

THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,
JAIPUR

- Complaint No. RAJ-RERA-C-2018-2127**
Kuldeep Kaur ...Complainant
Versus
MVL Ltd. ... Non-complainant
- Complaint No. RAJ-RERA-C-2018-2134**
Ajeet Verma ...Complainant
Versus
MVL Ltd. ... Non-complainant
- Complaint No. RAJ-RERA-C-2018-2138**
Raju Mondal ...Complainant
Versus
MVL Ltd. ... Non-complainant
- Complaint No. RAJ-RERA-C-2018-2159**
Deepak Batra ...Complainant
Versus
MVL Ltd. ... Non-complainant
- Complaint No. RAJ-RERA-C-2018-2177**
Praveen Pandey & anr. ...Complainants
Versus
MVL Ltd. ... Non-complainant
- Complaint No. RAJ-RERA-C-2018-2183**
Vikas Bansal & anr. ...Complainants
Versus
MVL Ltd. ... Non-complainant
- Complaint No. RAJ-RERA-C-2018-2207**
Danish Kumar Tak ...Complainant
Versus
MVL Ltd. ... Non-complainant
- Complaint No. RAJ-RERA-C-2018-2219**
Govinda Chandra Behera ...Complainant
Versus
MVL Ltd. ... Non-complainant



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Complaint No. RAJ-RERA-C-2018-2221

Rakshit Bisaria ...Complainant

Versus

MVL Ltd. ... Non-complainant

Complaint No. RAJ-RERA-C-2018-2223

Jitendra Singh ...Complainant

Versus

MVL Ltd. ... Non-complainant

Present

Shri Nihal Chand Goel, Hon'ble Chairman

Shri Rakesh Jain, Hon'ble Member

- (1) Shri Kishore Singh, for the complainant in Complaint No. 2127.
- (2) Shri Harshal Tholia, Advocate, on behalf of the complainant(s) in Complaints No. 2134, 2159, 2183, 2207 & 2221.
- (3) Shri Rohit Rohilla, representative of the non-complainant company.

Date of Order: 9th May, 2019

ORDER

In this order, we are dealing with ten cases taken together, all against M/s MVL Ltd. and having a common case.

On the last date of hearing, an application was filed under Section 279 of the Companies Act, 2013 on behalf of the non-complainant company, requesting that these proceedings be stayed in the light of the fact that Hon'ble High Court of Delhi has, vide its order dated 5th July, 2018, admitted a winding up petition against the non-complainant company and appointed a provisional liquidator. On this, it was directed



to issue notice to the provisional liquidator; and hearing on the application was adjourned for this day.

Notice was then issued to the provisional liquidator on 26th April, 2019, but none is present on his behalf. However, a representative of the non-complainant company is present. Shri Harshal Tholia, Advocate has filed a reply to the said application, in complaint No. 2018-2134. We have perused the reply and heard Shri Harshal Tholia on the issues involved in the application.

Our attention is drawn to Section 279 of the Companies Act, 2013, which reads as under:

279. (1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:

Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.

(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

A bare reading of this provision of the Companies Act, 2013 makes

it clear that, except with the leave of the Tribunal,-



- (a) no suit or other legal proceeding can commence once a winding up order has been passed or a provisional liquidator has been appointed; and
- (b) no suit or other legal proceeding which is pending, at the date of winding up order, can be proceeded with once a winding up order has been passed.



Thus, Section 279 makes two clearly separate prescriptions, one for the fresh institution or commencement of a new suit or other legal proceeding, and the other for proceeding with an already pending suit or other legal proceeding. Accordingly, no fresh institution or commencement is allowed when a winding up order is passed or even when a provisional liquidator comes to be appointed pending the winding up decision. And, no pending suit or other legal proceeding can be proceeded with when a winding up order is passed. As such, in our humble view, appointment of provisional liquidator is of no consequence when it comes to staying or not staying a pending suit or other legal proceeding. It is the winding up order, and only the winding up order, which is relevant for staying a pending suit or other legal proceeding.

In the matters under consideration, complaints were filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act, for short), between January, 2018 and April, 2018; and

these are still pending. The order of Hon'ble High Court of Delhi, dated 5th July, 2018, is an interim order for appointing a provisional liquidator to safeguard the assets and records of the company till such time the winding up order is made, which is not reported to have been made as yet. Thus, in our considered view, the stage of staying the present proceedings has not yet arrived, and admission of the winding up petition or appointment of a provisional liquidator has no bearing on these proceedings pending before us.



Furthermore, even if a winding up order had been made or were to be made, the present proceedings are pending under the RERA Act, which is a special Act of the Parliament, made with the special purpose of regulating and promoting the real estate sector, of protecting the interest of consumers in the real estate sector and of establishing an adjudicating mechanism for speedy dispute redressal. That the RERA Act is a special Act is also borne out by the fact that Section 79 of the RERA Act has barred the jurisdiction of all civil courts in respect of all matters to be determined under the RERA Act. Thus, the RERA Act is a special Act; and it has been made in 2016, i.e., much after the Companies Act, 2013 was made.

Moreover, the RERA Act has an overriding provision under its section 89, which reads as under:-

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

As such, even if the RERA Act were not a special Act, it being a later Act and an Act having overriding provision, its provisions will prevail over all earlier laws and over all general laws, including the Companies Act, 2013. More specifically, provisions of Section 31 of the RERA Act will prevail over the provisions of Section 279 of the Companies Act, 2013.



Here, Shri Harshal Tholia has drawn our attention to the judgment passed by Hon'ble Supreme Court in "Allahabad Bank Vs. Canara Bank & anr." (2000) 4 SCC 406, which makes it abundantly clear that the provisions of a special law, like the RDB Act, must prevail over the provisions of the Companies Act, 2013, which is a general law. In our view, the RERA Act is very much like the RDB Act and we, therefore, find it proper that it must prevail over the Companies Act, 2013. Accordingly, we find that Section 279 of the Companies Act, 2013 does not come in the way of the Authority proceedings further with the present proceedings and leave of the Tribunal is not required for the purpose.

In view of the above observations and findings, the application for staying the present proceedings is hereby rejected.

Thereafter, the arguments were heard on merits of the case and the same were concluded.

In the case of complaint No. RAJ-RERA-C-2018-2183, we find that it is an application in Form O, under Rule 36 of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 and is addressed to the Adjudicating Officer. As such, this application can be heard only by the Adjudicating Officer, and not by the Authority. We, therefore, direct that this case shall be dropped from the cause list of the Authority and included in a separate list of cases pending adjudication by the Adjudicating Officer, who, we hope, will soon be in position and will issue to the parties a fresh notice of hearing.



All the other nine cases may be listed for final orders on 13th June, 2019. Shri Rohit Rohilla, representative of the non-complainant company, seeks an opportunity to file written submissions on behalf of the company. He is given the liberty to file written submissions by 31st May, 2019, along with a written authorization in his favour (in Form R-5). He is also directed to appear on 13th June, 2019 and inform this

Authority if a winding up order comes to be passed by then. Shri Tholia may also file a note on EOW case, as also copies of the agreements entered into with the non-complainant company.

Original copy of this order may be placed on the case file relating to complaint No. RAJ-RERA-C-2018-2183, and a copy on each of the other nine case files.




(Rakesh Jain)
Member


(Nihal Chand Goel)
Chairman