only.***

***This issues with the approval of Hon'ble***

*President, NCLT.*

*(Shiv Ram Bairwa)  
Registrar, NCLT"*

12. It is evident from the above that in exercise of power under proviso to Section 419(3) of the Act, the President has constituted a Special Bench at New Delhi for 13.02.2020 and 14.02.2020 comprising of Single Member (Judicial). The Member (Judicial) heard the application under Section 9 on 04.02.2020 and delivered the judgment on 17.08.2020.

13. Nothing further needs to be discussed about the legality and validity of the jurisdiction exercised by the Bench of Member (Judicial), on 14.02.2020 and 17.08.2020 than to refer to the above referred order passed by the President of NCLT under Section 419(3) of the Act on 12.02.2020.

14. It is apparent that the Appellate Tribunal did not have the benefit of the above referred notification dated 12.02.2020 before it arrived at its decision. The order impugned clearly notes that, *"nothing has been brought to our notice during the course of hearing that the President of the Tribunal had issued any general or special order to give power to the single member (Judicial Member) to function as a bench..."*.

15. In view of the above, we allow the Civil Appeal No. 476 of 2023 and set aside the final order dated 16.11.2022 passed by the National Company Law Appellate Tribunal, Principal Bench in Company Appeal (AT) (Insolvency) No. 755 of 2020. The

CIRP commenced with the order of the adjudicating authority dated 17.08.2020 shall continue and be taken to its logical conclusion.

16. We have not expressed any opinion on the merits of the matter. CIRP proceedings shall be conducted as provided in the Code and the adjudicating authority may pass appropriate orders under Section 31 of the Code after giving opportunity to all the contesting parties.

.....J.  
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.  
[ARAVIND KUMAR]

NEW DELHI;  
APRIL 23, 2024.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 476/2023

GREEN AVENUE SOCIAL WELFARE SOCIETY

Appellant(s)

VERSUS

SANJAY KUMAR CHAUDHARY &amp; ORS.

Respondent(s)

([FOR FINAL DISPOSAL].....

IA No. 261568/2023 - APPLICATION FOR SUBSTITUTION

IA No. 6404/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT

IA No. 25009/2023 - INTERVENTION/IMPLEADMENT

IA No. 6402/2023 - STAY APPLICATION)

Date : 23-04-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA  
HON'BLE MR. JUSTICE ARAVIND KUMARFor Appellant(s) Ms. Nina Nariman, Adv.  
Mr. Pawan Bhushan, Adv.  
Ms. Hima Lawrence, AORFor Respondent(s) Mr. S. Niranjan Reddy, Sr. Adv.  
Ms. Priyadarshini Dewan, Adv.  
Mr. Sumeet Kaul, Adv.  
Ms. Shankari Mishra, Adv.  
Ms. Sakie Jakharia, AOR  
Ms. Chumei Mercy, Adv.Mr. Suryanu Sengupta, Adv.  
Mr. Biju P Raman, AORMr. Mukul Rohtagi, Sr. Adv.  
Ms. Shraddha Deshmukh, AOR  
Mr. Aman Raj Singh, Adv.

Mr. E. C. Agrawala, AOR

Mr. Mukul Rohtagi, Sr. Adv.  
Mr. Sumesh Dhawan, Adv.  
Ms. Vatsalya Kak, Adv.  
Mr. Abhinav Agrawal, AOR

Mr. Anup Kumar, AOR

Mr. Subodh Prasad Deo, Adv.  
Mr. Vaibhav Prasad Deo, Adv.  
Mr. Shivama Kumar, Adv.  
Ms. Shruti Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

1. Applications for substitution and impleadment are allowed.  
Cause title be amended accordingly.
2. The Civil Appeal is allowed in terms of the Signed Order.
3. Pending application(s), if any, shall stand disposed of.

(KAPIL TANDON)  
COURT MASTER (SH)

(NIDHI WASON)  
COURT MASTER (NSH)

(Signed Order is placed on the file)