

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-37/2022
In
IB-02(PB)/2017

IN THE MATTER OF IB-02(PB)/2017:

Nikhil Mehta & Sons (HUF) & Ors.

..... **Financial Creditors**

Versus

M/s. AMR Infrastructures Limited

..... **Corporate Debtor**

AND IN THE MATTER OF IA-37/2022:

Mr. Satish Kumar and 47 Ors.

..... **Applicants**

Versus

Mr. Vikram Bajaj

Resolution Professional of the Corporate Debtor

..... **Respondent**

Order Pronounced On: 07.02.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicant : Mr. Anil Nag, Adv.

For the Respondent : Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Mohak Sharma with Mr. Vikram Bajaj, RP in person.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Satish Kumar and 47 Ors., the Applicant on 03.01.2022 under Rule 11 of the NCLT Rules, 2016 before this Adjudicating Authority, for seeking the following reliefs:

“i. Allow the applicants access to the units purchased by them through duly registered lease deeds.

ii. Allow the applicants to commence commercial activity from their units.

iii. Allow the applicants to obtain electrical connections and carry out necessary alterations in the units which may be permitted to be demarcated in the presence of Resolution Professional or his authorised representative.”

2. Brief Background of the Case:

The facts which are relevant for the purposes of determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditors i.e. Nikhil Mehta & Sons (HUF) & Ors., against the Corporate Debtor i.e. M/s. AMR Infrastructures Limited and the said application was admitted by this Adjudicating Authority vide order dated 10.05.2018 and a moratorium was declared including the appointment of Mr. Vikram Bajaj as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Vikram Bajaj was confirmed as Resolution Professional in terms of Section 22 of IBC.
- ii.** Thereafter, the Resolution Plan was submitted jointly by Mr. Surender Kumar Singhal, Mr. Rajat Singhal, Mr. Raman Aggarwal which was approved by the CoC in its 7th meeting dated 20.05.2019 by 74.44% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Vikram Bajaj, the Resolution Professional of the Corporate Debtor filed CA-1069-(ND)-2019 to seek approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 27.05.2019, which is pending adjudication before this Adjudicating Authority.

3. Submissions of the Applicants:

- i.** It is the case of the Applicants that the Greater Noida Industrial Development Authority (GNIDA) executed a lease deed dated

- 21.07.2006 in favour of M/s. RC Info Systems Pvt. Ltd. in respect of the plot No. TZ-09, Tech Zone, Greater Noida, U.P. to develop an IT project which was named "Kessel I-Valley". The project consisted of a Mall, IT spaces and residential units for people working in IT.
- ii.** M/s. RC Info Systems Pvt. Ltd appointed M/s. AMR Infrastructure Ltd. (Corporate debtor) vide MoU dated 31.07.2006 as developer with an intention to develop, sell and manage the construction activities relating to plot No. TZ-09.
 - iii.** The Applicants purchased commercial units/residential units in the said project launched by the Corporate Debtor. In fact, a registered tripartite lease deed was executed in favour of the individual Applicants by the GNIDA and M/s. RC Info System. It is submitted that under the lease deed, the Applicants who had booked their units in the Mall were given physical possession of their units while the Applicants who had booked IT spaces were handed over the possession of the requisite area after the labelling and demarcation of the space.
 - iv.** The Applicants got the demarcation conducted from one Sh. Rajesh Jain for the purpose of labelling their units/spaces, but the Resolution Professional refused to recognise the said demarcation. The name of Sh. Rajesh Jain was suggested by the Resolution Professional himself since Sh. Rajesh Jain happened to be an architect and a partner in the Company which had been engaged by the Corporate Debtor as the architect in the project.
 - v.** Several attempts were made by the Applicants to convince the Resolution Professional to allow them to access their units and permit them to commence business did not meet with any success. Unfortunately, the Resolution Professional is acting in a high-handed fashion in as much as he asked the Applicants to execute an indemnity bond which imposes unwarranted and onerous

conditions on the applicants. A copy of the indemnity bond suggested by the Resolution Professional as a condition to allow access to the premises is filed along with the Application.

- vi.** The action of the Resolution Professional in disallowing the Applicants to have access to their commercial units and commence business activity from the said units is not only illegal but also without jurisdiction. The Applicants contended that the lease deed was executed in favour of the Applicants by GNIDA and M/s. RC Info System Pvt. Ltd. The Corporate Debtor was merely acting as an agent on behalf of the M/s. RC Info System Pvt. Ltd. for the purpose of marketing and developing the project and therefore the Resolution Professional has no jurisdiction to prevent the Applicant from having access to the said Project Site.

