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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 11th December, 2023

+ CM(M) 2038/2023 & CM APPL. 63947/2023 (Stay)

URBAN IMPROVEMENT TRUST, ALWAR Petitioner

Through: Mr. Tishampati Sen, adv.

versus

MR. DEEPAK KUMAR AGARWAL (RESOLUTION
PROFESSIONAL OF R.S STONES PVT. LTD.) & ANR.

..... Respondents

Through: Ms. Kanicka Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 63948/2023 (Ex.)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 2038/2023

1. Learned counsel for the respondents is present on advance notice.
2. The petitioner company is assailing impugned order dated 06.01.2023 passed by the National Company Law Tribunal, New Delhi ["NCLT"], whereby in the pending winding up proceedings Committee of Creditors ["CoC"] including the petitioner have been directed to make payment towards meeting the Corporate Insolvency resolution process cost ["CIRP Cost"].



2023 DEC 08 00



3. Learned counsel for the petitioner has vehemently submitted that although they had filed a reply to the application, which was moved for payment of amount, same was lying in objections in the Registry and the NCLT did not allude to their objections that amount payable was not correctly calculated or assessed and the impugned order was passed without hearing them.

4. Learned counsel for the respondents points out that the petitioner had earlier filed CM (M) 1270/2023 and CM APPL. 40427/2023 assailing the same order dated 06.01.2023 and the same was withdrawn with liberty to pursue its remedy in accordance with law vide order dated 08.08.2023 and thereafter, although an appeal was filed before National Company Law Appellate Tribunal [“NCLAT”], the same was not even pursued and the petition remained pending in objections.

5. I am afraid it appears that the petitioner is indulging in forum shopping. The instant Civil Miscellaneous Petition is preferred under Article 227 of the Constitution of India while infact there is available an efficacious remedy of filing an appeal, which has not been preferred within the period of limitation.

6. All said and done, the impugned order relies on resolution passed by the CoC in the meeting held on 14.12.2020 vide item No. 10. The resolution reads that when the matter was put to voting, it was resolved with 94.27% of the votes that the PNB and the petitioner company i.e. UIT shall make payment @ 1% of their claim amount for meeting CIRP Cost of the corporate debtor. It is also evident from the record that the impugned order is only an interim management in



order to protect the properties of the company (in liquidation) and subject to final adjustments

7. I, therefore, see no merit in the present Civil Miscellaneous Petition and the same is dismissed.

8. The pending application also stands disposed of.

DHARMESH SHARMA, J.

DECEMBER 11, 2023

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