

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.272 of 2024

(Arising out of Order dated 19.12.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in IA-4252/2020 & IA-4924/2021 in C.P. (IB) No.1397/PB/2019)

IN THE MATTER OF:

Amit Tyagi
S/o Mr. Lokendra Kumar,
R/o 5/24, Diwan Complex,
Delhi – 110093.

... Appellant

Vs

Indirapuram Habitat Centre Pvt. Ltd.
Through Shri Narender Kumar Sharma (Resolution Professional)
Having its registered office at:
Unit No.154, F.F.,
Aggarwal Shopping Center Plot No.2,
LSC Block-CD, Pitampura,
Delhi – 110034.

... Respondent

Present:

For Appellant: Mr. Piyush Singh, Mr. Akshay Srivastava and Mr. Vivek Kumar, Advocates

For Respondent: Present but appearance not marked.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 19.12.2023 passed by National Company Law Tribunal, New Delhi Bench (Court-II) in IA No.4252/2020 and IA No.4924/2021. The Adjudicating Authority by the impugned order rejected the IAs filed by the Appellant.

2. Brief facts necessary to be noticed for deciding the Appeal are:

- (i) The Appellant claims to be allottee of commercial space by Indirapuram Habitat Centre Pvt. Ltd./ Corporate Debtor. The Appellant was allotted different commercial units in the project developed by the Corporate Debtor. A Memorandum of Understanding (“**MoU**”) was entered between the Corporate Debtor and the Appellant, by which the Appellant was offered different shops.
- (ii) One of the MoU has been filed at Annexures A-3 dated 08.06.2016. As per the MoU, the Corporate Debtor allotted Shop No.TW-14A, on Ground Floor, Block A&B, having super area of 23.50 Sq. Mtrs. The MoU further contemplated that Company assures to the Second Party to pay lease rent for the premises till 27.01.2032. The Annexure-A to the MoU provided for amount of rent payable per month for different years. As per the MoU rent was paid to the Appellant, prior to initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor.
- (iii) By order dated 22.08.2019, CIRP commenced against the Corporate Debtor. The Respondent - Narender Kumar Sharma is working as Resolution Professional (“**RP**”)
- (iv) Applications were filed before the Adjudicating Authority being IA No.3492/2020 and IA No.3314/2020 by the allottees, asking for registration of shops in their name, which was

disposed of, noticing the submission of RP that RP has initiated Forensic Audit, which shall be looked into and verified as to who have title over the shop. The Adjudicating Authority disposed of the Applications by order dated 31.08.2020.

- (v) An Application being IA No.4252 of 2020 – Narmdeshwar Singh & Ors. vs. M/s Indirapuram Habitat Centre Pvt. Ltd. was filed by the Appellant where several prayers were made. Another Application being IA No.4924 of 2021 filed by the Appellant, where reliance was placed on the order of the Delhi High Court in CM(M) 314/2021. The RP filed reply to the IA No.4252 of 2020. The Adjudicating Authority by the impugned order refused the prayer of the Appellant seeking a direction to execute Conveyance Deed, relying on the order of the Co-ordinate Bench dated 09.01.2020. Both the IAs were rejected by the Adjudicating Authority. Aggrieved by the said order, this Appeal has been filed.

3. Shri Akshay Srivastava, learned Counsel has appeared for the Appellant. Shri Sumesh Dhawan, learned Counsel has appeared for the Respondent.

4. The learned Counsel for the Appellant, challenging the impugned order submits that the Appellant who was allottee of commercial space, has paid about 95% of the amount and he was also ready to pay the balance amount for execution of the Conveyance Deed in his favour, which was

denied by the impugned order. It is submitted that in earlier Application, the Adjudicating Authority has already passed an order on 31.08.2020 noticing the submission of the RP that after verifying the titles of the allottees, steps shall be taken. Forensic Audit having been received now, there is no impediment in execution of the Conveyance Deed. It is submitted that the Appellant was also entitled for rent of the shops, which have been let out by the Corporate Debtor to different persons as per agreed rent settled in the MoU, which rent are not being paid to the Appellant after initiation of the CIRP, whereas, earlier they were receiving monthly rent from the Corporate Debtor. The learned Counsel for the Appellant in support of his submission has relied on the judgment of this Tribunal in ***Company Appeal (AT) (Insolvency) No.350 of 2020 – Alok Sharma vs. M/s I P Construction Pvt. Ltd.***

5. Shri Sumesh Dhawan, learned Counsel appearing for the RP refuting the submissions of learned Counsel for the Appellant, contends that Appellant is not entitled for execution of the Conveyance Deed. It is submitted that in the Applications, which were filed by the Appellant before the Adjudicating Authority, in which orders have been passed, there was no prayer seeking any direction to execute the Conveyance Deed and it is during the course of the arguments that the said submission was advanced. It is further submitted that as per the MoU, the amount to which the Appellant was entitled, the said amount has been kept in the Fixed Deposit Receipt, which shall be disbursed as per the orders of the Adjudicating Authority in accordance with law.

