

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 4
(IB)-462(PB)/2022

IN THE MATTER OF:

Girish Luthra and Ors.

.... Petitioner/Applicant

Vs.

Cosmos Infra Engineering (India) Private Limited Respondent

Order u/S. 7 of the Insolvency & Bankruptcy Code, 2016

Order delivered on 23.01.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE & VC)

PRESENT:

For the Petitioner : Adv. Karan Malhotra, Adv. Ayush Pratap Singh,
Adv. Sarthak Dhingra
For the Respondent : Sr. Adv. P. Nagesh, Adv. Daizy Chawla, Adv. Vijaya
Singh, Adv. Jatin Kapoor, Adv. Ankita Sinha, Adv.
Rishabh Singh, Adv. Akshay Sharma
For the Applicant : Adv. Sumit Thakur, Adv. Manish Paliwal, Adv.
Megha Yadav in IA-6397/2023

ORDER

IA-1127/2023, IA-5169/2023 & IA-6397/2023

1. Mr. Karan Malhotra, Ld. Counsel for the Petitioner appears through VC.
Mr. P. Nagesh, Ld. Sr. Counsel for the Respondent appears physically.
2. The present Section 7 Petition has been filed by the Home Buyers
against the Corporate Debtor namely Cosmos Infra Engineering (India)
Private Limited in a housing project called "Cosmos Express 99".
3. The Home Buyers are aggrieved by the Corporate Debtor's conduct in
not completing the project in time; and therefore creditors in a class
filed Section 7 Petition.
4. Notice was issued on 10.06.2022.
5. In the meanwhile, IA-1127/2023 has been filed by the Corporate
Debtor *inter alia* pleading that the project is by and large complete

except 30% which remains incomplete due to several factors which includes delayed payment by the allottees; and therefore, the project is being delayed.

6. Therefore, vide order dated 19.04.2023 we appointed one Advocate Commissioner, who for some reasons could not be identified; and therefore, Mr. Saurabh Kalia, Ld. Counsel was appointed as Advocate Commissioner vide order dated 23.05.2023.
7. The Advocate Commissioner took up the responsibility and has filed 03 reports. First report is dated 21.07.2023; 2nd report is 10.10.2023 and the 3rd report is 29.11.2023. All the reports are taken on file and have been shared with all the respective parties.
8. During the course of proceedings, Ld. Sr. Counsel for the Respondent made a proposal that the 247 Home Buyers should be allowed to meet and take the decision as to how to go forward in the matter. This was recorded in our order dated 22.08.2023.
9. Thereafter, the meeting was held under in the presence of Advocate Commissioner and the Home Buyers were given the option of suggesting ways and means to resolve the issue and it is not in dispute that the Home Buyers met and decided the two proposals given by the Corporate Debtor, which is Plan-A and Plan-B.
10. Both the proposals given by the Corporate Debtor were considered in the meeting held on 29.10.2023 and majority of Home Buyers totalling to 78.48% have voted in favour implementing Plan-A of the proposal given by the Corporate Debtor.
11. This fact stated by the Advocate Commissioner is not disputed by any of the parties.
12. Consequent to the Home Buyers giving their assent to Plan-A proposed by the Corporate Debtor, the details of the proposal was agreed by the Corporate Debtor and the Promoter of the Corporate Debtor has filed an affidavit dated 20.01.2024. The hard copy of the affidavit dated 20.01.2024 was submitted before us today at the time of hearing and they have also filed the soft copy on the DMS.
13. The affidavit filed by the Promoter of the Corporate Debtor reads to the

following effect:

AFFIDAVIT

I, Pranav Mittal, aged about 32 years having address at Block 6, Rishi Apartment, 4 Battery Lane, Rajpur Road, Civil Lines, Delhi 110054, the Director and the Promoter of M/s. Cosmos Infra Engineering (India) Private Limited ("Respondent Company") having its registered office at 1/6, Ground Floor, Rishi Apartments, 4 Battery Lane, Rajput Road, Civil Lines, Central Delhi - 110054, presently do hereby solemnly affirm and declare as under:

- 1. I am conversant with the facts and circumstances of the case as such I am competent to affirm and swear the present Affidavit.*
- 2. That the present Proceedings before this Hon'ble Tribunal have been initiated by Applicant/Allotees of the 'Cosmos Express 99 Project' (hereinafter referred to as "Project") located at Sector 99, Village Dhankot, Dwarka Expressway Gurugram, under Section 7 of the Insolvency and Bankruptcy Code, 2016 for the initiation of the Corporate Insolvency Resolution Process against the Respondent Company.*
- 3. I am one of the Director and promoters of the Respondent Company and I state that the Project of the Respondent Company is at an advanced stage, where presently the Civil Structural work is complete in all Five (5) towers (70% of the total work is Completed) and the finishing works (which is only 30% of the total work) are being undertaken by the Respondent Company.*
- 4. That vide order dated 23.05.2023, this Hon'ble Tribunal appointed Mr. Saurabh Kalia as the Local Commissioner ("LC") to undertake the inspection of the Project site of the Respondent Company*
- 5. Mr. Saurabh Kalia conducted the physical inspection of the Project site on 10.06.2023 and submitted his report on 19.07.2023. The Report of the LC also corroborates the fact that the Civil Structural work is complete in all Five (5) towers, summing that approximately over 70% of the total work is Completed in the Project.*
- 6. Thereafter pursuant to the order of this Hon'ble Tribunal dated 17.10.2023, the Respondent Company on 25.10.2023 placed two comprehensive proposal-cum-plans (namely Plan A and Plan B), w.r.t. Project's completion and the handover of flats/units within specified timelines as outlined in the respective plans, before all 247 existing homebuyers for their review and consideration*

