



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

Intervention Petition No. 13 of 2023

Under Rule 11 of NCLT, Rules, 2016

**UTI Employees Sai Samruddhi Co-operative
Housing Society**

..... Applicant

Vs.

Jayesh Sanghrajka,
Resolution Professional of
Ornate Spaces Private Limited & Ors.

..... Respondent No. 1

CoC - Ornate Spaces Private Limited & Ors.
Through the RP

..... Respondent No. 2

AND

I.A. No. 3376 of 2022

Under Section 60(5) of IBC, 2016

**UTI Employees Sai Samruddhi Co-operative
Housing Society**

..... Applicant

Vs.

CoC - Ornate Spaces Private Limited & Ors.

..... Respondent(s)

In the matter of

CP (IB) No.4469/MB/C-IV/2019

IDBI Trusteeship Services Limited

...Financial Creditor

Vs.

Ornate Spaces Private Limited

...Corporate Debtor

Order Pronounced on: 17.03.2023



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IA-3376/2022
IN
CP (IB)/4469/MB-IV/2019

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : Mr. Partho Sarkar a/w Mr. Pratik Sarkar, Advocates;
For the Respondent : Mr. Jayesh Sanghrajka, Resolution Professional. Mr. Vikram Nankani, Ld. Sr. Counsel a/w Mr. Nausher Kohli, Advocates.

Per. Kishore Vemulapalli, Member (Judicial)

ORDER

Intervention Petition-13/2023

1. This is an Application filed by the UTI Employees Sai Samruddhi Co-operative Housing Society seeking impleadment of the Applicant as a necessary party to IA-2421/2021.
2. It has been submitted that the Applicant society is allottee of the land by MHADA for construction of tenments and issue wrongful mortgage of the land by the Corporate Debtor is under investigation by the Ministry of Corporate Affairs. It is further submitted that the RP has relied upon pendency and/or outcome of IA-2421/2021 as ground to to respond to IA-3376/2022, thereby *ex-facie*, the RP has acknowledged the fact that the outcome of IA-3376/2022 is contingent on the outcome of IA-2421/2021; IA-3376/2022 is preferred by the instant Applicant. Hence, the instant Applicant Society is a necessary party to IA-2421/2021 given the settled position in law by the Hon'ble



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Supreme Court ruling in National Organic Chemical Industries Limited Vs. Miheer H. Mafatlal, **(2004) 12 SCC 356**, wherein it was ruled, extracts infra;

..... basic principles of natural justice were violated by the courts below in deciding an issue against the appellant in proceedings to which the appellant was not even party...

3. We have heard the Ld. Counsel for the Applicant and considered the submissions on record.
4. We observed that the allottee of the land has sought impleadment as a necessary party in the IA-2421/2022 on the ground that the Corporate Debtor has allegedly mortgaged the parcel of land, stated to belong to the Applicants in the Application, and such act of Corporate Debtor is under investigation. Also, it has been submitted that the RP had become *functus officio* after expiry of CIRP period and in the absence of further extension. We feel that the Mortgagee of the land gets the security interest in the mortgaged Property to the extent of interest in such property held by the mortgagor. We also note that the MHADA has not filed any Application before us in this regard. Also, the issue whether the plan has been approved by the CoC and presented before us after expiry of CIRP period can be dealt with in the IA-2374/2021 filed for seeking approval of the Plan in accordance with the law as all the facts relied on by the Applicant are available before this Bench. The reliance placed on decision of Hon'ble Supreme Court ruling in National Organic Chemical Industries Limited (supra) is ill founded as that decision was rendered in relation to arrangement proceedings as contemplated under section



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397/398 of the Companies Act. Further, as the plan has been approved by the Committee of Creditors in the manner required under the Code and it is trite law that commercial wisdom of CoC is supreme, we decline to implead the Applicant as a necessary party in IA-2421/2022. Before we leave, it is made clear that the copy of IA-2421/2022 was provided by the Resolution Professional under direction of this Bench for the sake of information of Applicant only.

5. This Intervention Petition No. 13 of 2023 is accordingly **dismissed.**

IA-3376/2022

6. This is an Application filed by the UTI Employees Sai Samruddhi Co-operative Housing Society seeking possession of land, claimed to belong to the Applicant but in possession of the Corporate Debtor. We noticed this prayer is covered by IA-651/2022. Further by way of this Application, the Applicant has submitted that the RP becoming *functus officio* could not have presented this Plan and also the plan contravenes the provision of Section 30(2)(e) &/ or Section 30(3) &/ or Section 30(4) &/ or Section 30(6) of Insolvency and Bankruptcy Code, 2016. The Applicant has also sought punishment under Section 235(a) of Insolvency and Bankruptcy Code, 2016 and reference under Section 236(2).
7. We perused the contents of the Application and feel that the prayers contended in this Application are in nature of argument opposing the approval of Plan pending before this Bench in IA-2374/2021. Needless to say, the Adjudicating Authority is under obligation to satisfy itself that the Resolution Plan has been



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approved by the CoC u/s 30(4) and meets the requirements of section 30(2). Accordingly, the alleged non-compliances/contraventions are bound to be examined while passing order in IA-2374/2021. In view of this, this IA-3376/2022 is **dismissed**.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)