

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 93 of 2022

[Arising out of order dated 13.12.2021 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in CP (IB) No. 1022/ND/2018 IN I.A. No.2871/2021]

IN THE MATTER OF:

**M/s Indo World Infrastructure Private Limited
99, Patparganj,
Delhi – 110 091**

...Appellant

Versus

**1. Shri Mukesh Gupta
Resolution Professional of M/s Rohtas Projects Ltd.,
Flat No.2, First Floor,
F-50B, Madhu Vihar Ext.,
Patparganj, New Delhi – 110 092**

Also at:

**F-L, Milap Nagar, Uttam Nagar,
New Delhi – 110 059**

...Respondent No. 1

**2. M/s Wing Constructions & Developers Pvt. Ltd.
Successful Joint Resolution Applicant
D-277, Vibhuti Khand,
Gomti Nagar, Lucknow – 226 010
Uttar Pradesh**

...Respondent No. 2

**3. Consortium Shri Rajbir Goyat and M/s Antriksh Infrdesign Pvt. Ltd.
(Now GYGY Infradesigns Pvt. Ltd.)
Successful Joint Resolution Applicant
Plot No. 452, 2nd Floor,
Dwarka Sector-19,
New Delhi – 110 078**

...Respondent No. 3

Present:

**For Appellant: Mr. Kunal Tandon, Mr. Sumit Kalra, Ms. Niti Jain,
Advocates**

**For Respondents: Mr. Abhishek Anand and Mr. Prateek Kushwaha,
Advocates for R-1**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal, filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**” in short) by the Appellant arises out of order dated 13.12.2021 (hereinafter referred to as ‘Impugned Order’) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-III) in IA No. 2871/2021 in CP(IB) No. 1022/(ND)/2018. By the Impugned Order, the Adjudicating Authority approved the Resolution Plan of the Corporate Debtor without disposing IA Nos. 5333/2020 and 1587/2021 filed by the present Appellant and therefore aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. The brief facts of the case necessary to be noticed for deciding the appeal are: -

- M/s Rohtas Projects Limited, the Corporate Debtor was allotted a plot of land in Sector 140, Noida in 2007 by the Noida Authority for construction and setting up of an Information Technology Enabled Services (IT & ITES) commercial complex. The lease deed in favour of Corporate Debtor was executed on 22.10.2008 by which the Corporate Debtor came to have possession of the said plot of land.
- The Corporate Debtor later entered into an Agreement to Sell (“**Agreement**” in short) on 14.04.2015 with M/s Indo World Infrastructure Private Limited, the present Appellant by virtue of

which the Appellant got rights for construction and development of 6,00,000 sq. ft. therein (hereinafter referred to as the '**Project land**').

- The Appellant in turn had entered into a sub-contract with Antriksh Real Estate Builders Private Limited on 07.11.2019 to carry out the construction and development of the project on the said plot of land.
- The Corporate Debtor got admitted for Corporate Insolvency Resolution Process ('**CIRP**' in short) by the Adjudicating Authority on 30.09.2019. Subsequent to the triggering of CIRP, the Resolution Professional, being present Respondent No.1 took over the possession of the said plot of land of the Corporate Debtor including the 6,00,000 sq. ft. of project land. Further, on an application filed vide IA No.4689 of 2020 by the Resolution Professional/Respondent No.1 before the Adjudicating Authority, the Adjudicating Authority on 09.11.2020 had directed the police authorities to assist the Resolution Professional/Respondent No.1 in taking control of the assets of the Corporate Debtor including the project land.
- The Resolution Professional/Respondent No.1 with the approval of Committee of Creditors ("**COC**" in short) with 99.12% voting share placed the Resolution Plan submitted by M/s Wing Construction and Developers Private Limited, present Respondent No.2 and consortium of M/s Antriksh Infradesign Private Limited and Shri Rajbir Goyat, present Respondent No.3 before the Adjudicating Authority in IA No.2871/2021. The Adjudicating Authority approved the Resolution Plan in respect of the Corporate Debtor on 13.12.2021.