7. *Under the same order of this Hon'ble Tribunal dated 17.10.2023, both Plan A and Plan B were put to vote before all existing 247 homebuyers in the meeting (Physically and virtually) convened on 29.10.2023 and 17.11.2023 under the supervision and observance of Mr. Saurabh Kalia.*
8. *According to the report of Mr. Saurabh Kalia dated 29.11.2023 on the outcome of the meeting dated 29.10.2023 and voting conducted from 29.10.2023 to 31.10.2023 and on 17.11.2023, it is established that out of the total 247 homebuyers, 158 homebuyers have cast their vote during the voting process. Out of 158 homebuyers who cast their vote, 124 homebuyers have voted in favour of Plan A, which constitutes 78.48% (the overwhelming majority) of the homebuyers in favour of Plan A.*
9. *That pursuant to the hearing held before this Hon'ble Tribunal dated 09.01.2024, this Hon'ble Tribunal has directed to submit an Affidavit in consonance with the approved Plan A with all details pertaining to how the Project will be managed to be completed within specified timelines.*
10. *I say that the Respondent Company and its Promoters confirm that they shall adhere to the terms of Plan A as well as the submissions made in IA 1127 of 2023 and the submissions made in Reply to CP (IB) 462 (PB) of 2022.*
11. *In case this Hon'ble NCLT directs and appoints a court-appointed observer/Administrator/LC, on fixed monthly fees which shall be borne by the Respondent Company, to oversee and monitor the implementation of Plan A by the Respondent Company within the specified timelines, the Respondent Company shall adhere to the direction of this Hon'ble NCLT.*
12. *I say that I and the Respondent Company will have no objection if this Hon'ble NCLT proceeds with appointing Mr. Saurabh Kalia as the court-appointed observer/Administrator/LC who has assisted this Hon'ble NCLT during the present proceedings.*
13. *I say that as mentioned in Plan A the Respondent Company will complete the remaining construction of the Project i.e. the remaining 30% of finishing work in the Project) in 6 milestones and hand over the flats to all the homebuyers within a period of 12 months (+/- 3 months) subject to the approval/consent of this Hon'ble NCLT. The detail of Construction Milestones under Plan A is attached and marked herewith as Annexure-1.*
14. *I state that all the amenities, common areas, and specifications w.r.t. materials used in each Unit under the Project will be as specified and agreed upon in the Builder Buyer Agreement (BBA) with the homebuyers and there will be no compromise*

with the quality of work done.

15. *That the total expected amount required by the Respondent Company to complete the remaining construction of the Project and hand over the flats to all the homebuyers is INR 50,68,43,793.31 (Rupees Fifty Crores Sixty Eight Lakh Forty-Three Thousand Seven Hundred Ninety-Three and Thirty-One Paisa) ("Construction Cost"). The details of the Construction Cost are attached and marked herewith as Annexure 2.*
16. *That as per the calculations and records of the outstanding payments due from the homebuyer, as of the date, an amount of INR 46,55,14,005/- (Rupees Forty Six Crores fifty five Lakh fourteen Thousand five) is outstanding and due from homebuyers. The detail of the outstanding dues of the Homebuyers is attached and marked herewith as Annexure 3.*
17. *I state that I on my own or through any other entity will arrange and infuse an amount INR 10 Crore in 4 milestone-linked instalments into the Project as my contribution to the completion of the Project in a time-bound manner.*
18. *That the outstanding amount of approx. INR 46,55,14,005/- remaining due from the existing homebuyers will be divided into 6 instalments linked with 6 milestones as identified in the approved Plan A, for the completion of the Project. The details of payment to be made by Homebuyers are attached and marked herewith as Annexure 4.*
19. *That the Homebuyers are required to make the payment of their respective outstanding dues in instalments as follows:*

<i>Instalments</i>	<i>% of Outstanding Dues</i>
<i>1st Instalment within a period of 30 days from the order of this Hon'ble NCLT for approval of Plan A.</i>	<i>10%</i>
<i>2nd Instalment within a period of 60 days after the 1st Instalment</i>	<i>15%</i>
<i>3rd Instalment within a period of 60 days after the 2nd Instalment</i>	<i>15%</i>
<i>4th Instalment within a period of 60 days after the 3rd Instalment</i>	<i>20%</i>
<i>5th Instalment within a period of 60 days after the</i>	<i>20%</i>

