

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No.
TA (IB)- 44(PB)/2022

IN THE MATTER OF:

Ishan Singh Financial Creditor/Applicant
v.	
Spaze Towers Pvt. Ltd. Corporate Debtor/Respondent

Order Under Rule 16(d) NCLT , 2016

Order delivered on 12.01.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

(HEARING THROUGH PHYSICAL MODE AND VC)

PRESENT:

For the Petitioner	: Mr. Arjun Syal, Adv. Ishan Singh applicant in person
For the Respondent	: Mr. Sumesh Dhawan, Ms. Vatsala Kak, Mr. Shaurya Shyam, Mr. Raghav, Advs. for Spaze Towers

ORDER

1. The prayer made in this Transfer Application reads as follows: -
 - a. *Allow the present Application and allow the captioned Application under Section 7 of the Code bearing C.P. (IB) No. 736/2021 to be continued be adjudicated before the Ld. Bench IV of this Ld. Tribunal and waive the compliance on the part of the Applicant of formally filing before the Ld. Bench in Chandigarh and thereafter seek for the requisite transfer;*
 - b. *Pass any other and further order as this Hon'ble Court deems fir in the interest of justice;*

Facts of the case:

2. The present Transfer Application is filed by the Applicant under Rule 16(d) read with Rule 11 of NCLT Rules, 2016 seeking allowing the Company Petition bearing (IB) No. 736/2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 to be continued to be adjudicated before the Bench No. IV of NCLT, New Delhi.

3. The Corporate Debtor filed a Reply to the Company Petition bearing **No. 736 of 2021**, wherein they raised preliminary objection regarding the maintainability of the captioned Application on the ground of lack of territorial jurisdiction.

Brief Submissions of the Financial Creditor

- a. It is submitted that the captioned Application is a continuation of the Section 9 Application (IB-1584(ND)/2018) where notice was issued on 20.11.2018. The present Application is nothing but continuation of the previous lis between the parties and any subsequent change in the registered office from Delhi will not have any bearing on the maintainability of the captioned Application.
- b. It is submitted that it is settled law as per Chapter 2 of the Companies Act of 2013 that change of address shall not prejudice any pending judicial issue and moreover the same is also confirmed by affidavit signed by directors of the corporate debtor. Unfortunately, the corporate debtor has hoodwinked the ROC and played fraud on the Applicant herein which can be seen by a perusal of the Application under Section 13(4) of the Companies Act, 2013 and Rule 30 of the Companies (Incorporation) Rules 2014 which was filed by the Corporate Debtor for the shifting of Registered Office from Delhi to Haryana wherein it would show that the Corporate Debtor has listed the Applicant herein as a creditor. No notice of any change in registered office was given to the Applicant in complete disregard to the applicable laws and is effected with a malafide intent and only to defeat the process of law. Even otherwise, a bare perusal of the aforesaid Application ex facie highlights the serious non compliances and fraudulent activities undertaken by the Corporate Debtor to evade its liability, escape the clutches of law and to

inordinately delay the proceedings. The Applicant reserves its rights to take appropriate remedies against the same as available under law.

- c. It is submitted that 37 allottees of the same project of which applicant is part are currently before Ld. bench IV in a Section 7 application CP(IB) No. 284/2021 titled as "*Vivek Khanna & Ors. V. Spaze Towers Pvt. Ltd.*" which is the subject matter of the captioned Application and the said Applications are pending adjudication before the Ld. Bench IV of this Tribunal.
- d. It is submitted that in March, 2022 i.e., pursuant to the change in the registered office of the Corporate Debtor (purportedly on 21.07.2021), this Ld. Tribunal was pleased to allow the transfer of C. P. (IB) No. 284/2021 titled as "*Vivek Khanna & Ors. V. Spaze Towers Pvt. Ltd.*" vide orders dated 07.03.2022 and 04.05.2022 from Principal Bench of NCLT, New Delhi to Court No-4 of NCLT, New Delhi.
- e. It is submitted that there are multifarious litigations against the Corporate Debtor with respect to the same project which are pending adjudication before Bench No. 4 of NCLT, New Delhi and filing a fresh Application under Section 7 for the same project before a bench in another state will not only lead to multiplicity of proceedings but it may also result in conflicting orders and opinions with respect the same Corporate Debtor. Moreover, it will also lead to unnecessary wastage of judicial time and resources.
- f. It is submitted that the Code does not contemplate adjudication of proceedings for initiation of CIRP of the same Corporate Debtor before two different benches with different jurisdictions and if the objection raised by the Corporate Debtor in the present case is allowed then it will lead to an absurd anomaly wherein two benches of NCLT with different territorial jurisdiction

shall be adjudicating upon Applications for initiation of CIRP for the same Corporate Debtor. In fact, the entire legislative intent behind Section 60 is to consolidate the proceedings against the same Corporate Debtor and even Personal Guarantors to Corporate Debtor before the same Adjudicating Authority.

