

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 241 of 2020**

**IN THE MATTER OF:**

Pradip Kumar Chaudhuri

...Appellant

Versus

M/s Dagcon (India) Pvt. Ltd.  
Through its Resolution Professional  
Bimal Agarwal & Anr.

...Respondents

**Present:**

**For Appellant :**                   **Mr. Saurabh Jain and Ms. Bhavishya Singh,**  
**Advocates.**

**For Respondents:**           **Mr. Prateek Kushwaha, Advocate for Resolution**  
**Professional.**

**Mr. Palzer Moktan, Advocate for Promoter Rana**  
**Sarkar.**

**Mr. Abhirup Dasgupta and Mr. Ishaan Duggal,**  
**Advocates for asset Reconstruction Company (India)**  
**Ltd.**

**ORDER**

**04.03.2020**           Asset Reconstruction Co. (I) Ltd. moved an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') against Ms/ Dagcon (India) Pvt. Ltd. ('Corporate Debtor'), which was admitted by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata.

2.       During the 'Corporate Insolvency Resolution Process', the 'First Progress Report' was filed by the 'Interim Resolution Professional', which was confirmed by the 'Committee of Creditors' with 100% votes in its meeting held on 18<sup>th</sup> December, 2019. In the said case, 'Resolution Professional' filed one application

CA(IB)1817/KB/2019 and the 'Adjudicating Authority' after hearing the parties directed the Directors and Officers of the Corporate Debtor to cooperate with the 'Resolution Professional' and handover all books and accounts and required information of the assets within seven days. The Adjudicating Authority allowed the application with liberty to 'Resolution Professional' to approach local Police Station, if it is not handed over and to ensure successful completion of 'Corporate Insolvency Resolution Process'.

3. The Appellant moved this Appeal with the grievance that due to failure on the part of the Directors and other Officers of the 'Corporate Debtor' in handing over the records, the 'Resolution Professional' is not in a position to give possession of the flats/ apartments/ shops, which have already been completed and for which appropriate certificate can be obtained from the concerned Authority.

4. This Appellate Tribunal issued notice on 'Resolution Professional' stating as to why the Appeal be not disposed of in terms of decision of this Appellate Tribunal in **"Flat Buyers Association Winter Hills-77 vs. Umang Realtech Pvt. Ltd. through IRP & Ors. – Company Appeal (AT) (Insolvency) No.926 of 2019"** disposed of on 4<sup>th</sup> February, 2020 and **"Rajesh Goyal vs. Babita Gupta & Ors. – Company Appeal (AT) (Insolvency) No.1156 of 2019"** disposed of on 5<sup>th</sup> February, 2020.

5. Mr. Prateek Kushwaha, learned Counsel appearing on behalf of the 'Resolution Professional' submitted that the total records have still not been handed over by the Promoters and their Officers. Mr. Palzer Moktan, learned Counsel appearing on behalf of Mr. Rana Sarkar, the Promoter assures that the

Promoter will cooperate with the 'Resolution Professional' and will handover all the records.

6. Mr. Abhirup Dasupta, learned Counsel appearing on behalf of Asset Reconstruction Company (India) Ltd. submits that land in question was mortgaged with the 'Financial Creditor', which now stands mortgaged to the Asset Reconstruction Company (India) Ltd. He further submits that the decision in **"Flat Buyers Association Winter Hills-77"** may not be applicable in the present case as Dagcon (India) Pvt. Ltd is not a Real Estate Company. However, such submission cannot be accepted, if the 'Corporate Debtor' is in the business of selling the flats/ apartments/ shops to allottee(s). It is for the 'Resolution Professional' to find out as to who is the allottee in whose favour the Promoter Dagcon (India) Pvt. Ltd. has reached settlement/ Agreement or issued receipts of payments for such allotment and any other documents in support of such claim as may be produced. On receiving of such receipts, if it is found that the flats/ apartments/ shops etc. are to be completed or is completed and ready to be handed over, the 'Resolution Professional' is bound to proceed in accordance with law and the guidelines issued in **"Flat Buyers Association Winter Hills-77"** uninfluenced by the terms of agreement part of the said judgment. The 'Resolution Professional' is to ensure that the 'Corporate Debtor' remains a going concern and if there are allottee(s), then it should be handed over to the allottee(s), if the flats are complete. The Promoter is bound to cooperate with the 'Resolution Professional' in respect of flats/ apartments/ shops, if any is completed. The 'Resolution Professional' may take help of their officers/ workmen etc. The 'Resolution Professional' and the 'Committee of Creditors' are also directed to ensure that it should not reach the 'Liquidation' stage before handing over the

assets to the allottee(s). The Adjudicating Authority (National Company Law Tribunal) will pass order after taking into consideration the relevant facts and circumstances of the case and the development, following the observations made by this Appellate Tribunal in **“Flat Buyers Association Winter Hills-77”** and **“Rajesh Goyal vs. Babita Gupta & Ors.”**. It is needless to say that the ‘Resolution Professional’ on receipt of rest of the consideration amount from the allottee(s) will intimate the allottee(s) and on payment of amount for registration, it will be open to the ‘Resolution Professional’ to get the premises registered in favour of the allottee(s), after counter signature of the Promoter. Whatever the amount remains on completion of the project, the ‘Committee of Creditors’ will decide the matter of distribution.

7. The Appeal stands disposed of with the aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansilal Bhat ]  
Member (Judicial)

Ash/SR/RR