

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 512 of 2018

IN THE MATTER OF:

Paramjit Gandhi

...Appellant

Vs.

Amit Kumar Malik & Anr.

...Respondents

Present: For Appellant: - Mr. Satish Rai, Mr. Kartik Bhardwaj and Mr. Abhay Kaushik, Advocates.

For Respondents: Mr. Vivek Malik, Advocate for R-1.

O R D E R

28.02.2019— The Respondent- Mr. Amit Kumar Malik, an allottee of the Real Estate, filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Kindle Developers Pvt. Ltd.'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, by impugned order dated 9th March, 2018 admitted the application which is under challenge.

2. Before the constitution of the 'Committee of Creditors', learned counsel on behalf of the Appellant sought for some time to settle the matter. However, even after four months, the matter could not be settled.

3. In the meantime, the 'Committee of Creditors' was constituted, 'Information Memorandum' sought for, 'Resolution Applicants' have filed their 'Resolution Plans', which are under consideration of the 'Committee of Creditors'.

4. Learned counsel appearing on behalf of the Appellant submitted that the allottee of infrastructure has been treated to be a 'Financial Creditor' by amendment of Section 5(8) made on 6th June, 2018. The application was admitted much prior to the amendment i.e. on 9th March, 2018. However, such submission cannot be accepted as in terms of the agreement, the Respondents having disbursed the amount against the consideration for time value of money i.e. for flat, it is the time value as decided in the case of **"Nikhil Mehta & Sons (HUF) & Ors. V. AMR Infrastructures Limited"** and the Adjudicating Authority has rightly treated the Respondent as a 'Financial Creditor'. Mere recognition of such position by amending Section 5 (8) will not make substantial change in the main definition of 'Financial Debt' as defined in Section 5(8) read with Section 5(7) i.e. the 'Financial Creditor'.

5. It was next contended that there was no due payable in fact as on the date of admission of application under Section 7.

6. Learned counsel for the Appellant relied on a letter dated 10th March, 2018 addressed by the 'Corporate Debtor' to the Respondent ('Financial Creditor') which was pressed to suggest that the Respondents made application for cancellation and refund of the amount and acceptance for refund of full booking amount after deducting service tax.

7. However, the Respondents have brought to the notice that the post-dated cheques which were provided to the Appellant, out of 10 cheques, three were encashed and fourth was presented and bounced. The amount of the bounced cheque is Rs. 2 lacs i.e. more than Rs. 1 lac.

8. In the circumstances, we hold that there is a debt which was payable and in terms of the settlement it was not paid and, therefore, the application under Section 7 was maintainable.

9. Learned Counsel appearing on behalf of the group of allottees submits that in their cases also the Real Estate Owner ('Corporate Debtor) has failed to provide the flats and/or refund the amount. They have jointly applied as 'Resolution Applicants' and their 'Resolution Plan' is pending consideration.

10. In the facts and circumstances, we are not inclined to interfere with the impugned order dated 9th March, 2018. The appeal is dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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