

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

I.A./5731/ND/2022

IN

Company Petition No. (IB)-2900 (ND)/2019

**Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal Rules, 2016**

In the matter of:

GITASHA KHANNA & ORS.

.... Petitioners/ Financial Creditor

VERSUS

M/S. AEGIS VALUE HOMES LIMITED

.... Respondents/ Corporate Debtor

And in the matter of:

LEENA ARORA AND ORS.

.... Applicants/Interveners

VERSUS

HEMI GUPTA AND ORS.

.... Respondents

CORAM:

DR. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 20.12.2022

ORDER

PER: SH. P.S.N.P PRASAD, HON'BLE MEMBER (J)

The instant application is being preferred under section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("IBC") on behalf of 5 homebuyers/ real estate allottees ('Interveners') of M/s. Aegis Value Homes Limited ('Corporate Debtor'), who are opposing the prayers sought in application being I.A. 4981(ND)/2022 filed by Ms. Hemi Gupta, Interim Resolution Professional ('IRP') of Corporate Debtor, wherein the IRP has sought withdrawal of the instant company petition being CP IB No. 2900(ND) of 2019 in terms of section 12A of IBC.

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2. Briefly stated facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -
- a. The interveners submit that the C.P.(IB)/2900/ND/2019, a petition filed under Section 7 of the Code, 2016 was filed on behalf of a class of creditors / real estate allottees who are 13 financial creditors/real estate allottees was admitted on 22.09.2022 and consequently CIRP was initiated against M/s. Aegis Value Homes Limited.
 - b. The interveners submit that Ms. Hemi Gupta, Insolvency Resolution Professional of the corporate debtor had made public announcement in Form A on 23.09.2022 pursuant to Section 15 of the Code read with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - c. The interveners submit that the interveners were in the process of filing their respective claims with the IRP, however, before the same could be filed, the Hon'ble NCAT vide its order dated 29.09.2022 in Company Appeal (AT)(Ins) No. 1199 of 2022 had granted an interim stay on the operation of the Hon'ble NCLT CIRP admission order dated 22.09.2022.
 - d. The interveners submit that the suspended management of the corporate debtor has allegedly gone ahead to settle with all the Section 7 applicant home buyers (13 in numbers), while ignoring the other 107 homebuyers (total units are 120). The intervenors further submit that the homebuyers/ real estate allottees cannot be equated with other creditors and stakeholders of the corporate debtor. To support its content, the interveners placed reliance on citation of **Hon'ble National Company Law Appellate Tribunal in the case of Sushil Ansal vs. Ashok Tripathi and Ors.[Company Appeal (AT) (Ins) No. 452 of 2020 dated 14.08.2020.**
 - e. The interveners submit that it is a well settled law that while deciding an application for withdrawal of CIRP, this Hon'ble Tribunal has power to exercise its discretion to either allow the same or reject it. To support its content, the interveners placed reliance on citation of Hon'ble Supreme Court Judgement in **Swiss Ribbons Pvt. Ltd vs. UOI and Ors. (2019) 4 SCC 17.**
 - f. The interveners submit that the **Hon'ble Supreme Court of India in the case of Amit Katyal vs. Meera Ahuja & Ors. cited in (2022) 8 SCC 320,** had allowed all the parties/ stakeholders/ homebuyers, who were willing to intervene in the withdrawal proceedings and allowed the withdrawal after observing that the promoters / suspended management had agreed to hand over the possession of the entire project within a period of 1 year, with liberty to the parties to approach the Hon'ble Supreme Court in case of non-compliance of such undertaking.

