

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.7534 OF 2021

ANAND MURTI

...APPELLANT(S)

VERSUS

**SONI INFRATECH PRIVATE LIMITED
& ANR.**

...RESPONDENT(S)

ORDER

B.R. GAVAI, J.

1. The present appeal challenges the order passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as “the NCLAT”) dated 22nd November, 2021, in I.A. No.1115 of 2020 in Company Appeal (AT) (Insolvency) No. 1507 of 2019, thereby rejecting the Modification Application filed by the appellant herein. Vide the

impugned order, the NCLAT observed that, in the meantime, if settlement takes place between the parties for completion of the housing project, the same can be filed under Section 12A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the IBC”) before the Adjudicating Authority. The NCLAT also directed the Interim Resolution Professional (“IRP” for short)/Resolution Professional (“RP” for short) to hold the meeting of the Committee of Creditors (hereinafter referred to as “CoC”) within ten days from the date of order and decide the future course of action about a resolution for completion of the Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) of the respondent No.1-company (hereinafter referred to as “the Corporate Debtor”).

2. The facts in brief giving rise to the present appeal are as under:

3. The appellant herein is the Suspended Director of the Corporate Debtor. The respondent No.2 herein had booked a flat in the housing project launched by the Corporate Debtor.

Subsequently, vide a letter dated 31st July, 2018, the respondent No.2 cancelled the booking and demanded refund of the amount of Rs.32,27,591/- from the Corporate Debtor.

4. On failure of the appellant in refunding the amount, the respondent No.2 filed an application under Section 7 of the IBC against the Corporate Debtor for initiation of CIRP before the National Company Law Tribunal, New Delhi (hereinafter referred to as “the NCLT”). The NCLT vide order dated 22nd November, 2019, admitted the said application and appointed an IRP. The IRP was directed to initiate the CIRP of the Corporate Debtor as per the provisions of the IBC.

5. The appellant being aggrieved by the order dated 22nd November, 2019, filed an appeal before the NCLAT, being Company Appeal (AT) (Insolvency) No.1507 of 2019. The NCLAT vide its order dated 19th December, 2019, issued notice and passed an interim order, thereby directing the IRP not to constitute CoC.

6. It was submitted by the appellant herein before the NCLAT that he was ready and willing to settle the matter with the respondent No.2. It was further submitted by him that the project was complete almost to the extent of 70-75% and that he had arranged the funds/private financier to complete the project.

7. In light of the submission made by the appellant herein, the NCLAT vide order dated 31st January, 2020, directed the appellant herein to file proposed settlement terms/plan disclosing all material particulars with regard to completion of the housing project. Accordingly, the appellant herein submitted/filed the proposed settlement terms/plan on 13th February, 2020. The IRP had submitted his status report a day prior, on 12th February, 2020, stating therein that most of the Allottees decided to have possession of the flats. In the meantime, the appellant settled the matter with the respondent No.2 herein. Despite the settlement with the respondent No.2 and appellant's readiness and willingness to complete the

project, the NCLAT, vide order dated 26th February, 2020, modified the interim order dated 19th December, 2019 and directed the IRP to go ahead with the constitution of CoC and carry forward the CIRP. The said order dated 26th February, 2020 was passed by the NCLAT on the ground that the settlement arrived at by the appellant was only with the respondent No.2 and the settlement plan did not encompass all the Allottees.

8. The appellant therefore approached this Court by way of Civil Appeal No. 1928 of 2020. This Court vide order dated 5th March, 2020, permitted the appellant to approach the NCLAT for modification of the order dated 26th February, 2020, so as to present the settlement plan covering all the Allottees. Vide the said order of this Court dated 5th March, 2020, liberty was also granted to the appellant to approach this Court again in case the modification application was not allowed.

9. Pursuant thereto, the appellant filed the modification application being I.A. No.1115 of 2020 in Company Appeal (AT)

(Insolvency) No.1507 of 2019 before the NCLAT. However, the NCLAT vide the impugned order dated 22nd November, 2021, has rejected the said application for modification and passed the order as aforesaid. Being aggrieved, the appellant has approached this Court by way of present appeal.

10. We have heard Shri Shyam Divan, learned Senior Counsel appearing on behalf of the appellant, Shri D.N. Goburdhun, learned Senior Counsel appearing on behalf of the applicants-home-buyers and Shri Abhigya Kushwah, learned counsel appearing on behalf of the respondent No.1/ IRP/applicant.

11. Shri Shyam Divan, learned Senior Counsel, would submit that in pursuance to the liberty granted by this Court, the appellant had moved the NCLAT placing on record the settlement with all the stakeholders. He submitted that not only that but in pursuance to an order passed by the NCLAT dated 29th September, 2021, a special meeting of the stakeholders was convened on 23rd October, 2021, wherein the IRP, the representatives of the Corporate Debtor, the financial creditors,

ten representatives of home-buyers and the lawyers representing home-buyers were present. He submitted that the perusal of the minutes of the meeting dated 23rd October, 2021 would show that there was a settlement between the appellant and the home-buyers almost on all counts. It is submitted that, however, the NCLAT, without taking into consideration the minutes of the said meeting, has erroneously passed the impugned order, thereby holding that there was no settlement with all the home-buyers and that there was trust deficit amongst the home-buyers. He submitted that not only this but Shri Kashi Nath Shukla, the Promoter of the Corporate Debtor, has filed an undertaking on an affidavit, thereby undertaking to complete the project within the stipulated period. He therefore submits that it is in the interest of the home-buyers that the reverse CIRP should be permitted to be continued in accordance with the decision taken in the meeting dated 23rd October, 2021.

12. Shri D.N. Goburdhun, learned Senior Counsel strongly opposes the prayer made on behalf of the appellant. He submits that the appellant is not at all interested in completing the project. He submits that the proposed settlement terms/plan is not a *bona fide* one but only to delay the completion of the project. He submits that the initiation of CIRP proceedings would ensure the completion of the project and would be in the interest of the home-buyers. He therefore prays for dismissal of the present appeal.

13. Shri Abhigya Kushwah, learned counsel, would submit that most of the home-buyers are interested in getting the possession of the flats. He therefore submits that this Court may pass appropriate orders taking into consideration the interests of the purchasers of the flats.

14. A perusal of the record would reveal that after the order was passed by this Court on 5th March, 2020, the appellant submitted a Revised Proposed Settlement Plan on 15th March, 2021. The IRP also submitted its Revised Status Report on 25th

March, 2021 before the NCLAT. An email dated 9th July, 2021, addressed by Senior Investment Associate, SBI Cap Ventures Ltd.-SWAMIH Investment Fund to Shri Kashi Nath Shukla, the Promoter of the Corporate Debtor, was also placed on record before the NCLAT. When the matter was listed before the NCLAT on 29th September, 2021, the NCLAT directed the IRP/RP, who was present before the NCLAT, to convene a meeting of CoC within four weeks to consider the modified Resolution Plan. The NCLAT further directed that home-buyers may nominate not more than 10 persons, who will participate in the meeting and represent them. The NCLAT further directed that the promoters and the authorized persons of Edelweiss Asset Reconstruction Company Ltd. (Financier) would also participate in the meeting so that they can explain the elements of the modified Resolution Plan to the home-buyers. The IRP/RP was directed to place on record the minutes of the meeting after the meeting was convened. The

matter was thereafter directed to be listed for hearing on 15th November, 2021.

15. In accordance with the directions issued by the NCLAT, a meeting was convened on 23rd October, 2021. A perusal of the minutes of the meeting dated 23rd October, 2021 would reveal that the 'Modified Resolution Plan' submitted by the Promoter was presented on a Digital Screen. During the presentation, some home-buyers requested for further modification of some contentious points of the 'Modified Resolution Plan'. The perusal of the minutes of the said meeting would further reveal that most of the concerns as expressed on behalf of the home-buyers were taken care of by the statement made on behalf of the Promoters.

16. It is further to be noted that the Status Report came to be filed by the IRP before the NCLAT on 3rd November, 2021. The said Status Report of the IRP would reveal that the Promoter, Shri Kashi Nath Shukla had informed that he would file an addendum to his 'Modified Resolution Plan' to include the

points of home-buyers and to amend the plan as per discussions in the Meeting.

17. However, by the impugned order dated 22nd November, 2021, the NCLAT has rejected the application for modification and directed the CIRP to be continued.

18. It could thus be seen that though a meeting of various stakeholders was conducted on 23rd October, 2021 in pursuance to the directions issued by the NCLAT dated 29th September, 2021 and in which meeting most of the issues stood resolved, the NCLAT has failed to take into consideration the minutes of the said meeting dated 23rd October, 2021. Not only that, but the NCLAT has also not taken into consideration the Revised Status Report dated 3rd November, 2021 submitted by the IRP.