6. We have heard learned Counsel for the parties and have perused the record.

7. The first submission of learned Counsel for the Appellant is that the Appellant's prayer seeking direction to the Adjudicating Authority to execute the Conveyance Deed in favour of the Appellant was rejected, whereas the Appellant was entitled for the said relief. The learned Counsel for the Appellant has also relied on earlier order dated 31.08.2020 passed by the Adjudicating Authority. The order dated 31.08.2020 passed by the Adjudicating Authority is as follows:

“IA-3492/2020 & IA-3314/2020

Applications filed by allottees asking for registration of shops in their names claiming themselves as bonafide purchasers of those shops, as against this, the RP says he is not sure which plot belongs to whom, because the RP himself not being in a position to come to a conclusion about the right and title of these applicants and other allottees, to get this clarity, the RP has initiated forensic audit and the report has also submitted to the RP. RP will look into that forensic audit and verify and make it clear who has title over which shop.

In the backdrop of these facts, we are of the view that we cannot decide these applications unless RP is clear about who has title over which shop. On order to ascertain this fact, the RP is directed to verify the claims and declare who is the owner of which shop. Until such time it being difficult to ascertain bonafides of these applicants, these applications are hereby disposed of with liberty to these applicants to proceed in accordance with law in the event claim of any of these applicants is rejected by the RP.

IA-3492/2020 & IA-3314/2020 stands disposed of.”

8. It is also relevant to notice the prayers made in IA No.4252 of 2020, which are as follows:

- “i) Allow the instant Application;
- ii) Direct the Resolution Professional to place before this Hon'ble Tribunal complete Forensic Audit Report and also provide a copy of the same to the Applicants;
- iii) Direct the Resolution Professional to publish the list of the shop owners as per the Forensic Audit Report and release the monthly rent wrongly withheld by the Resolution Professional;
- iv) Direct the Resolution Professional to disclose the complete list of the transaction done by the Resolution Professional since the initiation of CIRP till date and also that were duly authorized by the CoC;
- v) Direct the Resolution Professional to conduct the affairs of the Corporate Debtor and CIRP process in a time bound manner as per law;
- vi) Direct the Resolution Professional to release the pending monthly rent due and payable to the Applicants/ Financial Creditors as per their respective MoUs and also to release the monthly rent in future whenever it becomes due and payable;
- vii) Direct the Resolution Professional to deliver the possession of the units which are vacant/not rented;
- viii) Pass any other order as it deems fit in the interest of justice.”

9. Another Application, which was disposed of is IA No.4924 of 2021, where, following prayers were made:

- “i) Allow the present Application and direct the Resolution Professional to release the monthly rent/ arrears owed to the genuine buyers/ allottees in terms of the respective MoUs as per the Forensic Audit Report and the list published by the Resolution Professional as the allottees of project are

dependent on the same since the initiation of the CIRP;
and/or

- ii) Dispose of the application I.A. No.4252/2020 in C.P. (IB)-1397(PB)/2019 in terms of the order of the Hon'ble Delhi High Court passed in the case 'Narmdeshwar Singh & Ors. v. National Company Law Tribunal & Ors [CM(M) 314/2021]' expeditiously; and/or
- iii) Pass any other order as it deems fit in the interest of justice."

10. The RP has also filed his reply to the IA 4252/2020, where it has been pleaded that allottees had actually received the rent till June 2018, which is over a year prior to the initiation of CIRP. In paragraph-3, following has been stated:

- "3. That it was observed by the Resolution Professional that the Allottees who are claiming to having been receiving "**rent**" had actually received the "assured returns" from the Corporate Debtor till June 2018 only (which is over a year prior to the initiation of CIRP). The Allottees have been allegedly deprived of the assured returns since June 2018 and several of the Applicants have also had to file cases under Section 138 of The Negotiable Instruments Act, 1881 against the suspended management of the Corporate Debtor."

11. We also need to notice certain other averments made by RP in his reply to the Application, where the RP has pleaded that the RP is under no obligation under the Code to honour the arrangement which was agreed upon between the Applicants and the erstwhile management of the Corporate Debtor especially considering the fact that the said alleged arrangement was not even in force at the time of initiation of CIRP. It was further pleaded that several of the Applicants have not paid the complete

amount due and payable by them. It is further pleaded that rent received from the Lessee who are currently in possession of the units allotted to the Applicant, are paying considerably less than the alleged rent agreed between the Applicants and the erstwhile management.

