

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

Item No. 113
(IB)-448(PB)/2017

IN THE MATTER OF:

Rajendra Kumar Saxena

.... Applicant/petitioner

Vs.

Earth Gracia Buildcon Pvt. Ltd.

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 17.01.2019

CORAM:

CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT

DR, DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)

PRESENT:

For the Applicant/petitioner: Mr. Rakesh Kumar Singh, Adv.

For the respondent: Mr. Prashant Jain, Adv. for Corporate Debtor.

ORDER

Mr. Rajendra Kumar Saxena, an allottee of real estate project filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') before this Tribunal for initiation of Corporate Insolvency Resolution Process against 'M/s Earth Gracia Buildcon Private Limited' (for brevity 'Corporate Debtor').

2. This Tribunal comprising one of us (the President) and Hon'ble Mr. S.K. Mohapatra, Member (T) by order dated 5th March, 2018 passed in Company Petition No. (IB)-448(PB)/2017 dismissed



the aforesaid application on the ground that disbursement made by the Applicant do not come within the meaning of 'financial debt'.

3. In appeal the aforesaid judgment dated 5th March, 2018 was set-aside by the Hon'ble NCLAT vide order dated 11.09.2018 in Company Appeal (AT) Insolvency) No. 187/2018 holding in para 7 as under:-

"the Adjudicating Authority should have admitted the application in absence of any defect. As the Adjudicating Authority has failed to notice the decision of this Appellate Tribunal in 'Nikhil Mehta & Sons' Vs. 'AMR Infrastructure Ltd.' and has also failed to consider the 'Terms and Conditions' of the 'Allotment Letter' including the provision of Assured Return and the fact that the Appellant has already paid Rs.13 Lakhs in favour of the Corporate Debtor which the Respondent has defaulted to pay."

The matter was remitted back with the direction to the Adjudicating Authority-NCLT to admit Company Petition No. (IB)-448(PB)/2017, pass order of moratorium and appoint the Interim Resolution Professional as proposed by the Applicant if there is no enquiry pending against him.

4. It is pertinent to notice that in the aforesaid Company Appeal (AT) (Insolvency) No. 187/2018 Hon'ble NCLAT vide a detailed order dated 11th September 2018 it has been clearly held that the



amount invested by the applicant/allottee of real estate is covered within the meaning of expression 'financial creditor' as defined in Section 5(7) of the Code. Apparently, the learned Appellate Tribunal has taken notice of the amended provision of Section 5(8)(f) explanation of the Code w.e.f. 06.06.2018. It has also been observed that the present case is covered by the decision passed by the Appellate Tribunal in the case of *Nikhil Mehta & Sons v. AMR Infrastructure Ltd.*.. The relevant portion of the order passed by the Appellate Tribunal is reproduced below.

"6. Thereby, after amendment of the Act, the allottees of real estate project have been treated as 'Financial Creditors.

7. The present case is covered by the decision of this Appellate Tribunal in '*Nikhil Mehta & Sons*' Vs. '*AMR Infrastructure Ltd.*', as also in view of Section 5(8)(f) as amended since 6th June, 2018....." (emphasis given).

5. The applicant in the application has proposed the name of Resolution Professional, Ms. Manisha Rawat, 403-C, 4th Floor, Ocean Plaza, Sector-18, Noida, UP-201301, email id - manisharawatfcs@gmail.com. She has registration No. IBBI/IPA-002/IP-N00233/2017-18/10684. A written communication made by Ms. Manisha Rawat in terms of Rule 9(1) of the Insolvency and



Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record (at pg. 113-A). There is a declaration made by her that no disciplinary proceedings are pending against her in Insolvency and Bankruptcy Board of India or ICSI Insolvency Professional Agency. In addition, further necessary disclosures have been made by Ms. Manisha Rawat, as per the requirement of the IBBI Regulations. Accordingly, she satisfies the requirement of Section 7 (3) (b) of the Code.

6. While remitting the matter it was directed by Hon'ble Appellate Tribunal that the Adjudicating Authority-NCLT at the time of admitting the petition is only to see that no enquiry is pending against the Interim Resolution Professional. It is accordingly, seen from a perusal of written communication that no enquiry is pending against the Interim Resolution Professional as directed by the Appellate Tribunal.

7. It is further relevant to mention here that the order of the Hon'ble Appellate Tribunal is binding on us as per the principles of stare decisis and the precedents. Therefore, it will not be necessary to once again consider and deal with the petition on other factors.



8. As a sequel to the above discussion, this petition is admitted and Ms. Manisha Rawat, 403-C, 4th Floor, Ocean Plaza, Sector-18, Noida, UP-201301, email id - manisharawatfcs@gmail.com, Registration No. IBBI/IPA-002/IP-N00233/2017-18/10684 is appointed as an Interim Resolution Professional.

9. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately make public announcement with regard to admission of this application under Section 7 of the Code.

10. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;





- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

11. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12. The Interim Resolution Professional shall perform all her functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. She must follow best practices and principles of fairness which are to apply at



various stages of Corporate Insolvency Resolution Process. Her conduct should be above board & independent; and she should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by her in managing the affairs of the Corporate Debtor. In case there is any violation by the ex-management or its ex-directors the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

13. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Ms. Manisha Rawat to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for



Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

14. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.



Sd/-
(M.M.KUMAR)
PRESIDENT

Sd/-
(DEEPTI MUKESH)
MEMBER (JUDICIAL)

VINEET
17.01.2019

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Rajh : 18/1/2019
व.वि.व. राजू : V.V.B. RAJU
उप न्यायिक : DEPUTY REGISTRAR
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