19. An additional affidavit dated 27th December, 2021, has now been filed by the Promoter, Shri Kashi Nath Shukla before

this Court. It will be relevant to reproduce the same, which is as under:

“IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
CIVIL APPEAL NO. 7534 OF 2021

IN THE MATTER OF:
ANAND MURTI ... APPELLANT
VERSUS
Soni Infratech Pvt. Ltd
& Anr. ... RESPONDENTS

AFFIDAVIT

“I K.N. Shukla son of Sh Kailash Nath Shukla resident of C-35 Sector 30, Noida, UP 201301 around 68 Years age and the major share holder of M/S K N Consultant pvt Ltd. which is promoter of M/S Soni Infratech Pvt Ltd, (Corporate Debtor) Having its Registered office at 517 A, Narain Manzil, 23, Barakhmbha Road Connaught place, New Delhi-110001, presently do hereby solemnly affirm and state as under:

1. That I am conversant with the facts of the case as such I am competent to affirm this affidavit.
2. That I am the original land owner and existing promoter of the Corporate Debtor and I say that I have purchased the land in 2007 for the development of the project of the corporate debtor i.e. M/S Soni Infratech Pvt Ltd.

3. That I have given the land for the development to “SPIRE Group” to develop the project vide development Agreement. And accordingly the Development and management of the project transferred to erstwhile promoters i.e. Mr. Sunil Gandhi and Mr. Ashish Bhalla of “Spire Group”.
4. That SPIRE Group has launched the project and collected the booking from the home buyers for the said project and appointed construction company ERA Group to complete the project.
5. That After construction of 30-40% work, ERA Group has stopped the work due to *inter-se* dispute in the ERA group which lead to multiple litigation between the erstwhile promoters.
6. That I have discussed about the delay of the project and after a long discussion and series of meeting, I managed to take back the management of the project in 2017.
7. That I have terminated the Civil contract of ERA and appointed the new contractor i.e. M/s Indsao Infratech and within a period of 18 months we have managed to complete approx 70% of total construction of the project by mid of 2018. The Enclosed Construction audit report by “Qonquest” confirms the stage as approx 70% completed.
8. That I have approached Financial Creditor M/s Edelweiss to grant further loan to complete the project. But Due to stay granted by NCLT in CP No. NO.175/241/242/(ND)/ 2018 arises in

the inter-se disputes between Mr. Sunil Gandhi and Mr. Ashish Bhalla, 50% of shares of the corporate Debtor could not be pledged in favour of M/s Edelweiss. Thus, the Edelweiss has not disbursed the funds for the construction.

9. That in June 2019, I managed to get 100% share back after the Hon'ble NCLT decided the matter in CP No 175/241/242/(ND)/2018.
10. That before I could arrange more funds, an application in case title Balram Singh Vs. Soni Infratech Private Limited vide its order dated 22.11.2019 for the CIRP got admitted.
11. That suspended Director has preferred an Appeal before Hon'ble NCLAT and Hon'ble NCLAT vide its order dated 19.12.2019 were pleased to grant stay on CIRP.
12. That as per the direction of the Hon'ble NCLAT, I have filed the settlement terms/Resolution Plan with all details pertaining how this project will be managed to be completed with funds planning and repayment to all Creditors.
13. That I say that I will complete the stage wise construction within 6 months to 15 months (+/- 3 Months) in phased manner from the date of Order.

Particulars	Tower	Time in Months (+/- 3 Months)
Stage-I	T8-T12	Within 6-9

		months
Stage-II	T1-T4	Within 12 months
Stage-III	T5-T7	Within 15 months

14. That I say, I had committed in open court and accordingly arranged Rs 10 Crore to start the project immediately without any delay and I will ensure this will be started within 15-30 days.
15. That I have already agreed in my Resolution plan that the Cost of the Flat will not be escalated and agreed to honor the BBA signed by the previous management.
16. That as per the data before the LD IRP only 9 home buyers out of 452 Home Buyers wanted the refund and in my Resolution Plan I have agreed to refund the amount after completion of the project of Phase-1.
17. That I have stated all relevant data and computation in details in my Resolution Plan that how the funds will be utilized and how the construction work can be completed in time.
18. That I have stated in my last modified resolution plan that SBI Cap Vetures Ltd has already shown interest for further Loan of 100 Crore to me.
19. That as per the direction of Hon'ble NCLAT I have attended the meeting with the Representative of the Home Buyers and I have already accepted and agreed to Incorporate the suggestions and

objections of the Home Buyers to the Resolution Plan and the same has been recorded by the LD IRP in the Minutes of the Meeting dated 23.10.2021.

