



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No.7
(IB)-892(PB)/2018

IN THE MATTER OF:

Bank of Baroda

... Petitioner/Applicant

v.

Brys International Pvt Ltd.

... Respondent

Order Under Section 7 of Insolvency & Bankruptcy Code (IBC) CIRP

Order delivered on 24.04.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (T)

(HEARING THROUGH PHYSICAL MODE AND VC)

PRESENT:

- For the Applicant : Ms. Mrinal Harsh Vardhan, Mr. Yogender Singh,
Adv. for the SRA
Mr. Piyush Singh, Ms. Riddhi Jain, Adv. in CA-
2233/2019
- For the NOIDA : Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Adarsh
Srivastava , Adv.
- For the RP : Mr. IPS Oberoi, Adv. along with Mr. Dinesh Sood,
RP
- For the EPFO : Mr. Rajesh Kumar, Mr. Harshit Garg, Adv. in IA-
1989/2019

ORDER

IA-3099/2020

Ld. Counsel Ms. Mrinal Harsh Vardhan appeared on behalf of the Successful Resolution Applicant.

Ld. Counsel Mr. IPS Oberoi appeared on behalf of the Resolution Professional along with Mr. Dinesh Sood, Resolution Professional in person.

Ld. Counsel Mr. Rachit Mittal also appeared on behalf of the NOIDA.

Today when the matter was taken up, Ld. Counsel Mr. Rachit Mittal for the NOIDA submitted the copy of the order passed by the Hon'ble NCLAT in **Company Appeal (AT) (INS) No. 424/2022, Company Appeal (AT) (INS) No. 434/2022 & Company Appeal (AT) (INS) No. 458/2022.** In these, one of the



appeals is filed by the Resolution Professional, one by the Successful Resolution Applicant, and the third one by a group of Homebuyers. These three appeals have been filed as a consequence of an order dated 21.02.2022 passed by this Tribunal in CA-2488/2019 filed by the NOIDA against the RP and Others. The relief sought by the NOIDA was to direct the Respondent not to accept the Resolution Plan which is a composite scheme for the Corporate Debtor and M/s. Neo Infrastructure Pvt Ltd. The NOIDA also sought a stay on the Resolution Plan submitted by M/s E- Homes Infrastructure Pvt. Ltd. The contention of NOIDA *inter-alia* is that they are the owners of the leased property and without the consent of NOIDA, the plan should not be approved for the various grounds raised in the IA that was allowed by this Tribunal vide order dated 21.02.2022. Para-11 of the order reads as follows:

“11. The issue that arises for consideration is whether without permission of this Authority a Composite Scheme can be considered?”

It is the case of the Applicant that there are no other provisions for creating any interest whatsoever in favour of a third party, other than the ones that are provided in the Lease and the Sub-Lease Deeds, therefore, the Respondent has violated the terms provided under the Lease Deed as well as the Sub Lease Deed as the Lessee had to take prior permission of the Lessor for transferring the Plot to a third party or for creating any interest of a third party in the Plot. Further, no permission from the Applicant was taken to enter into the Collaboration Agreement; therefore, it is non-est in the eyes of law and is an instrument of fraud to deprive Applicant of the rights over the Plot as a Lessor. The Applicant has referred to Clause II of the Lease Deed among others and stated that the Lessee could transfer whole Plot or building constructed on it only with the prior permission of the Applicant, after making payment of transfer charges, as per its prevailing policy, alongwith an amount of Rs. 10,000 as processing fee and even then, the Applicant has the right to reject any such transfer, without assigning reasons for the same. The Clause II (h) of the Lease Deed provides for construction of the building and development on the property had to be done as per development norms and controls prescribed under the Scheme/ Building regulations and as per the directions of the Lessor.



The Applicant has referred to the Clause III of the Lease Deed and other clauses which provide for obtaining prior approval from the Applicant. The Clause provides that the Lessee was entitled to sub-lease the sports, other facilities and instrumental activity only after obtaining the prior approval of the Lessor and the commercial, residential area can be leased after executing a tripartite agreement between the Lessee, the proposed Sub-Lessee and the Lessor, as per prevailing transfer policy, at time of such transfer. In terms of Clause III(3) of the Sub-lease Deed, in case of breach by the Lessee of any of the terms and conditions of the Sub-Lease Deed, building bye laws or other rules framed or directions, the Lessor had the rights to cancel/terminate the sub-lease Deed and forfeit the deposits paid by the Sub-lessee.”

Aggrieved by this, these three appeals were filed before the Hon'ble NCLAT and by order dated 15.03.2023, the common order was passed in all the three appeals dismissing the appeals and the order of this Tribunal was upheld which was in favour of the NOIDA. As a consequence thereof, the plan which has been approved by the CoC and pending before us for adjudication has to be relooked by the CoC. Therefore, in the light of the order passed by this Adjudicating Authority and upheld by the Hon'ble NCLAT, we are inclined to refer this application i.e. **IA-3099/2020** which is a plan approval application to the CoC which according to the Ld. Counsel Mr. IPS Oberoi for the RP is going to be conducted tomorrow i.e. 25.04.2023. This plan is said to be based on the composite scheme for which there was no approval by the NOIDA.

In view of the above, we remand this IA-3110/2020 related to approval of Resolution Plan to the CoC for reconsideration in light of the Hon'ble NCLAT order and the order passed by this Adjudicating Authority approved by the Hon'ble NCLAT.

At the request, list the matter for a physical hearing along with the pending applications **on 17.07.2023.**

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(RAMALINGAM SUDHAKAR)
PRESIDENT

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(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)