- The Appellant had also preferred two applications before the Adjudicating Authority vide IA Nos. 5333/2020 and 1587/2021 seeking the following reliefs: -

IA No. 5333/2020:

- a. pass an order recalling/modifying the order dated 09.11.2020;
- b. pass an order directing the Applicant's peaceful and vacant possession of the said property is not to be disturbed;
- c. pass an order directing that no adverse action should be taken against the Applicant's title in respect of the said property; and
- d. pass any other order as this Hon'ble Tribunal may deem fit and proper in the interest of justice, equity and good conscience;

IA No. 1587/2021:

- a. directing the Resolution Professional not to make the property bearing Plot No.2 admeasuring 20,000 sq. mtrs. situated in Sector 140, Noida as part of the assets of the Corporate Debtor;
- b. directing Resolution Professional/COC to exclude the said property bearing Plot No.2 admeasuring 20,000 sq. mtrs. situated in Sector 140, Noida from resolution plan of the Corporate Debtor;
- c. directing Resolution Professional to return the possession of the said property to the Applicant without any further delay; and
- d. pass any such order(s) as may be deemed necessary.

Aggrieved by the fact that these two IAs filed by the Appellant remained undisposed, while the Adjudicating Authority went ahead and approved the

Resolution Plan of the Corporate Debtor in IA No.2871/2021, the Appellant has preferred this appeal.

3. Making his submissions, the Learned Counsel for the Appellant claimed that by virtue of Agreement signed between the Corporate Debtor and the Appellant, the Appellant had acquired ownership and taken over possession of 6,00,000 sq. ft. in the said plot for development and construction of the project. It was further submitted that Article 13 of the Agreement gave unfettered rights to the Appellant to sell the allotted area of 6,00,000 sq. ft. to customers and that the Appellant had further entered into a sub-contract with Antriksh Real Estate Builders Private Limited for construction of the project. Hence, the dispossession of the Appellant from the project land by the Respondent No.1/Resolution Professional was illegal.

4. The Learned Counsel for the Appellant strenuously contended that as it enjoyed ownership of 6,00,000 sq. ft. of the project land, the said project land could not have been included in the pool of assets of the Corporate Debtor by the Resolution Professional. Moreover, since they were in continuous peaceful possession of the said project land, their peaceful and vacant possession ought not to have been disturbed. Furthermore, such a Resolution Plan which included the said project land should not have been approved by the Adjudicating Authority given that two IAs in respect of the said land had been filed by the Appellant which were pending adjudication.

5. Adverting attention to Explanation (a) to Section 18(1)(f) of the IBC, it was contended that this provision specifically prohibits the Resolution Professional to take control and custody of any asset which is owned by the third party though under possession of the Corporate Debtor under contractual agreements. Since the Appellant had acquired the right to develop, construct and undertake sale of the saleable area of the said project land by virtue of the Agreement dated 14.04.2015, it was asserted that the Appellant had acquired substantial ownership rights over the said saleable area. The Learned Counsel for the Appellant argued therefore that the Corporate Debtor at the time of initiation of the insolvency proceedings against it was not the owner of the said project land and hence the Adjudicating Authority should not have approved the Resolution Plan in the present form.

6. It was further pointed out by the Learned Counsel for the Appellant that the Resolution Plan prepared by consortium of the Respondents No.2 and 3 was done in conspiracy and connivance with the Respondent No.1/Resolution Professional. It is also alleged that there were numerous material irregularities in the exercise of powers by the Respondent No.1/Resolution Professional in getting the Resolution Plan approved by COC as several important material facts were concealed. The Appellant has also questioned the propriety of the decision of the Resolution Professional /Respondent No.1 in declaring the agreement between the Appellant and Corporate Debtor to be

null and void and using this false premise to get Resolution Plan admitted by the Adjudicating Authority.