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3. We have heard the Learned Counsels for the interveners, suspended board of directors, and the Interim Resolution Professional. The averments made in the application and the judgments relied upon are carefully considered.
4. Adverting to the facts of the case in hand, admittedly the Hon'ble NCLAT vide order dated 29.09.2022 in Company Appeal (AT)(Ins) No. 1199 of 2022 had granted an interim stay on the operation of the Corporate debtor's CIRP admission order dated 22.09.2022 passed by this Adjudicating Authority. In view of the Hon'ble NCLAT order dated 29.09.2022, no verification of claim has been undertaken by the IRP and no CoC is constituted in the CIRP of the Corporate Debtor. The IRP in compliance of this Adjudicating Authority's order dated 18.11.2022, had submitted list of claims received from the creditors of corporate debtor as on 22.11.2022. On perusal of the list of claims placed on record, it is observed that a total of two claims are received by the IRP, one claim from the Operational Creditor claiming an amount of Rs.39,272/- and other claim from home buyer claiming an amount of Rs.22,56,740/- . Further, on a settlement between all the 13 Financial Creditors, who were original petitioners in C.P.(IB)/2900/2019 and the corporate debtor, the IRP had filed the application (I.A. 4981(ND)/2022) seeking withdrawal of the Company Petition under Section 12A of the Code, 2016.
5. On a perusal of the citation **Amit Katyal vs. Meera Ahuja & Ors. (2022) 8 SCC 320**, we find that the facts of the cited case are totally different from the facts of present case, as in the cited case the COC was constituted on 23.11.2020, however, there was a stay on CIRP proceedings on 03.12.2020 and no proceedings took place before the COC. The COC comprises of 91 members, of which 70% were the members of the Flat Buyers Association who are willing for the CIRP proceedings being set aside, subject to Appellant and CD honouring its undertaking. In view of the above, and the fact that the original applicants had also settled the dispute with the corporate debtor, the Hon'ble Apex Court was of the opinion that it was a fit case to exercise the powers under Article 142 of the Constitution of India read with Rule 11 of the NCLT rules, 2016 and to permit the original applicants to withdraw the CIRP

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proceedings. Further, in the given citation its is observed by the Hon'ble Supreme Court that even the object and purpose of the IBC is not to kill the company and stop/stall the project, but to ensure that the business of the company runs as a going concern.

6. At this juncture, it will be advantageous to refer the matter of M/s. Rolta India Limited, wherein the Hon'ble NCLT, Mumbai vide its order dated 06.08.2021 dismissed the Section 12A of the Code, 2016 on the ground that there were 40 interveners and the claims collated by the IRP amounts to Rs.5000 Crore and allowing an Application under Section 12A of IBC, 2016 would lead to multiplicity of litigation. The **Hon'ble Supreme Court of India vide Judgement dated 25.08.2021 in Kamal K.Singh Vs. Dinesh Gupta & Anr. in Civil Appeal No. 4993 of 2021**, observed and held as follows:

"We have heard learned counsel for the parties. It is not in dispute that CoC has not been constituted so far. This Court in Swiss Ribbons Private Limited and Anr. v. Union of India and Others (2019) 4 SCC 17 has held that at any stage, before a Committee of Creditors is constituted, a party can approach National Company Law Tribunal (NCLT) directly and that the Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, allow or disallow an application for withdrawal or settlement. It was held thus :

"82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 I days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly. which Tribunal may. in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case." (emphasis supplied)

(4) In the instant case, as noticed earlier, the applicant- respondent no.1 had made an application before the NCLT, Mumbai Bench, under Rule 11 of the NCLT Rules for withdrawal of company petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) on

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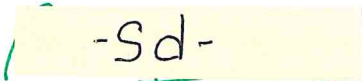
the ground that the matter has been settled between the Corporate debtor and the applicant-respondent no.1.

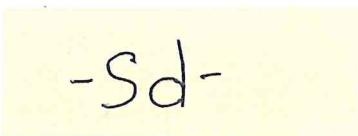
(5) Having heard learned counsel for the parties and having regard to the facts and circumstances of the case, we are of the view that the applicant / respondent no.I was justified in filing the application under Rule 11 of the NCLT Rules for withdrawal of the company petition on the ground that the matter has been settled between the parties.

(6) The appeal is accordingly allowed. The order of the NCLT dated 06.08.2021 is hereby set aside and the company petition, for which withdrawal application was filed under Rule 11 of the NCLT Rules, is ordered to be withdrawn. No costs."

7. Having gone through the conspectus of all relevant facts and circumstances and the judgements cited supra, we are of the view that the citations relied upon by the interveners are not helpful for them. Further, it is observed that the interveners do not have any locus to object the application i.e., I.A. 4981(ND)/2022 filed under Section 12 A of the Code, 2016 read with CIRP Regulations, 2016 since the said interlocutory application (I.A. 4981(ND)/2022) is filed before the Constitution of the Committee of Creditors. The interveners are at liberty and may enforce their right to undertake remedies available under Real Estate (Regulations and Development) Act, 2016, Consumer Protection Act, 2019 or any other law as applicable. They may also consider to file another application under Section 7 of the IB Code, 2016 if they so desire, subject to fulfillment of mandatory conditions as laid down in Section 7(1) of the Code, 2016

Accordingly, the instant application (I.A./5731/ND/2022) ***being devoid of any merit, stands dismissed without costs.***


(DR. BINOD KUMAR SINHA) *12/22*
MEMBER (T)


(P.S.N PRASAD)
MEMBER (J)