

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 107 of 2019

IN THE MATTER OF:

**Hadi Mohd Teher Badri
Director,
Emaar MGF Land Ltd.**

...Appellant

Versus

Neeraj Gupta & Ors.

...Respondents

Present:

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Arjun Jain, Ms. Anushree Narain, Advocates.

For Respondents: Mr. Krishna Mohan K, Mr. Chaitanyashil Priyadarshi and Ms. Dania Nayyar, Advocates for R-2.

Mr. Nithin Chandran, Advocate for Intervenors.

ORDER

30.09.2022: Heard Shri Krishnendu Datta, learned senior counsel for the Appellant, learned counsel for Respondent No.2 and learned counsel appearing for the Intervenor.

2. This Appeal has been filed against order dated 24.01.2019 passed in C.P. No. IB-1403(PB)/2018 – ‘Neeraj Gupta vs. Emaar MGF Land Ltd.’ by which order the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi has admitted the Section 7 application filed by Neeraj Gupta – Financial Creditor (an allottee).

3. This appeal was entertained by this Tribunal and on 01.02.2019 interim orders were also passed. Subsequently, this Tribunal passed orders on

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28.02.2019, 04.04.2019 and 15.04.2019. It is further relevant to notice that against the interim order passed by this Tribunal on 01.02.2019 in the present Appeal, Civil Appeal No. 2502 of 2019, “Dr. Virendra Swarup Institute of Computer Studies vs. Hadi Mohd. Taher Badri and Others” was filed, which appeal has been disposed of on 29.03.2019. Hon’ble Supreme Court has by the said order set aside the insolvency proceeding filed by the Respondent No.2 to the said Appeal (Neeraj Gupta). A copy of the said order was also placed in the records of this Appeal.

4. Subsequently, the Respondent No.2 to this Appeal filed Civil Appeal No. 4433-4435/2019 before the Hon’ble Supreme Court challenging orders dated 04.04.2019, 05.04.2019 and 15.04.2019 passed by this Tribunal in the present appeal. When the Appeal was taken before the Hon’ble Supreme Court it was submitted by learned counsel for the Appellant that insolvency process having been set aside this appeal being Company Appeal (AT) (Ins.) No. 107 of 2019 which is pending in this Tribunal ought to have been closed. The Hon’ble Supreme Court considering the said submission disposed of the Appeals for deciding Company Appeal (AT) (Ins.) No. 107 of 2019 as expeditiously, as possible within a period of six weeks.

5. Learned counsel for the Appellant submits that in view of the order passed by Hon’ble Supreme Court in Civil Appeal No. 2502 of 2019 this Appeal itself has become infructuous and ought not to be proceed further. Learned counsel for the Respondent No.2 (Company) does not oppose this submission

that in view of the order of Hon'ble Supreme Court in Civil Appeal No. 2502 of 2019 the present appeal has become infructuous.

6. As noted above, Company Appeal (AT) (Ins.) No. 107 of 2019 has been filed against the order dated 24.01.2019 of Adjudicating Authority initiating CIRP on a Section 7 application filed by 'Neeraj Gupta' being C.P. No. IB-1403(PB)/2018 and interim order was passed on 01.02.2019. It is relevant to notice that against the order dated 01.02.2019 Civil Appeal No. 2502 of 2019 was filed by Dr. Virendra Swarup Institute of Computer Studies, where following order was passed on 29.03.2019:-

“O R D E R

Heard the learned Senior Counsel/ Counsel appearing for the parties.

The matter is being disposed of today as it is clear that the appellant is an allottee in the real estate project of the Respondent No.3. As an allottee, it has either a right to get possession of the flat or to claim refund. It has been argued before us that the appellant has been offered possession but has declined.

In this event, it is clear that the appellant is entitled to refund of monies that it has paid. This refund will be made by Respondent No.3 within a period of four weeks from today with 10.7% interest.

It is made clear that this order is not to be treated as a precedent.

The insolvency proceeding filed by the Respondent No.2 is therefore set aside.

Accordingly, the appeal is disposed of.

Pending applications also stand disposed of.”

7. As noted above, subsequently when further interim orders were passed in this Appeal being orders dated 04.04.2019, 05.04.2019 and 15.04.2019, the Respondent No. 2 in the present Appeal (Company) filed Civil Appeal No. 4433-4435/2019 which has been disposed of by the Hon’ble Supreme Court on 15.09.2022. The Hon’ble Supreme Court in the aforesaid Civil Appeal No. 4433-4435/2019 noticed the submission of the Appellant that in view of the order passed by Hon’ble Supreme Court in Civil Appeal No. 2502 of 2019, the Company Appeal (AT) (Ins.) No. 107 of 2019 pending in this Tribunal has become infructuous. Noticing the aforesaid, the Hon’ble Supreme Court disposed of the Civil Appeal with the following observations:-

“At this stage, we also see no reason to entertain the applications filed by the intervenors before this Court since in any event they have filed applications before the NCLAT and if the prayer of the appellant to withdraw his appeal is allowed, the said intervenors in any event will have to avail their remedies in accordance with law.

Considering the fact that the last order in the appeal before NCLAT is 15.04.2019 and sufficient time has elapsed, we request the NCLAT to dispose of the application pending before it seeking withdrawal

of the appeal, as expeditiously as possible within a period of six weeks from this date.

With the above observations, the appeals stand disposed of.”

8. We after considering the submissions of the parties and after perusing both the orders dated 29.03.2019 and 15.09.2022 passed by Hon'ble Supreme Court are of the opinion that in view of the order passed on 29.03.2019 this appeal itself has become infructuous. The order initiating the CIRP itself having been set aside by the Hon'ble Supreme Court by order dated 29.03.2019, there is no occasion to keep this appeal pending. The present appeal Company Appeal (AT) (Ins.) No. 107 of 2019 is thus dismissed having become infructuous in view of the order of the Hon'ble Supreme Court.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

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