7. Advancing his side of arguments, the Learned Counsel for the Respondent strongly refuted the contention that the Appellant are absolute owners of the plot by virtue of the Agreement signed with the Corporate Debtor. It is contended that the Agreement does not grant any ownership rights to the Appellant. The said project land was obtained from the Noida Authority vide a lease deed dated 22.10.2008 executed between Noida Authority as the lessor and the Corporate Debtor as the lessee. Clause 14(b) of the Lease Deed clearly provides that sub-lease can be done by the Corporate Debtor only with the prior approval of Noida Authority being the lessor. Thus separation of the plot could not have been done without prior permission of Noida Authority, and in the present case the Appellant had failed to provide any No Objection Certificate from the Noida authority in this regard. Hence, the Agreement executed between the Corporate Debtor and the Appellant in the absence of any permission from Noida authority is null and void and the Agreement cannot be the basis for the Appellant to claim ownership of the said project land.

8. It was further submitted that by merely entering into an Agreement to Sell does not amount to ownership of the property and that ownership of property is transferred only upon execution of conveyance deed before the Registrar which is amiss in the present case. Adverting attention to Sections 54 and 55 of the Transfer of Property Act, 1882 and Sections 47, 48 and 49

of the Registration Act, 1908, it was submitted that the instrument which purports to transfer title of property is required to be registered and hence the title does not pass till registration is affected. In support of their contention, the Learned Counsel for the Respondent placed reliance upon judgements of Hon'ble Supreme Court in the matter of Narandas Karsondas v. S.A. Kamtam and Anr. and Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors.

9. It was further pointed out that Clause 22 of the Agreement provides that documents for transfer of the title will be executed after the completion of the development on the project land by the SECOND PARTY (which is the Appellant in the present case). Clause 22 of the Agreement was read out as follows: -

“That it is mutually agreed between both the parties that the necessary documents for the transfer of the title of the SECOND PARTY will be executed in favour of the SECOND PARTY/Assignees/Nominees of the SECOND PARTY after the completion of the said complex and obtaining the Occupation Certificate and expenses incurred for the same shall be borne by the SECOND PARTY. This is however subject to the terms of Lease Deed and applicable laws, bye-laws, rules, regulations etc of NOIDA Authority.”

Thus it was stated that the Agreement in clear terms stipulated that transfer of the title was possible only after the completion of the said complex and after obtaining the occupancy certificate from the concerned authority. In the

present facts and circumstances, neither the Appellant was able to complete the construction of the said project nor any occupancy certificate was granted in favour of the Appellant and hence the Corporate Debtor continued to remain the owner of the project land. The said plot being the asset of the Corporate Debtor, the Respondent No.1/Resolution Professional was duty bound to take possession of the same in terms of Section 18 of the IBC and cannot be faulted for having included it in the pool of assets of the Corporate Debtor.

10. Emphatically asserting that pendency of IAs before the Adjudicating Authority do not constitute sufficient grounds for preferring an appeal against an order approving Resolution Plan, the Learned Counsel for the Respondent pointed out that Section 61(3) of the IBC stipulates specific grounds for preferring an appeal against an order of the Adjudicating Authority approving a Resolution Plan under Section 31 of the IBC. Since the Appellant has failed to show any contravention of provisions of any law or material irregularity in the exercise of power by the Respondent No.1/Resolution Professional, it was argued that there are no sufficient grounds for preferring an appeal in the matter. Further, reliance was placed upon the judgment of Hon'ble Supreme Court in the case of **K. Sashidhar v. Indian Overseas Bank (2019) SCC OnLine SC 257** to claim that the jurisdiction bestowed upon the Appellate Authority to entertain appeals is also expressly circumscribed. It was also categorically pointed out that the Appellant has not been able to substantiate that the Resolution Applicant is a related party of the Corporate Debtor.

