

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

Company Appeal (AT) (Insolvency) No. 912 of 2024

In the matter of:

JM Financial Asset Reconstruction Company Ltd.

....Appellant

Vs.

ASK Trusteeship Services Pvt. Ltd. & Ors.

...Respondents

For Appellant

Mr. Krishnendu Datta, Sr. Advocate with Mr. Raunak Dhillon, Ms. Srideepa Bhattacharyya, Ms. Niharika Shukla, Advocates for JM Financial

For Respondents

**Mr. Arun Kathpalia, Sr. Advocate with Mr. Arunav Guha Roy, Ms. Diksha Gupta, Mr. Aditya Dhupar, Ms. Anushree Poddar, Advocates for R1
Mr. Gaurav Katiyar, IRP in person.
Mr. Abhijeet Sinha, Sr. Advocate with Mr. Krish Kalra, Mr. Divyansh Rai, Advocates for suspended director
Mr. G. Umapathi Ganesh, Sr. Advocate with Mr. Sandeep Chilano, Mr. Abdullah Tanveer, Advocates for homebuyers.**

WITH

Company Appeal (AT) (Insolvency) No. 926 of 2024

In the matter of:

Santosh Kumar

....Appellant

Vs.

ASK Trusteeship Services Pvt. Ltd. & Anr.

...Respondents

For Appellant

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Krish Kalra, Mr. Divyansh Rai, Advocates

For Respondents

**Mr. Arun Kathpalia, Sr. Advocate with Mr. Arunav Guha Roy, Ms. Diksha Gupta, Mr. Aditya Dhupar, Ms. Anushree Poddar, Advocates for R1
Mr. Gaurav Katiyar, IRP in person.
Mr. G. Umapathi Ganesh, Sr. Advocate with Mr. Sandeep Chilano, Mr. Abdullah Tanveer, Advocates for homebuyers.**

ORDER**(Hybrid Mode)**

09.05.2024: These two Appeals have been filed against the same order dated 22.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench, Court-II admitting Section 7 application filed by ASK Trusteeship Services Pvt. Ltd.

2. Company Appeal (AT) (Insolvency) No. 912 of 2024 has been filed by JM Financial Asset Reconstruction Company Ltd. which claims to be financial creditor and assignee of Piramal whereas Company Appeal (AT) (Insolvency) No. 926 of 2024 has been filed by Suspended Director of the Corporate Debtor.

3. We have heard Shri Krishnendu Datta and Shri Abhijeet Sinha, Learned Senior Counsel for the Appellants, Shri Arun Kathpalia, Learned Senior Counsel for the ASK Trusteeship Services Pvt. Ltd and Shri G. Umapathi Ganesh, Learned Senior Counsel for the Homebuyers.

4. Counsel for the Appellant submits that the debt of ASK Trusteeship Services Pvt. Ltd. was subordinate debt to the Piramal and two Section 7 applications were filed by ASK Trusteeship Services Pvt. Ltd. Section 7 application which has been admitted was based on the debt and default of Piramal. It is submitted that JM Financial Asset Reconstruction Company Ltd. has also filed Section 7 application and ultimately after the order dated 22.04.2024, both other Section 7 applications filed by ASK Trusteeship Services Pvt. Ltd. for its own debt i.e. 569/ND/2023 and Section 7 application filed by JM Financial Asset Reconstruction Company Ltd. i.e. 58 of 2024 has

been dismissed as having become infructuous. Shri Krishnendu Datta, Learned Senior Counsel submits that the Adjudicating Authority itself has wrote in paragraph 9 that JM Financial Asset Reconstruction Company Ltd. is taking steps to restructure the facilities availed by the Corporate Debtor which was submitted by the Corporate Debtor before the Adjudicating Authority as noticed in paragraph 9. It is submitted that the JM Financial Asset Reconstruction Company Ltd. who is assignee of Piramal is entitled to take its own remedy and on the default committed by the Corporate Debtor to the facilities of JM Financial Asset Reconstruction Company Ltd., ASK Trusteeship Services Pvt. Ltd. cannot rely nor that can be basis of admission of Section 7 application. It is further submitted that the financial creditor- JM Financial Asset Reconstruction Company Ltd. is entitled to restructure its debt. It is submitted that the present is a case where Section 7 application ought not to have been admitted.

5. Shri Abhijeet Sinha, Learned Counsel for the Corporate Debtor submits that the Corporate Debtor has been carrying out the construction and it is having talks with the JM Financial Asset Reconstruction Company Ltd. for restructuring its debt so that Corporate Debtor may be revived and continue its activity. It is submitted that the interpretation of Section 7 explanation is also involved in the present appeal.

6. Shri Arun Kathpalia, Learned Senior Counsel appearing for the ASK Trusteeship Services Pvt. Ltd. refuting the submissions of the Appellant submits that the debt and default to the Piramal is well established and there can be no denying that the default was committed regarding debt of Piramal

which has now been assigned to the JM Financial Asset Reconstruction Company Ltd. It is submitted that in Section 7 application which was filed by JM Financial Asset Reconstruction Company Ltd., an affidavit was filed where it is not even suggested that any restructuring proposal is going on. It is submitted that Section 7 application filed by ASK Trusteeship Services Pvt. Ltd. was rightly admitted by the Adjudicating Authority. It is submitted that the payments which were due to ASK Trusteeship Services Pvt. Ltd. were also in default since the due date for the payment has already over. It is submitted that the payment has not been made to ASK Trusteeship Services Pvt. Ltd. on account of clause 2.3 of the Security Subscription Agreement entered by ASK Trusteeship Services Pvt. Ltd. with the Corporate Debtor. It is submitted that Section 7 application filed by JM Financial Asset Reconstruction Company Ltd. has not been dismissed as infructuous rather it was disposed of on the statement that the financial creditor shall withdraw Section 7 application with right to file claim and liberty to come back.

7. Learned Counsel for the homebuyers has referred to paragraph 30 of the judgment where the Adjudicating Authority has directed construction to be carried out under the supervision of Justice Sunil Gaur to Monitor over the IRP to supervise the CIRP process.

8. The Corporate Debtor being a Real Estate Company, we are of the view that the interest of the homebuyers are to be protected. The submissions raised by Counsel for the parties as noted above needs consideration. We issue notice in both the appeals and grant three weeks' time to file reply to the Respondents. Rejoinder, if any, be filed within two weeks thereafter.

9. Appellant in appeal filed by Suspended Director of the Corporate Debtor submits that the Corporate Debtor shall extend all assistance for carrying out the constructions.

10. List both the Appeals on 12.07.2024 for disposal.

In the meantime, in pursuance of the impugned order dated 22.04.2024, no further steps shall be taken in the CIRP except the construction to be carried out under the IRP with the assistance of officers and staff of the corporate debtor under the supervision of Justice Sunil Gaur as directed by the Adjudicating Authority at paragraph 30.

The RERA account which are earmarked for the construction of the project, under the instructions of the IRP and other signatories of the fund may be used for construction. Financial Creditors also to extend co-operation for release of fund for the purpose of the construction.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

Anjali/nn