

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

IA-147/2024
In
CP(IB)72(ND)/2022

Order under Section 65 of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF IA-147/2024:

Rudra Home Buyers Welfare Association Applicant
Vs.
Ms. Priti Rawat Pandey & 78 Ors. Respondents

AND IN THE MATTER OF CP(IB)72(ND)/2022:

Ms. Priti Rawat Pandey & Ors. Financial Creditors
Vs.
M/s. Rudra Buildwell Construction Pvt. Ltd. Corporate Debtor

Order delivered On: 05.02.2024

CORAM:

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

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Saurabh Kalia, Adv.
For Respondent : Mr. Venayagam Balan (AoR), Adv. for Respondent No. 1
to 78 and Mr. P. Nagesh, Sr. Adv. for Respondent
No.79/Corporate Debtor

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application has been filed by a group of Home Buyers under Section 65 of the Insolvency and Bankruptcy Code, 2016 on the ground that the Applicant has initiated the CIRP Proceedings with fraudulent intent and therefore sought dismissal of the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 and also seeking a direction to initiate prosecution against the Applicants in

CP(IB)72(ND)/2022. The Applicant has also prayed for staying the proceedings in CP(IB)72(ND)/2022.

2. We have heard the submissions made by Mr. Saurabh Kalia, Ld. Counsel appearing for the Applicant as well as Mr. Venayagam Balan, Ld. Counsel appearing for the Respondent No. 1 to 78 and Mr. P. Nagesh, Ld. Senior Counsel appearing for the Corporate Debtor.
3. The main ground on which the present application has been filed as is contended by Mr. Saurabh Kalia is that the Uttar Pradesh Government on 21.12.2023 issued a notification bearing No. 7774/77-4-2023-6011/2023 based on recommendations of the committee, constituted under Sh. Amitabh Kant (EX-CEO, NITI AAYOG), Government of India for redressal of the problems of Legacy styled real estate projects.
4. The Applicant has relied upon the following clauses of the said notification which are as follows:

“Para 21 (viii) "But it is to be ensured that in every case, the registration of all the complete flat and flat in which flat buyers are residing either after obtain OC or without obtaining OC, will be ensured their registry within 03 Months after completing the necessary formalities.

Para 21 (ix) "Before registration, it will be ensured that the flat/tower has fire NOC, structural NOC and all other necessary NOC's from the competent authorities."
5. Mr. Saurabh Kalia, Ld. Counsel for the Applicant has further submitted that the Corporate Debtor on 02.01.2024 filed an additional affidavit bringing the said notification issued by the U.P. Government on record. He submitted that clause 7.1 (iii)

provides that the scheme under the said notification will be applicable only in cases if the matter pending before the NCLT or the Court are withdrawn. However, the Financial Creditors/Applicant refused to withdraw the Section 7 Application and avail the benefits of the said notification.

6. It is further submitted that the Applicants wrote a letter on 09.01.2024 to the Chairman of Greater Noida Industrial Development Authority requesting for grant of Occupancy Certificate to the Corporate Debtor for the project in the light of the notification dated 21.12.2023. However, the Applicants/Financial Creditors have no intention to take over the possession of the flats and acting against the interest of all the home buyers of the projects.
7. Mr. P. Nagesh, Learned Senior Advocate appearing for the Corporate Debtor has also submitted that the Corporate Debtor is willing to give possession to all the Applicants and complete the registration process as soon as the Occupancy Certificate will be issued by the Concerned Authority.
8. From the perusal of the records and the submissions made by the Ld. Counsel appearing for the Applicant, the only ground that has mentioned by the Applicant to file the present application under Section 65 of the Code, 2016 is the notification dated 21.12.2023 issued by the U.P. Government.
9. It is pertinent to note herewith that these Applicants have filed an Intervention Application in the main matter opposing the admission of the Section 7 application. Further the Corporate

Debtor has filed a detailed reply affidavit in the main matter and the matter is being heard finally.

10. During the course of the arguments, this Adjudicating Authority had appointed a Court Commissioner and called for a report to ascertain the status of the project. The Court Commissioner has submitted a report to which the parties have filed their responses.

11. For better appreciation of the case, it is pertinent to refer to Section 65 of the Code which is quoted below:

“65. Fraudulent or malicious initiation of proceedings. —
(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”

12. The aforesaid provision clearly indicates that if, any person initiates the Corporate Insolvency Resolution Process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

- 13.** Admittedly, the present application under Section 65 of the Insolvency and Bankruptcy Code, 2016 filed by a group of Home Buyers who are not parties to the main Section 7 application and have filed an application seeking intervention on the basis of the notification dated 21.12.2023 issued by the Government of Uttar Pradesh which gives a discretion to the party to either opt for the scheme or to proceed with the litigation before the NCLT or the Court.
- 14.** Therefore, we do not consider that merely because a notification has come into place the Applicant can be said to have filed the Section 7 application of the Code with malicious intent.
- 15.** The present application which has been filed by a group of home buyers who are also seeking intervention in the Section 7 Application, has been filed with an ulterior and frivolous motive to scuttle the resolution process of the Corporate Debtor. Accordingly, **IA-147-2024** stands dismissed.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

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