11. Advancing the arguments further, it is submitted that while adjudicating any application for approval of Resolution Plan under Section 31 of the IBC, the Adjudicating Authority is required to limit its scrutiny to grounds as specified in Section 30(2) of the Code. None of the criteria mentioned in Section 30(2) require disposal of all pending applications before the Adjudicating Authority prior to passing an order for approval of the Resolution Plan. In support of their contention, the Learned Counsel for the Respondent pointed out the judgment of the Hon'ble Supreme Court in **Pratap Technocrats (P) Ltd. v. Monitoring Committee of Reliance Infratel Ltd., Civil Appeal No. 676 of 2021**, wherein it has been held that the jurisdiction of the Adjudicating Authority is confined by the provisions of Section 31(1) in determining whether the requirements of Section 30(2) have been fulfilled in the plan as approved by the CoC and once the requirements of the statute have been duly fulfilled, the decisions of the Adjudicating Authority are in conformity with law.

12. On the issue raised by the Appellant that while the IA filed by them remained pending, the Adjudicating Authority had already adjudicated upon 2 other applications vide IA No. 1833/2021 and 4904/2021, it was pointed out that the reliefs sought therein was for exclusion of Rohtas Presidential Tower from the CIRP of the Corporate Debtor. Both IAs were dismissed by the Adjudicating Authority by observing that in case they had any grievance with respect to inclusion of their property in the assets of the Corporate Debtor they should have raised the same at much earlier stage and not after the approval of the Resolution Plan by the CoC. Since the prayer of the Appellant

in IA Nos. 5333/2020 and 1587/2021 raised similar grounds, they were also liable to be dismissed on the same grounds. Moreover, the Appellant not having filed any claim in the CIRP of the Corporate Debtor before the Resolution Professional, they do not have the locus standi to prefer any appeal questioning the commercial wisdom of the CoC which has been accorded paramountcy by the Hon'ble Apex Court.

13. We have duly considered the detailed arguments and submissions advanced by the Learned Counsel for both the parties and perused the records carefully.

14. The moot points before us for our consideration are: -

(i) whether the Agreement to Sell dated 14.04.2015 between the Corporate Debtor and the Appellant vested ownership rights on the Appellant in respect of the project land over which leasehold rights had been obtained by the Corporate Debtor from Noida authority after executing a Lease deed on 22.10.2008;

(ii) whether the Resolution Professional/Respondent No.1 by including the project land in the pool of assets of the Corporate Debtor had acted beyond the statutory framework of IBC; and

(iii) whether the approval of the Resolution Plan of the Corporate Debtor by the Adjudicating Authority without deciding the two IAs filed by the Appellant suffered from impropriety.

Point No. (i)

15. The rival contentions of the two sides have been noted. According to the Appellant, by their entering into the “Agreement to Sell” with the Corporate Debtor and also having paid certain amounts on behalf of the Corporate Debtor to the Noida Authority, there has taken place a transfer of ownership of the project land from the Corporate Debtor to them. On the other hand, the Resolution Professional/Respondent No.1 contends that mere signing of the Agreement does not result in transfer of ownership of the asset and that even if the Appellant had made payments to the Noida Authority, that does not make them owner of the project land and that in respect of such payments made, the Appellant could have filed claim before the Resolution Professional.

16. It has been contended by the Resolution Professional/Respondent No.1 that the ownership rights of the project land flows from the Lease Deed and not from the Agreement to Sell. It has been argued that the project land was obtained on lease by the Corporate Debtor from the Noida Authority by executing a Lease Deed and that the terms and conditions of the Lease Deed at Clause 14 do not permit subletting of the lease or transfer of the plot without the prior approval of Noida Authority.

17. At this juncture we find it pertinent to extract the relevant clauses of the Lease Deed as at pages 24-43 of the Appeal Paper Book (“**APB**” in short). Relevant portions of Clauses 14 and 15 of the Lease Deed with Noida Authority is extracted below: -

“Clause 14 (a) *That the lessee shall not be permitted to transfer
the demised plot before making the unit*

functional and building constructed thereupon. However at the discretion of CEO the transfer may be permitted after making the unit functional and building constructed thereupon and laying transfer charges as prevailing at that time of transfer such transfer charges shall be paid to the lessor. The decision of Chairman / Chief Executive Officer for all purpose will be final and binding on the lessee.

