

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 898 of 2019

IN THE MATTER OF:

John Varghese Appellant

Vs

Value Designbuild Pvt. Ltd. and Ors. Respondents

Present:

For Appellant: Mr. S. Santanam Swaminadhan, Advocate.

For Respondents: Mr. Rana Mukherjee, Senior Advocate with Ms. Daisy Hannah, Mr. Abhijit Atur, Mr. Nikhil Swami, Advocates for Respondent No.1.

Mr. Ritin Rai, Senior Advocate with Mr. Goutham Shivshankar and Mr. Raghuram Cadanbi, Advocates for Respondent No.2.

O R D E R

16.10.2019 At the instance of Mr. John Varghese ('Financial Creditor'), 'Corporate Insolvency Resolution Process' was initiated against M/s. Value Designbuild Private Limited. In the said 'Resolution Process' an application under Section 12A of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') was filed by one of the 'Financial Creditors', which was approved by the 'Committee of Creditors' with voting share of 89.85%. Thereafter, when the matter was placed before the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, the Adjudicating Authority by impugned order dated 17th July, 2019 approved the application under 12A and permitted the Applicant to withdraw the main Company Petition and the same was dismissed.

2. Learned Counsel appearing on behalf of the Appellant submits that the Appellant was the Applicant, who filed application under Section 7 of the I&B Code and he had not filed any application for withdrawal. While the 'Committee of Creditors' and others decided to resort to other mode, the

Appellant had not agreed to the same. It is alleged that the 'Interim Resolution Professional'/ 'Resolution Professional' had not verified the claim and on tentative verification, a mere sum of Rs.90,29,491/- is shown as admitted claim against the total claim of Rs.5,57,34,480.

3. Learned Counsel for the Appellant submitted that the voting share was less than 90% and the voting share of 89.85% shown is also wrong. However, we are not inclined to interfere on such ground, as the Adjudicating Authority noticed that the largest creditor of the 'Committee of Creditors' is the HDFC with 89.85%, which includes the home buyers, who had approved the 'Plan'. The percentage of 89.95% can be rounded off to 90%. The disputed question whether the voting share is less than 90% or not cannot be decided by this Appellate Tribunal. We are of the opinion that in the interest of 'Home Buyers', if majority of the 'Home Buyers' ('Allottees') decide to vote in favour of Section 12A to return the 'Corporate Debtor' to original 'Promoter' for completion of the project, at the instance of one person normally it should not be stopped.

4. However, the question arises as to whether the Adjudicating Authority had jurisdiction to dispose of the application as withdrawn, without any application under Section 7 for withdrawal made by the Original Applicant (Appellant herein).

5. For the purpose of deciding the aforesaid issue, it is required to notice all the relevant facts before deciding such issue.

6. According to the Appellant, the claimed amount is Rs.5,57,34,480 and tentatively it was collated as Rs.90,29,491/-, subject to verification of other records. It is submitted that till such verification is done, it cannot be stated as an admitted claim of Rs.90,29,491/-.

7. In this regard, we are of the view that 'Interim Resolution Professional'/ 'Resolution Professional' once collated the claim as Rs.90,29,491/-, the question of further verification does not arise.

8. In the present case, we find that the collated amount of Rs.90,29,491/- was offered in favour of the Appellant and the Appellant is not agreeing to accept the same and does not want to withdraw the application. In such a

case, though it may or may not be a case for withdrawal, pursuant to a decision under Section 12A, it may fall within the meaning of filing the application with malicious intent for any purpose other than for the resolution of insolvency, or liquidation (as referred in Section 65 of the I&B Code). In such case, it is also open to the Adjudicating Authority to dismiss the application under Section 7, if admitted claim amount is not accepted by one of the 'Financial Creditors' and makes hindrance, which otherwise affects the large number of 'Allottees' ('Home Buyers'). For the said reason, while we are not inclined to interfere with the impugned order dated 17th July, 2019, we give liberty to the Appellant, as agreed by the 'Corporate Debtor' to withdraw the total claim to enable the Appellant to move before a Court of competent jurisdiction in accordance with law, in view of section 60(6) of the I&B Code. If such withdrawal of claim is made by the Appellant within two weeks, the 'Corporate Debtor' will withdraw back the amount of Rs.90,29,491/- stated to be deposited with the National Company Law Tribunal, Bengaluru Bench. The Appeal is disposed of with the aforesaid liberty.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Ash/GC