- g. It is submitted that the apart from the aforesaid, several other matters against the same Corporate Debtor are already pending adjudication before this Ld. Tribunal which are as follows:

S. No.	Case No.	Under Provision	Case Title
1.	(IB)-174(ND)2019	u/s 7 of IBC	Arun Kumar Khanna vs. Spaze Towers Pvt. Ltd.
2.	(IB)-2551(ND)2019	u/s 7 of IBC	Anil Madhk vs. Spaze Towers Pvt. Ltd.
3.	(IB)-739(ND)2019	u/s 7 of IBC	Berry Cots Pvt Ltd vs. Spaze Towers Pvt. Ltd.
4.	CA.358/ND/2019 (IB)-639(ND)2019	u/s 7 of IBC	Intercon Finlease Pvt Ltd vs. Spaze Towers Pvt. Ltd.
5.	(IB)-2738(ND)2019	u/s 7 of IBC	Ankit Agarwal vs. Spaze Towers Pvt. Ltd.
6.	(IB)-2741(ND)2019	u/s 7 of IBC	Neeru Madhuri Parti vs. Spaze Towers Pvt. Ltd.
7.	(IB)-2744(ND)2019	u/s 7 of IBC	Rikki Gupta vs. Spaze Towers Pvt. Ltd.
8.	(IB)-2778(ND)2019	u/s 7 of IBC	Jasbir Singh Bhandari vs. Spaze Towers Pvt. Ltd.

h. It is submitted that the Corporate Debtor is a habitual offender who has acted with impunity and has done fraud on various authorities, the Applicant herein and other unit holders. The dispute between the Corporate Debtor and the Applicant was the subject matter of arbitration. The copy of the award dated 14.09.2022 in the Arbitration between “Spaze Towers Pvt. Ltd. v. Ishan Singh is annexed with the application.

Observation, Analysis & Order:

- a. Respondent (Corporate Debtor) has filed its reply to the transfer application denying various averments as made in the transfer application. It is to be seen that as per the records, the Registered Office of the Corporate Debtor has been shifted from A-307, Ansal Chambers-13, Bhikhaji Cama Place, **New Delhi** to Tower C, Space Edge, Sector 47, Sohna Road, **Gurugram**.
- b. The Registered Office of the Respondent/ Corporate Debtor was changed on 26.07.2021 and the Company Petition bearing (IB) No. 736/2021 was filed on 21.11.2021 i.e. much after the change of the Registered Office of the Respondent Company. Further it is a settled law that the territorial jurisdiction for instituting proceedings before the Adjudicating Authority shall be as per the Registered Office of the CD, which in the present case will be NCLT, Chandigarh Bench.
- c. The Applicant has filed the Captioned Petition (IB No. 736/2021) which is currently pending before Bench IV of NCLT, New Delhi. Now through this Transfer Application, the applicant is seeking the hearing of CP(IB) No. 736/2021 to be continued to be adjudicated by Bench IV of NCLT, New Delhi. For ready reference, The Rule 16(d) of the NCLT Rules, 2016 is extracted below:

“16. Functions of the President. - In addition to the general powers provided in the Act and in these rules the President shall exercise the following powers, namely: -

(d) transfer any case from one Bench to other Bench when the circumstances so warrant;”

In view of the above, the relief sought in the application is not permissible and outside the ambit of Rule 16(d) of the NCLT Rules, 2016 and the prayer made in the application would have only been justified if the captioned petition was pending adjudication before NCLT, Chandigarh Bench and the transfer of the same is sought before New Delhi Bench.

- d. The argument of the applicant that filing of case before NCLT, Chandigarh Bench will lead to multiplicity of proceedings is not correct as it is evident that the following 2 petitions u/s-7 being titled **CP(IB) No. 69 of 2022 Automax Constructions v. Spaze Towers Private Limited** and **CP(IB) No. 70 of 2022 Nikhil Khanna & Ors. v. Spaze Towers Private Limited** against the same CD are being adjudicated by NCLT, Chandigarh Bench.
- e. The applicant has placed its reliance on the Company Petition CP(IB) No. 294 of 2021 titled as Vivek Khanna & Ors v. Space Towers Private Limited pending adjudication before Bench-IV of NCLT, New Delhi on the sole ground that the said Company Petition has been filed by the allottees of the same project as the one within which the applicant claims to be an allottee. Such reliance is not correct as the aforesaid company petition was filed before this Adjudicating Authority on 19.04.2021 i.e. the date on which the Registered Office of the CD was situated in Delhi and was within the jurisdiction of NCLT, New Delhi.

f. The applicant has further stated that this Adjudicating Authority vide its order dated 07.03.2022 and 04.05.2022 in Company Petition bearing (IB) No. 284 of 2021 allowed the transfer of Company Petition (IB) 284 and the same was never challenged by the Respondent CD. This particular contention of the applicant is not justified as the administrative decision of assigning the Company Petition (IB) 284 of 2021 from one Bench to another coordinate Bench of the same Adjudicating Authority at New Delhi cannot be interpreted by the applicant to be a transfer of the Petition from one jurisdiction to another.

g. In this view of the matter **TA (IB)- 44(PB)/2022** stands **dismissed**.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT