

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 4570/ND/2020

IN

Company Petition No. (IB)-334(ND)/2018

IN THE MATTER OF:

Radha Kapoor & Ors.

**... Applicant/
Financial Creditor**

Versus

M/s MSX Mall Pvt. Ltd.

... Respondent

AND IN THE MATTER OF IA. NO. 4570/ND/2023:

1. Radha Kapoor

W/o Sh. Har Krishan Lal Kapoor
Aged about 69 years (Senior Citizen)
H.No. A-961, Krishna Garden Tools,
Arjun Nagar, Kotal Mubarakpur,
New Delhi-110003

... Applicant No. 1

2. Sh. Har Krishan Lal Kapoor

S/o. Late Sh. Behara Singh,
Aged about 68 years (Senior Citizen)
H.No. A-961, Krishna Garden Tools,
Arjun Nagar, Kotal Mubarakpur,
New Delhi-110003

... Applicant No. 2

3. Sangeeta Kapoor

D/o. Sh. Har Krishan Lal Kapoor
Aged about 44 years
H.No. A-961, Krishna Garden Tools,
Arjun Nagar, Kotal Mubarakpur,
New Delhi-110003
E-mail: sangeetakkapoor@gmail.com

... Applicant No. 3

VERSUS

1. M/s MSX Mall Private Limited

Through Resolution Professional
Mr. Anil Kumar Jain
R/o. 255-B, IInd Floor, Block A-1
Near Central School, Lawrence Road,
Keshav Puram, New Delhi-110035
E-mail: rp.msxmall@gmail.com

... Respondent No. 1

2. Madhav Saran Agarwal And Alka Agarwal

Through Authorized Representative
Ms. Garima Gupta
R/o. D-88, Sector-26, Noida
Uttar Pradesh-201301
E-mail: garima.gupta1207@gmail.com

... Respondent No. 2

Order Delivered on: 10.11.2023

SECTION: Section 60(5) of IBC 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

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

PRESENT:

For the Applicant in IA : Adv. Divya Gattani, Ms. Sangeeta Kapoor, Ms. Radha Kapoor, Mr. Shahil Kapoor

For the RP : CA Anil Kumar Jain, Resolution Professional
along with Adv. Abhishek Anand & Adv. Yogesh Bihani

ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

IA-4570/2020

The captioned application has been preferred under Section 60(5) of the IBC 2016, by the Applicants, namely, Radha Kapoor her husband Har Krishan Lal Kapoor, and their daughter Sangeeta Kapoor. The prayers made in the application are:

- (i) for setting aside the voting by CoC qua the Resolution Plan concluded on 03.02.2020;
- (ii) deferring the voting which was initiating from 29.01.2020 to 30.01.2020 in the 13th CoC meeting and 31.01.2020 till

03.02.2020, qua the approval of Plan for Resolution of Insolvency of the Corporate Debtor;

- (iii) direction to Respondent No.2/RA to modify the Resolution Plan; and for rejection of the Plan on the ground of being non-viable and non-feasible.

2. As has been espoused by the Applicants, they are amongst the Financial Creditors (in the Real Estate Class) and are being represented in the Committee of Creditors by the AR, namely, Mr. Prabhat Ranjan Singh. Applicant No.1 and 2 holds 0.27% voting shares in the CoC and such share of the Respondent No.3 is 0.09%. The CP No. (IB)-334/ND/2018 (Ranjit Das & Ors. vs. MSX Mall Private Limited) was preferred by six Petitioners jointly. The application was admitted by this Adjudicating Authority (hereinafter referred to as Tribunal) in terms of the order dated 09.07.2018. Resultantly, Mr. Anil Kumar Jain (IP) was appointed to discharge the function as IRP qua the CD. Subsequently, he was appointed as RP, in terms of the order dated 25.10.2018 passed by this Tribunal.

3. After the initiation of CIRP, the Applicants submitted their respective claims before Respondent No.1 (RP), in Form CA (prescribed for submission of claim by Financial Creditors in a class, under Regulation 8A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The claim was admitted. The Applicants had claimed possession of their shops/units in MSX Mall. The details of shops as mentioned in para 5 of the application read thus: -

“5. After the initiation of the CIRP, the Applicants submitted their respective claims in FORM CA to the Respondent no.1, and the same were admitted. It is pertinent to mention here that the Applicants had claimed possession of their shops/units in the

Corporate Debtor, in which they had invested their hard earned money. The details of the shops/unit are as follows:

- (i) Shop No. SF-217 (admeasuring 873 sq.ft.) allotted jointly in favour of the Applicant No.1 and Applicant No. 2.*
- (ii) Shop No. JS-133 on Second floor (admeasuring 100 sq.ft. allotted) jointly in favour of the Applicant No.1 and Applicant No.2.*
- (iii) Shop No. SF-228 A (Facing towards Food Court) (admeasuring 162 sq.ft.) allotted in favour of the Applicant No.1 and Applicant 3.*

4. As far as the prayer made in the application regarding deferment of the voting scheduled to be held from 29.01.2020 to 30.01.2020 in the 13th CoC meeting and from 31.01.2020 till 03.02.2020 regarding the approval of the Resolution Plan is concerned, at this stage, the prayer has become infructuous and is disposed of accordingly.

5. Regarding the challenge to the Resolution Plan, we find that primarily the Applicants have raised the plea that the MSME certificate was obtained after the commencement of CIRP and the Applicants did not vote in favour of the Plan. As far as this plea is concerned, having considered the same, we have already rejected the application for approval of the Plan.

6. The need for going into the prayers (ii) and (iii) is obviated as the Resolution Plan has already been rejected vide orders in IA No. 1833/2020 dated 10.11.2023. Accordingly, the present application has become infructuous and is disposed of accordingly.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)