- (b) *That the lessee may be permitted to sub-lease the part built up space for the same project in case of IT/ITES allotment of 20000 sq. mtr. or above **after making the unit functional** and completion of minimum of 75% of total permissible FAR subject to payment of prevailing pro-rata transfer charges **and prior approval of lessor.***

Clause 15

*.....That the lessee shall not be allowed to be rented out the allotted premises or any part thereof. **The plot cannot be transferred before making the unit functional and all such action done for transfer of the plot will be deemed as null and void ab-initio.***

(Emphasis supplied)

18. We find that this is reinforced by the provisions contained in the Agreement to Sell in that the Agreement unequivocally acknowledges the overriding provisions of the Lease Deed which find place at pages 49-66 of the APB and the relevant excerpts are as below:

*“22. That it is mutually agreed between both the parties that the necessary documents for the transfer of the title of the SECOND PARTY will be executed in favour of the SECOND PARTY/Assignees/Nominees of the SECOND PARTY **after the completion of the said complex and obtaining the Occupation Certificate** and expenses incurred for the same shall be borne by the SECOND PARTY. This is however subject to the terms of Lease Deed and applicable laws, bye-laws, rules, regulations etc of NOIDA Authority.*

*26. That the **clauses of this agreement shall not supersede the lease agreement executed between the FIRST PARTY and NOIDA development authority.** That both the parties and their allottees shall be bound by the terms & condition above said lease agreement executed between FIRST PARTY and NOIDA development authority.”*

(Emphasis supplied)

19. The Lease Deed clauses make it abundantly clear that for any sub-lease to be entered into by the Corporate Debtor, there were two pre-requisites to be met. First, that the unit was to be made functional and, secondly, that the prior approval of Noida authority being the lessor had to be obtained and that in the absence of such permission all actions for transfer of the demised land and thereby any claim of transfer of ownership rights will be deemed to be ab initio null and void. We have noted that the Appellant has not staked any claim of having completed the construction of the project. It has been brought to record by the Respondent No. 1 in reply affidavit that the Appellant in turn had entered into a sub-contract with Antriksh Real Estate Builders Private Limited on 07.11.2019 to carry out the construction and development of the project on the said plot of land and that the project land was in possession of Antriksh Real Estate Builders Private Limited at the time of taking possession by the Resolution Professional. This has not been denied by the Appellant either in the submissions or during the pleadings. We also do not find on record any prior clearance given by the Noida Authority allowing any sub-lease of the project land by the Corporate Debtor to the Appellant. We have therefore no hesitation to agree with the Resolution Professional/Respondent No.1 that the Appellant cannot rely upon the Agreement to Sell to claim sub-lease rights and ownership rights of the project land sans the No Objection from the Lessor.

20. This brings us to the submission made by the Resolution Professional/Respondent No.1 that mere entering into an Agreement to Sell does not amount to ownership of the property and that ownership of property

is transferred only upon execution of conveyance deed before the Registrar. We note that reliance has been placed on the Hon'ble Supreme Court in **Narandas Karsondas v. S.A. Kamtam and Anr. (1977)3 SCC 247** wherein it has been observed that : *"A contract of sale does not of itself create any interest in, or charge on, the property. That is expressly declared in Section 54 of the Transfer of Property Act."* Reference has also been made to the decision of the Hon'ble Apex Court in **Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors. 2012 1 SCC 656** wherein this position has been affirmed and it has been held: *"Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."*

21. It is therefore a settled proposition of law that an Agreement to sell does not convey a property from one person to another, either in present or even in future. Agreement to sell is a promise of a future transfer of property ownership which outlines the terms and conditions under which the property will be transferred. An agreement to sell an immovable property is therefore a bilateral contract under which the two parties, i.e. the buyer and the seller,

agree to certain terms and conditions, subject to which the property in question would be transferred by the seller to the buyer for a decided sale consideration. It is only after such bilateral obligations are discharged that the execution of the sale deed kicks in and it is this sale deed, which is compulsorily registrable under the Registration Act, 1908, which upon being registered, would transfer the right, title and interest in the property in question on to the purchaser. In the present factual matrix, the agreement to sell was yet to culminate into a registered sale deed and therefore not ripe for transfer of the title of property in question from the Corporate Debtor to the Appellant.

