

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – II, SPECIAL BENCH

Item No.102
(IB)-868(ND)2018
New IA-5521/2021

IN THE MATTER OF:

M/s. Propertree Real Estate Solution Pvt. Ltd. ... Applicant/Petitioner

Versus

M/s. Unibera Developers Pvt. Ltd. ... Respondent

Under Section: 9 Of IBC, 2016

Order delivered on 01.12.2021

CORAM:

SHRI BHASKARA PANTULA MOHAN
HON'BLE MEMBER (J)

SHRI L.N. GUPTA,
HON'BLE MEMBER (T)

PRESENT: Gautam Singhal, Adv for Applicant No. 2
Adv Shubham Saket
Abhishek Anand, Adv for Applicant
Adv Shubham Saket and Adv Arvind Shukla for Home buyers
Adv Aditya Gauri & Dhananjaya Sud, Advs. for RP

ORDER

New IA-5521/2021: This is an application filed under Rule 11 of the NCLT Rules praying for withdrawal of the main Company petition in view of the settlement executed between the parties. It is observed that the main IB Petition in this matter has already been admitted and CIRP against the Corporate Debtor has been initiated vide order dated 12.11.2021. We also find that the present IA has not been moved under Regulation 30 A of CIRP Regulation, 2016. The Counsel for the Applicant submits that this application has been filed jointly by the Operational Creditor and the Corporate Debtor for the prayer as mentioned above. The point that is trying to be projected by the Applicant is that under Rule 11, this application is maintainable and in view of the fact that the IRP has been claiming the exorbitant fees, the present IA could not be routed through IRP. He further submits that in the communications made into the IRP, the fact of settlement between the parties was made clear to the IRP and despite that the IRP has constituted the CoC in a hurried manner. Ld. Counsel for the IRP

submitted that he has received more than 150 claims and after the last date of receipt of claims, he has constituted in the CoC in accordance with law.

We are aware that the Section 12A of the IBC makes it mandatory on the part of the Applicant to file the withdrawal application before this Adjudicating Authority with the approval of CoC. Also, the Regulation 30A (a) makes it mandatory on the part of the Applicant to move the withdrawal application through IRP, if it is a case of withdrawal before the Constitution of the Committee of Creditors. If it is a case of withdrawal after constitution of CoC, as per provision of Regulation 30 A(b), the application for withdrawal has to be filed through the Interim Resolution Professional with approval of 90% of voting share of the Committee of Creditors. Further, the application has to be moved in form FA. In the present case, the Applicant has not followed the law. He has neither obtained the consent from the Committee of Creditors, nor they have followed the procedure under Regulation 30A. When this Bench questioned of the IRP as to why he has constituted the CoC despite the fact that the parties have settled the issue, he explained that he is bound under law to constitute the Committee within 7 days from the date of receipt of claims. However, the matter relating to charge of exorbitant fee for a short period and constitution of CoC in hurried manner needs to be enquired. Hence, we refer the matter to IBBI, which has a proper jurisdiction, to enquire into the matter.

As regards the present IA, since the Operational Creditor and Corporate Debtor have not followed the due procedure prescribed under the law, we are not inclined to allow the same.

Therefore, the IA-5521/2021 is dismissed.

- Sol -

(L. N. GUPTA)
MEMBER (T)

- Sol -

(BHASKARA PANTULA MOHAN)
MEMBER (J)