

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 419 of 2020

In the matter of:

Akriti Agnihotri & Anr.

....Appellants

Vs.

Blackberry Realcon Pvt. Ltd.

....Respondent

Present:

Appellants: Mr. Piyush Singh, Mr. Aditya Parolia, Mr. Akshay Srivastava and Ms. Aditi Sinha, Advocates.

Respondent:

ORDER

13.03.2020: The Appellants were the Original Allottees who initially moved application under Section 7 of the I&B Code against 'M/s Blackberry Realcon Pvt. Ltd.' (Corporate Debtor) a Real Estate Company. The matter is pending. The Adjudicating Authority (National Company Law Tribunal), New Delhi Court V by impugned order dated 27th January, 2020 adjourned the matter for 5th March in view of pendency of the case before the Hon'ble Supreme Court in WP (Civil) – 26/2020.

2. Learned counsel for the Appellant submits that the Writ Petition (Civil) No. 26/2020 has been filed by the Homebuyers challenging the ordinance dated 28th December, 2019.

3. In the present case the question to be decided is to whether the Appellants filed their claim independently as Financial Creditors as defined under Section 5(7) & (8) of the I&B Code pursuant to the agreement of refund or as the allottees. If, they have claimed to be Financial Creditors independently relying on agreement of refund, in such case, one may argue that the order of status quo

passed by the Hon'ble Supreme Court with regard to allottees who have moved application under Section 7 will not be applicable to the present case. However, since such issue is required to be determined, therefore, we remit the matter to the Adjudicating Authority (National Company Law Tribunal), New Delhi Court V to decide the issue as to whether Appellants filed application as an independent "Financial Creditor" as defined under Section 5(7) & (8) of the I&B Code or as "allottees". If they have not claimed for allotment of flats or shops but prayed for initiation of insolvency proceeding as Financial Creditors, the Adjudicating Authority will decide the said issue without awaiting the decision of the Hon'ble Supreme Court. If it is decided that the application has been filed by the Appellants as allottees, in such case the Adjudicating Authority will await for the decision of the Hon'ble Supreme Court. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Alok Srivastava]
Member (Technical)

am/gc