22. For the above reasons, we therefore hold in negative the claim of the Appellant that upon execution of the Agreement to Sell, the ownership of the project land stood transferred from the Corporate Debtor to the Appellant.

Point No. (ii)

23. It is the Appellant's case that in terms of the Agreement to Sell entered between the Corporate Debtor and the Appellant, the right of ownership of the project land stood transferred to it and the Appellant had enjoyed complete right of possession and ownership in the said property. Only the act of registration and transfer of the rights registered with the Noida Authority was remaining which was to be executed on completion of construction. However, the Resolution Professional by including the said project land in the pool of assets of the Corporate Debtor had illegally disregarded the legal rights of the

Appellant and acted contrary to the provisions contained under Section 18 of IBC.

24. Admittedly, Section 18 enjoins upon the Resolution Professional to collect all information relating to the assets, finances and operations of the Corporate Debtor as well as control and custody of assets. However, the Explanation clause therein excludes assets owned by a third party in possession of the Corporate Debtor held under trust or under contractual arrangements. For reasons of clarity, the relevant portions of Section 18 is as reproduced below: -

18. Duties of interim resolution professional.- (1) *The interim resolution professional shall perform the following duties, namely:-*

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to -

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under Sections 13 and 15;

- (c) constitute a committee of creditors;*
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;*
- (e) file information collected with the information utility, if necessary; and*
- (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—*
 - (i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*
 - (ii) assets that may or may not be in possession of the corporate debtor;*
 - (iii) tangible assets, whether movable or immovable;*
 - (iv) intangible assets including intellectual property;*
 - (v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*

*(vi) assets subject to the determination of ownership by
a court or authority;*

*(g) to perform such other duties as may be specified by the
Board.*

*Explanation.—For the purposes of this section, the term
“assets” shall not include the following, namely—*

*(a) assets owned by a third party in possession of the
corporate debtor held under trust or under contractual
arrangements including bailment;*

*(b) assets of any Indian or foreign subsidiary of the
corporate debtor; and*

*(c) such other assets as may be notified by the Central
Government in consultation with any financial sector
regulator.*

25. A plain reading of Explanation clause to Section 18 makes it amply clear that the term “assets” will not include the assets owned by a third party in possession of the Corporate Debtor under Trust or Contractual Agreement. Keeping in mind the facts of the present case; the clause of the Lease Deed and the Agreement to Sell; the provisions of the Transfer of Property Act, 1882 and the Registration Act, 1908 as expounded in judgments of the Hon’ble Apex Court, we have already come to the conclusion at Point No.1 above that the instant Agreement to Sell between the Corporate Debtor and the Appellant

which conferred construction, development and sale rights on the Appellant on the project land did not confer ownership rights on the Appellant. That being the case there are no grounds to find faults or illegality on the part of the Resolution Professional in including the project land in the pool of assets of the Corporate Debtor under CIRP.

26. It is incumbent upon the Resolution Professional under Section 18 of IBC to embark upon necessary steps to take control and custody of the assets of the Corporate Debtor and under Section 20 of IBC to protect and preserve the value of the property of the Corporate Debtor. Thus in having included the project land in the pool of assets of the Corporate Debtor, the Resolution Professional cannot be held to be remiss in the performance of his duties.

27. We find no cogent grounds to agree with the Appellant's contention that Resolution Professional had acted in a manner that transgressed the statutory framework of IBC or that his conduct did not inspire confidence in the credibility of the insolvency process undertaken by him.