20. That I have also given my consent to make a team of 5 person, 2 from buyer side and 2 from management side and will be monitored by Ld IRP
21. That this affidavit to the additional documents in the present Civil Appeal have been read by me and are found true and correct to my knowledge and belief.
22. That the Annexures are true copies of their respective originals.
23. That the facts stated in the above affidavit are true and correct to my personal knowledge and belief.
24. That No part of the same is false and nothing material have been concealed there from.

DEPONENT

VERIFICATION

I, the above named deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge and belief which I believe to be true. No part of the same is false and nothing material has been concealed there from.

Verified at New Delhi, on this 27th day of December, 2021.

DEPONENT”

20. The Promoter, Shri Kashi Nath Shukla has also filed an undertaking, thereby undertaking to return the money with interest at the rate of 6% per annum of seven applicants in I.A. No.11358 of 2022 (for impleadment) in the present appeal, who were objecting to the Settlement Plan submitted by the appellant. The same is taken on record and marked 'X' for identification.

21. Taking into consideration the facts and circumstances of the present case, we find that it will be in the interest of the home-buyers if the appellant/promoter is permitted to complete the housing project. The salient features of the undertaking given on affidavit are as under:

(a) That the project will be completed stage-wise within a period of 6 months to 15 months (+/- 3 months) in a phased manner;

(b) That the promoter has arranged an amount of Rs. 10 crores to start the project immediately without any delay

and that he will ensure that the project would be started within 15-30 days;

(c) That the cost of the flat will not be escalated and that the promoter is agreeable to honour the BBA signed by the previous management;

(d) That SBI Cap Ventures Ltd. has already shown interest for further loan of Rs.100 crore;

(e) That the promoter has given his consent to make a team of 5 persons, 2 from home-buyer's side and 2 from the management side and that the entire process will be monitored by the IRP.

22. Taking into consideration the salient features of the undertaking given on affidavit by the Promoter, Shri Kashi Nath Shukla and the fact that there are only seven out of the 452 home-buyers, who opposed the Settlement Plan, we find that it will rather be in the interest of the home-buyers that the appellant/promoter is permitted to complete the project as

undertaken by him. It is pertinent to note that he has agreed that the cost of the flat will not be escalated. He has also given the time line within which the project would be completed. Not only this, but he has also undertaken to refund the amount paid by the seven objectors, if they so desire. He has further agreed that there shall be a team of 5 persons, 2 from the home-buyer's side and 2 from the management side and that the entire process shall be monitored by the IRP.

23. We find that there is every possibility that if the CIRP is permitted, the cost that the home-buyers will have to pay, would be much higher, inasmuch as the offer made by the resolution applicants could be after taking into consideration the price of escalation, etc. As against this, the Promoter has filed a specific undertaking specifying therein that the cost of the flat would not be escalated and that he would honour the BBA signed by the previous management.

24. In that view of the matter, we are inclined to allow the present appeal. Accordingly, we pass the following order:

- A. The appeal is allowed. The impugned order dated 22nd November, 2021 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi in I.A. No.1115 of 2020 in Company Appeal (AT) (Insolvency) No. 1507 of 2019 is quashed and set aside;
- B. The affidavit dated 27th December, 2021 filed by Shri Kashi Nath Shukla, the promoter of the respondent No.1 – Corporate Debtor is taken on record and treated to be an undertaking given to this Court;
- C. The appellant/promoter is permitted to complete the project as per the deliberations that took place in the Minutes of the Meeting dated 23rd October, 2021 and in accordance with the affidavit-cum-undertaking dated 27th December, 2021 of the Promoter, Shri Kashi Nath Shukla;
- D. The modification application being I.A. No.1115 of 2020 in Company Appeal (AT) (Insolvency) No. 1507 of 2019 before the NCLAT accordingly stands allowed.

E. From the date of this order, the IRP shall submit quarterly reports to the National Company Law Appellate Tribunal, Principal Bench, New Delhi with regard to the progress of the housing project;

F. The matter be listed before the National Company Law Appellate Tribunal, Principal Bench, New Delhi for such first Status Report on 22nd August, 2022.

25. Application for impleadment is allowed. Application for clarification/directions filed on behalf of the IRP does not survive and is accordingly dismissed. Application for vacation of stay/modification of order dated 4th January, 2022 is rejected. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

.....**J.**
[L. NAGESWARA RAO]

.....**J.**
[B.R. GAVAI]

NEW DELHI;
APRIL 27, 2022.