12. The first submission, which has been pressed before us is the prayer of the Appellant seeking a direction to Adjudicating Authority to execute the Conveyance Deed. It is relevant to notice that although in the impugned order the said prayer of the Applicant was noticed, considered and rejected, but in the Application which was filed by the Appellant, which has been disposed of, there was no prayer for execution of the Conveyance Deed. We have also quoted the prayers made in the Application, which was filed under Section 60, sub-section (5) by the Applicant and also noticed the reply filed by the RP to one Application, refuting the prayers made by the Applicant. When there was no prayer in the Application seeking a direction for execution of the Conveyance Deed, there was no occasion to raise objection to the said prayer by the RP in its reply. The learned Counsel for the Appellant submits that prayer having been considered by the Adjudicating Authority and rejected, the objection of the RP that no prayer was made in the Application is only technical objection and in no manner preclude the Adjudicating Authority to consider the prayer. We are of the view that even though no specific prayer was made, the Adjudicating Authority was not precluded to consider any prayers made in the Application and to entertain any issue with regard to such prayers. The learned Counsel for the Appellant relied on the judgment of this Tribunal

in **Alok Sharma** (supra) decided on 17.06.2022, where this Tribunal has laid down following in paragraph (l) and (m):

- “l. All the above also suggests that the rights of home buyers cannot be affected adversely in the ‘Corporate Insolvency Resolution Process’ and their interest is to be appropriately preserved and protected within the parameters of the I & B Code, 2016.
- m. Hence, in view of the above observations, this ‘Appellate Tribunal’ is not in a position to sustain the order of the ‘Adjudicating Authority’ and accordingly, this ‘Tribunal’ sets aside the impugned order dated 16.01.2020, dismissing CA No.2265/(PB)/2019 in CP(IB) 593 of 2018 and directs the ‘Resolution Professional’ to execute the sale deed after collecting ‘Dues and Costs’, if any, remaining unpaid, including the ‘Costs of Registration’, ‘Penalty’ and ‘other incidental Costs’, till date, etc.

The instant ‘Appeal’ is allowed with the above observations. Pending application, if any, stands disposed of. Interim order, if any, passed by this ‘Tribunal’ stands vacated.

No order as to costs.”

13. The present is a case where after commencement of CIRP, moratorium has been imposed. Moratorium under Section 14, sub-section (1) (b) provides as follows:

“14. Moratorium. –

(1) (b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;”

14. The submission of the Appellant that when the Corporate Debtor is being run as a going concern, it is open for the RP to continue the real estate business of the Corporate Debtor and while running business of real estate Company, execution of Conveyance Deed, payment of rent is part of

the said business. There can be no dispute that by virtue of Section 17, 18 and 25, it is duty of the IRP to manage the affairs and take control of the assets over which the Corporate Debtor has ownership rights. The allottees, cannot as a right claim execution of Conveyance Deed, as has been prayed in the present case before the Adjudicating Authority. The RP, who is running the business of the Corporate Debtor is the best person to take a decision as to what part of the business of the Corporate Debtor can be carried out. The Appellant by making such prayers are praying for specific performance of contract entered between the Appellant and the Corporate Debtor. What part of the contract has to be carried out and what part of contract cannot be carried out is in the domain of RP and there has to be reasons for issuing direction akin to order for allowing specific performance of contract. On the facts of the present case, we are of the view that Adjudicating Authority did not commit any error in not acceding the prayers of the Appellant for seeking direction to RP to execute a Conveyance Deed. Judgment of this Tribunal relied by the Appellant in ***Alok Sharma*** (supra) was a case of its own facts, where this Tribunal has taken the view that rights of homebuyers cannot be affected adversely in the CIRP and their interest is to be appropriately preserved and protected. There cannot be any dispute to the proposition that the rights of allottees cannot be affected in the CIRP as their interest is to be appropriately preserved and protected, but in what manner, the rights of homebuyers are to be protected and preserved is an issue, which depends on facts of each case and nature and function, which is carried out by the RP, who is vested

with the management. Direction issued in the case of in **Alok Sharma** (supra) to execute the Sale Deed has to confine to the facts of the said case and cannot be relied in the present case.

15. Now, second issue, which needs to be considered as to whether Appellant is entitled to receive the payment of rent as assured in the MoU entered with the allottees and the erstwhile management. The Adjudicating Authority in the impugned order has noticed the statement of the RP that rent received in respect of the units allotted to Applicants has been kept in Fixed Deposit and would be disbursed in accordance with law. The above statement of RP recorded in the impugned order amply protect the interest of the allottees. How the amount received during the CIRP from the shops allotted to the Appellant is a question, which depends on the ultimate decision of the Adjudicating Authority in the CIRP and during the currency of CIRP, the Adjudicating Authority has not committed any error, in not granting prayer of the Appellant to make the payment of entire amount received against the shops allotted to the Appellant. In the impugned order, the Adjudicating Authority has made following observation after noticing above submission of the RP:

“We are sanguine that the amount would be kept in the FD and the same would be dealt with in accordance with the decision to be taken in the matter at the appropriate stage.”

16. The above order of the Adjudicating Authority amply protects the interest of the Appellant and we do not find any infirmity in the said order, warranting interference in this Appeal.

17. In view of the foregoing discussions and conclusions, we are of the view that no grounds have been made out to interfere with the impugned order passed by the Adjudicating Authority. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

NEW DELHI

29th February, 2024

Ashwani