Point No. (iii)

28. This brings us to the issue wherein the Appellant has claimed that while other IAs relating to the CIRP of this Corporate Debtor were disposed by the Adjudicating Authority, the IAs filed by them remained unheard which militates against the principles of natural justice. It has also been urged that the Adjudicating Authority ought to have first adjudicated upon the two IAs filed by the Appellant before approving the Resolution Plan.

29. We would like to begin with finding out what was the main issue raised in IAs 1833/2021 & 4904/2021 and how the IAs were treated by the Adjudicating Authority. In IA No. 1833/2021, the main issue raised was to exclude the Rohtas Presidential Tower, Vibhuti Khand, Gomti Nagar, Lucknow from the Corporate Insolvency Resolution Process of the Rohtas Projects Limited. In IA No. 4904/2021 too, the issue raised was to exclude the Rohtas Presidential Tower Project of the Corporate Debtor situated at Vibhuti Khand, Gomti Nagar, Lucknow from the Corporate Insolvency Resolution Process of the Corporate Debtor thereby excluding the same from the Resolution Plan proposed by the Prospective Resolution Applicant. The Adjudicating Authority while disposing the IAs had come to the following finding:

“It is clear that the Applicants in both the IAs are aware about the CIR Proceeding of Corporate Debtor and they were also represented by Authorized representative during the CoC meetings. In case, they have any grievance with respect to inclusion of their project in the asset of Corporate Debtor, they could have raised the same at much earlier stage and not after the approval of resolution plan by CoC. It is also pertinent to mention that both these IAs namely, IA-1833/2021 and 4704/2021 were filed way after the approval of resolution plan by the CoC. Furthermore, the voting share of the Applicants in both the IAs is much less than 1% of the total voting percentage and Resolution Plan is approved by the CoC with 99.12% voting in favour.”

30. If we now look at the prayer contained in IAs 5333/2020 and 1587/2020, which have been detailed at Para 2 above, the central issue is exclusion of the project land from the CIRP thus being akin to prayer in IAs 1833/2021 and 4904/2021 which were dismissed. Thus the prayer of the Appellant in IA Nos. 5333/2020 and 1587/2021 having raised similar grounds, were squarely liable to be dismissed on the same grounds of having been filed much after the approval of resolution plan by the CoC. In fact it is also germane to note that the Resolution Professional/Respondent No. 1 has vehemently contended that at a time when the Appellant did not file any claim before the Resolution Professional when the Information Memorandum was being firmed up, now at such a belated stage when CoC has already approved the Resolution Plan, they cannot clamour that their interests have been jeopardised. Moreover, we find that the Adjudicating Authority has noted in the impugned order while approving the Resolution Plan submitted by M/s Wing Constructions & Developers Private Limited and Consortium of Mr. Rajbir Goyat & M/s. Antriksh Infradesign Private Limited that the plan was approved by the CoC in its 15th meeting with 99.12% voting share. The Adjudicating Authority had also noted that the resolution plan filed with the Application met the requirements of Section 30 and 31 of IBC, 2016 and Regulations 37, 38, 38(IA) and 39(4) of the IBBI(CIRP) Regulations, 2016; that the provisions of Section 29A of IBC were not attracted and that the Resolution Plan approved by the CoC does not contravene any of the provisions of the law for the time being in force.

31. We therefore hold that though the IAs 5333/2020 and 1587/2021 had not been disposed by the Adjudicating Authority before approving the Resolution Plan, this did not vitiate the CIRP of the Corporate Debtor.

32. In view of the above discussions, we are of the considered opinion that there are no convincing reasons to interfere with the order of the Adjudicating Authority approving the Resolution Plan of the Corporate Debtor under Section 31(1) of the IBC. The appeal being devoid of merit we find no reasons to entertain it. In the result, the appeal is dismissed. There is no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 06.12.2022

PKM