

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 957 of 2025

IN THE MATTER OF:

**Basant Kumar Upadhyay,
Ex- Director of Gardenia India Ltd.**

...Appellants

Versus

Kuber Shree Construction Company & Anr.

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha Ld. Sr. Advocate with Mr. Rishi Kumar Awasthi, Mr. Ishaan Raj, Ms. Heena Kochar, Mr. Anuj Tiwari, Ms. Kaanchi Ahuja and Mr. Vaibhav Vats, Advocates.

For Respondents : Mr. Akshay Sharma, Counsel for R1.

**Mr. Atul Bhatia, Counsel for R2, IRP along with
Mr. Narender Kumar Sharma, IRP.**

O R D E R
(Hybrid Mode)

11.07.2025: Heard counsel for the appellant and Ld. Counsel appearing for Operational Creditor as well as Ld. Counsel for the IRP.

2. This appeal have been filed against the order dated 30.06.2025 by which on an application filed by Operational Creditor under Section 9 order has been passed for admission of Section 9 application. Appellant aggrieved by the order has come up in appeal.

3. We have heard Shri Abhijeet Sinha, Ld. Counsel for the appellant, Ld. Counsel for the Operational Creditor and Ld. Counsel for the IRP. On 07.07.2025 when the appeal was taken for consideration following order was passed:-

**“O R D E R
(Hybrid Mode)**

07.07.2025: *Ld. Counsel for the appellant submitted that before the Section 9 application was admitted on 30.06.2025 parties have settled on 28.06.2025 and settlement deed was also executed. Hence, there was no debt on the date when order was passed. Counsel for the Operational Creditor is present who submits that settlement took place. Let an affidavit be filed by the Respondent no.1 within three days.*

List this appeal on 11.07.2025.

In the meantime, order dated 30.06.2025 shall remain stayed.”

- 4.** An affidavit has been filed on behalf of R1 in which affidavit from paragraph-4 to 9 following have been stated:-

“4. It is stated that during the pendency of the company petition before the NCLT, the Corporate Debtor approached the Respondent No.1 for settling the dues of the Respondent No.1 and the Corporate Debtor also sought adjournment of the hearing of the company petition before the NCLT on the ground of the same of settlement which is recorded by NCLT in its order dated 15.04.2025 and the fixed matter for hearing on 06.05.2025. The Copy of the Order dated 15.04.2025 is annexed herewith and marked as Annexure R2.

5. However, till the next date of hearing before the NCLT, the settlement between the Corporate Debtor and the Respondent No.1 was not finalised and accordingly, the NCLT vide its order dated 06.05.2025 reserved the company petition for orders. The Copy of the Order dated 06.05.2025 is annexed herewith and marked as Annexure R3.

6. It is further stated that subsequent to the order dated 06.05.2025, the settlement talks were again initiated between the corporate debtor and the Respondent No.1 and accordingly, settled the matter vide the settlement agreement dated 28.06.2025 which is already annexed with the above captioned by the Appellant and the Respondent No.1 is a signatory to the same.

7. It is stated that immediately thereafter, the company petition was listed for pronouncement before the NCLT on 30.06.2025 i.e.

the first day on the reopening of the NCLT after the summer vacations and the Respondent No.1 was not aware of the same and therefore, the Respondent No.1 was not able to apprise the NCLT that the matters stands settled between the parties and the default stated in the company petition did not exist on the date of the pronouncement of the impugned judgement by the NCLT.

8. It is further stated that on the date of the initiation of the CIRP, the default mentioned in the company petition was not in existence and the same was duly cured by the Corporate Debtor by virtue of the settlement agreement dated 28.06.2025. All the claims of the Respondent No.1 stands settled in terms of the settlement agreement dated 28.06.2025 and there was no subsisting default on the date of initiation of CIRP by the NCLT vide the impugned judgement dated 30.06.2025

9. The Respondent No.1 have no objection/grievance in case CIRP of the Corporate Debtor is set aside by this Hon'ble Appellate Tribunal. ”

Submission of the appellant is that during pendency of the application under Section 9 before the Adjudicating Authority, the Court was informed that parties are settling their issues which was noticed in the order dated 15.04.2025. Although settlement could not take place till 06.05.2025 when the matter was heard again, however, settlement took place between the parties on 28.06.2025 which settlement has been also brought on record alongwith the appeal at page-119. It is submitted that since the order was reserved on 06.05.2025 and 30.06.2025 was the first day after summer vacation, the Operational Creditor could not point out before the Adjudicating Authority that parties have settled their issues on 28.06.2025 and view of the settlement which took place on 30.06.2025 no debt was existing.

5. We have considered submission of counsel for the parties and perused the records.

6. Ld. Counsel for the Operational Creditor has filed an affidavit as noticed above where the settlement dated 28.06.2025 has already been referred and accepted, the reasons have given by the operational creditor as to why it could not be brought into the notice of Adjudicating Authority on 30.06.2025 when the orders was pronounced that the parties have settled. The present is a case where admittedly settlement took place prior to initiation of CIRP and the reason due to which the said settlement could not be informed to the court has already been mentioned by the Operational Creditor in his affidavit who has filed Section 9 application. Ld. Counsel for the IRP submits that IRP has already issued publication in pursuance of the order 30.06.2025. In the facts of the present case, we are of the view that in view of the settlement between the parties on 28.06.2025 prior to order date 30.06.2025 there were no debt existing for admission of Section 9 application hence we close the CIRP. Ld. Counsel for the appellant has undertaken to pay the fee of the IRP and expenses incurred by the IRP within two weeks from today.

7. Ld. Counsel for the IRP submitted that the total amount included fee and expenses is Rs.2,34,830/- which amount be paid within two weeks from today by a demand draft. The appeal is disposed of.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

harleen/NN