<i>4th Instalment</i>	
<i>6th Instalment within a period of 60 days after the 5th Instalment</i>	<i>20%</i>

20. *I state that under the supervision of the Administrator/LC, the Respondent Company will take the necessary steps for the opening of a new and separate bank account (i.e. the Designated Bank Account) for the collection of proceeds to be received from homebuyers and the contribution of the Developer in accordance with Plan A. The funds deposited in the said Designated Bank Account will solely be utilized by the Respondent Company for the completion of the Project. The flow of funds from such Designated Bank Account will be monitored by the Administrator/LC appointed by this Hon'ble NCLT.*
21. *That for the completion of the Project in the specified period of 12 months (+/-3 months) from the date of the order of this Hon'ble NCLT, it is crucial that homebuyers shall be required to make the payments in accordance with the schedule of payment specified in Plan A, in the designated Bank Account opened specifically for this purpose.*
22. *I state that the Respondent Company will submit periodic reports ("Progress Report") including inter alia details of Construction Progress with pictures, Funds inflow, and Verified information from the PMC at the site with this Hon'ble NCLT or any other information as may be directed by this Hon'ble Tribunal. Further, all the homebuyers (including the Petitioners of the present petition before the Ld.' NCLT) will be at liberty to access these periodically/quarterly submitted Progress Reports to track the project progress for themselves.*
23. *As per Clause 1.2 (b) (ix) of the BBA, the Allottee(s) had agreed that escalation in the construction cost resulting from the increase in the cost of construction inputs like steel, cement, fuel, and other building materials and labour shall be borne by the Allottee(s). However, as stated in Plan A, no burden of escalation has been imposed on the homebuyers and the Cost of the Flat is not escalated in the outstanding demands being made from the homebuyers under Plan A.*
24. *In case the homebuyer requests to cancel their Unit, the Respondent Company will issue a refund after the Project's completion or upon selling the specified Flat/Unit to a new buyer, whichever occurs first. The refund to the homebuyer will be processed within 30 days from the Project's completion or on*

the sale of the Flat/Unit to the new purchaser and upon receiving the purchase consideration.

25. *Any deficit arising due to a shortage of funds for the completion of the Project shall be met by the Promoters of the Respondent Company and/or through any other entity related to them.*
26. *That if the Respondent Company fails to comply with the undertaking to complete the Project in time bound manner, subject to the timely payments by the homebuyers in accordance with the payment scheduled under Plan A, and/or I fail to infuse the agreed funds in the Respondent Company as per Plan A or do not cooperate with the Respondent Company, this Hon'ble Tribunal may pass appropriate directions and/or impose penalty w.r.t. such default.*
27. *That the Annexures filed with the present Affidavit are true copies of their respective originals.*
28. *That the facts stated in the above affidavit are true and correct to my personal knowledge and belief and no part of the same is false and nothing material has been concealed therefrom.*
14. Effectively, the Corporate Debtor has consented to implement Plan-A proposed and also accepted by the Home Buyers and the parties are ad idem on resolution of the project in the manner suggested in Plan-A and undertaken by the Corporate Debtor in the affidavit dated 20.01.2024.
15. Since the parties have come to certain terms for resolving the issue we deem it fit to record the same and dispose of the petition i.e. (IB)-462(PB)/2022 stating that it will be binding on the parties for implementation. We do so keeping in mind the decision of the Hon'ble Supreme Court in the similar proceedings in the case of *Amit Katyal vs. Meera Ahuja & Ors. reported in (2022) 8 SCC 320* as well as in the matter of *Anand Murti vs. Soni Infratech Private Limited & Anr. Reported in 2022 SCC Online SC 519*.
16. One other aspect which remains unfinished here is that there is an IA-6397/2023 which relates to 06 Home Buyers. The Respondent undertakes to hear the parties with their records and deal with the same in accordance with law so that their grievance will be addressed on merits.
17. If the parties still have further grievances, they are entitled to seek

appropriate recourse as per law.

18. In terms of the affidavit undertaking and also the reply, we are inclined to appoint **Mr. Kaushal Jeet Kait, Mo. No. +91-9013908391, E-mail ID: advkaushal.kait@gmail.com** as Advocate Commissioner to monitor the project. The fees of Advocate Commissioner will be paid by the Corporate Debtor. The initial remuneration of the Advocate Commissioner will be Rs.2.5 Lakhs. The further remuneration will be paid to the Advocate Commissioner from time to time as directed by the Adjudicating Authority.
19. The registry is hereby directed to send a copy of this order to the Advocate Commissioner.
20. Accordingly, present Petition i.e. (IB)-462(PB)/2022 is disposed of. Connected applications in the present matter also stands disposed of.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

Shubham Pandya – 23.01.2024