

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1000 of 2021

IN THE MATTER OF:

Kotak Mahindra Bank Ltd.

....Appellant

Vs.

Resolution Professional of Universal Buildwell Pvt. Ltd.

....Respondent

Present:

**For Appellant: Ms. Nidhi Mohan Parashar and Mr. Manikya Khanna,
Advocates.**

For Respondent: Mr. Swapnil Gupta, Advocate.

O R D E R

23.08.2023: Heard Learned Counsel for the appellant. This appeal has been filed against the order dated 05.10.2021 by which order Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court-II) has rejected the IA-4472/2021. Corporate Insolvency Resolution Process was initiated against the Corporate Debtor Universal Buildwel Pvt. Ltd. on an application of the Financial Creditor (Homebuyer) by order dated 03.07.2018.

2. Adjudicating Authority has initiated the process and directed the declaration of the moratorium. The appellant before us who is a Financial Creditor of the Corporate Debtor has filed an application being IA-4472/2021 where following prayers were made:

“A. Be pleased to recall /modify/ amend the order dated 03.07.2018 whereby CIRP was initiated for the Corporate Debtor as a whole and instead order and direct that the admission and CIRP is only in respect of the Universal Aura Project of the Corporate Debtor and that the IRP /RP is

Cont'd.../

appointed only for the said project and he is required to invite claims only in respect of the Universal Aura Project and thereafter Resolution Plan is also to be invited only for the said Universal Aura Project and further that the assets of the said Universal Aura Project are to be maximised under the Plan;

B. In view of the Prayer Clause A being allowed the remaining projects of the Corporate Debtor viz. Universal Business Park, Universal Prime, Universal Greens, Universal Square, Market Square, Pavilion and Universal Trade Tower as also any other project/asset of the Corporate Debtor, be released from the rigours of the Code;

C. Pending disposal of the present application, the approval of Resolution plan be deferred till disposal of the present application;

D. Pass such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.”

3. The Adjudicating Authority heard the application and took the view that there is no provision available to Adjudicating Authority for review of the order passed by the Adjudicating Authority, hence, the application was rejected.

4. Learned Counsel for the appellant challenging the order contends that the project wise CIRP is an fact which has been utilized with regard to different Corporate Debtors. The Appellant has referred two Judgments in “*Flat Buyers v/s Umang Realtech Pvt. Ltd. vide Judgment dated 04.02.2020 passed in Company Appeal (AT) (Ins.) No. 926 of 2019*” and “*Ashok Kriplani Resolution Professional of Dreamz Infra India Ltd. Vs. Venugopal Swamy Temple & Ors.*”

5. It is submitted that since the Financial Creditor (Homebuyers) were confined to one project, hence, the Adjudicating Authority ought to have confined the CIRP with regard to one project only and the Adjudicating Authority has not correctly appreciated the prayers made by appellant and rejected the same.

6. We have considered the submissions of counsel for the appellant and perused the records.

7. Learned Counsel for the Respondent submitted that appellant has filed the claim on 16.07.2018 for entire CD and the application was filed on 14.09.2021.

8. The order dated 03.07.2018 passed by Adjudicating Authority in paragraph 6, 7 directed as follows:

6. Having heard the Ld. Counsels, this Bench is unable to appreciate the arguments advanced on behalf of the Corporate Debtor. Notwithstanding the fact that flat owners are also financial creditors where construction is delayed, the issuance of cheques was a novation of the agreement and acceptance of a financial debt. The initial amount of Rs. 90 lakhs was agreed to be returned as Rs. 98 lakhs. This is nothing short of returning the principal amount along with interest, being the time value of money for which it was retained. The right to payment crystallised upon issuance of the cheque, dishonour of which gives right to seek payment and falls well within the definition of a claim in terms of Section 3(6) of the Insolvency Bankruptcy Code. There is no cogent explanation given by the Corporate Debtor as to why the cheques were tendered to the Financial Creditor. This per se gives to the irrefutable surmise of acceptance of a financial liability. In view of the facts and the Corporate Debtor's inability to pay, the

petitioner's prayer for initiating the Corporate Insolvency Resolution Process of the Corporate Debtor merits consideration. The petition is therefore admitted.

7. A Moratorium in terms of Section 14 of the Code comes into effect forthwith, staying:-

"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.

Further,

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

9. When we looked into the order of Adjudicating Authority it is clear that the insolvency was initiated against the Corporate Debtor and petition of the homebuyer was admitted against the Corporate Debtor. Thereafter, it was the appellant who has filed the application for confining the CIRP to one project only after filing its claim which application came to be rejected.

10. There can be no dispute to the proposition that in appropriate case Adjudicating Authority could have directed relying on the Judgment of this Tribunal in *Flat Buyers Association Winter Hills, Gurgaon v/s Umang Realtech Pvt. Ltd.* for project wise insolvency. But when the Adjudicating Authority has directed initiation of insolvency against the Corporate Debtor, on the application of the appellant, Adjudicating Authority could not have modified the initiation of CIRP by confining the CIRP to one project.

11. We are of the view that Adjudicating Authority has not committed an error in rejecting the application which involves modification and review of the order admitting the CIRP.

12. Learned Counsel for the Appellant submitted that project wise CIRP would be more beneficial for maximization of assets of the Corporate Debtor as far as to protect the interest of the appellant, who is the Financial Creditor. We are of the view that the issue in question to be examined in the appeal is as to whether Adjudicating Authority committed error in refusing the prayer of the appellant. As observed above, we are of the view that Adjudicating Authority has rightly rejected the application taking the view that earlier order cannot be modified at the instance of the appellant.

13. We do not find any merit in the appeal, appeal is dismissed.

14. Learned Counsel for the appellant lastly contended that the application ought to have been treated as the application for recall, we are of the view that there was no ground in the application to recall the order.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

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