4. Submissions of the Respondent:

- i.** The Respondent has filed a reply affidavit denying the allegations made by the Applicant and stated that the proceedings of the CIRP are proceedings in rem, where the interest of a select stakeholder group cannot be made paramount and perused selectively, particularly when an application for approval of resolution plan is sub-judice.
- ii.** It is the case of the Respondent that the Respondent has never denied access to the stated property bearing Plot No. TZ-09, Tech Zone, Greater Noida UP ("property"). The Answering Respondent has requested the Applicants and other homebuyers to visit the aforesaid property after prior intimation to the Answering Respondent so that necessary instructions can be issued to the security personnel placed by the Answering Respondent in order to protect and preserve the value of the assets. It is imperative to note that previously some of the homebuyers had forcefully tried to take over the custody and control of the said property and

therefore the Answering Respondent had to file an FIR before the concerned Police Station seeking peaceful control over the property in terms of Section 25 of the Insolvency and Bankruptcy Code, 2016 ("Code").

- iii.** It is imperative to note that in the peculiar facts of the case although the registered lease deed has been executed in favor of the Applicants, the area in respect of their units is not demarcated nor their units have been labeled, which is admitted by the Applicants. Admittedly, the Applicants chose to get a sub-lease deed registered even without the provision of basic amenities like sewage, electricity lift, etc. Moreover, the Applicants cannot be permitted unrestricted access to the said property as the said homebuyers have rights only against the built-up area represented in their registered sub-lease, which is only a part of the superstructure which has rights created in favor of other 2000+ homebuyers claimants as well as the unsold inventory and common areas which pertain to the Corporate Debtor.
- iv.** It is submitted that the construction on the said property has been at a halt for the last seven to eight years, therefore, the said property is not an appropriate place to start commercial/residential activities. It is imperative to note that before handing over the property it is the duty of the builder to provide the said property which complies with minimum safety protocols and also basic amenities, which admittedly were not provided by the Corporate Debtor to the Applicants and the Applicants on their own risk had taken possession and got their execution of Registry done.
- v.** It is submitted that even if the demarcated piece of the property is given to the respective registry holder and such registry holders are allowed to initiate commercial activities on their respective land

then there shall be disputes with regard to the common basic amenities like sewage, lifts, escalators, electricity, air conditioning etc., which were to be completed by the Corporate Debtor and now the Successful Resolution Applicant in case the Resolution Plan is approved.

5. Analysis and Findings:

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent. We have also perused the records.
- ii.** Admittedly, the structure of the project is not complete and no construction activity has taken place in the last 7-8 years and lacks basic amenities such as water, electricity, sewage, sanitation, lifts, ventilation, fire safety, escalators etc., is thus unfit and unsafe and does not comply all structural fire safety laws. It is also an admitted fact that after initiation of the Corporate Insolvency Resolution Process, it is the duty of the Resolution Professional to protect, preserve and maintain the status quo of the value of the assets of the Corporate Debtor in toto.
- iii.** The Committee of Creditors of the Corporate Debtor approved a Resolution Plan in its 7th meeting dated 20.05.2019 by 74.44% voting share after considering its feasibility and viability, which seeks to complete the project in the interest of all stakeholders and while the application for approval of resolution plan is sub-judice. The Applicants at a much belated stage have filed an application to undertake construction and demarcation ahead of adjudication of the Resolution Plan.
- iv.** We find that the Conduct of Resolution Professional to not allow free Ingress and Egress to the Applicants/Homebuyers is not good in law. Therefore, we direct the Resolution Professional to restore

the right to visit the Project Site to the Applicants/Homebuyers. The Applicants/Homebuyers are directed to maintain the status quo while visiting the Project Site and take appropriate prior permissions from the Resolution Professional for visiting the Project Site in advance to avoid security inconveniences.

- v. Coming to the factual matrix of the present Application, it is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nittygritty's involved in the CIRP of the Corporate Debtor. Therefore, this Adjudicating Authority cannot entertain the present Application which is not sustainable.
- vi. We advice the Resolution Professional as well as the Applicants/Homebuyers to make their best endeavors to get the ultimate essence in the implementation of the Code and in the interest of justice to expedite the process of Resolution of the Corporate Debtor under the Code.

6. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i. The Application bearing **IA-37/2022** filed by the Applicants is **disposed of**.
- ii. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 315

CA-2884/2019, CA-1214/2019

In

(IB)-02(PB)/2017

IN THE MATTER OF:

Nikhil Mehta & Sons (HUF) & Ors.

Vs

M/s. AMR Infrastructures Ltd.

.....APPLICANT/PETITIONER

.....RESPONDENT

SECTION

U/s 7 of IBC, 2016

Order delivered on 07.02.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP : Mr. Abhishek Anand, Mr. Supriyo Banerjee, Advs.

For Welfare Asso. : Mr. Barinder Bhatia, Adv.

ORDER

This matter was taken up upon mentioning.

Learned Counsel appearing for the Respondent has submitted that this matter was supposed to be listed on 06.01.2024 and inadvertently, this matter has been listed today i.e. 07.02.2024. Therefore, Learned Counsel for the Respondent prays that this matter be listed for hearing on 09.02.2024.

List the matter on **09.02.2024**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

Shammy
07.02.2024