

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

IA-3312/2023
In
(IB)-717(ND)/2019

IN THE MATTER OF (IB)-717(ND)/2019:

Oriental Bank of Commerce (Merge With PNB)	 Financial Creditor
Vs.	
M/s. Siddhartha Buildhome Private Limited	 Corporate Debtor

AND IN THE MATTER OF IA-3312/2023:

Mr. Devendra Singh	 Applicant
Vs.	
Homebuyers of Siddhartha Buildhome Pvt. Ltd. & Ors.	 Respondents

Order delivered On: 17.01.2024

CORAM:

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

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant	: Mr. Alok Dhir, Ms. Varsha Banerjee, Mr. Kanishk Khetan, Advs.
For Respondent	: Mr. Arvind Nayar, Sr. Adv., Mr. Shiv Mangal Sharma, Mr. Saurabh Rajpal, Mr. Abhishek Sharma, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application has been filed by Mr. Devendra Singh, the Erstwhile Resolution Professional ("**Applicant**") of M/s. Siddhartha Buildhome Private Limited ("**Corporate Debtor**") under Rule 11 of the National Company Law Tribunal Rules, 2016 ("**NCLT Rules**"), seeking clarification of the order dated 24.05.2023 passed by this Adjudicating Authority in IA-753/2023 in (IB)717(ND)/2019. The IA-753/2023 was filed by Mr. Dharmendra Kumar, Authorised Representative on behalf of the Homebuyers of the Corporate Debtor ("**Respondent No. 1**") wherein this Adjudicating Authority has approved the "Proposal under Section 12A of the Code dated 26.12.2022" submitted by Mr. Sidharth Chauhan, Promoter/Managing Director ("**Respondent No. 2**") and directed that:

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Date of Order: 17.01.2024

“From an analysis of the relevant provision and the case laws cited by the Applicant, we are of the considered view that the Resolution Professional has committed an error and followed an incorrect method in counting the votes. Therefore, we approve the withdrawal proposal under Section 12A of the Code and permit the Applicant to withdraw the present Petition.

We further set aside all the subsequent actions taken by Respondent No. 1 pursuant to the after 27th CoC meeting held on 21.02.2023.

We direct that the Corporate Debtor Company be revived and restored to its original position. The RP shall handover the assets, documents, records pertaining to the Corporate Debtor Company forth with and file a compliance report within two weeks”

2. The following prayers are made in the present application:

- a) *“Allow the instant Application;*
- b) *Clarify that whether the term “forthwith” in the order dated 24.08.2023 means that the Applicant shall handover the Corporate Debtor to the Respondent No. 2 without requiring the compliances under Regulation 30A(2)(b) and (7) of the CIRP Regulations;*
- c) *Direct the Respondent No. 2 to ensure compliances of the provisions of Section 12A read with Regulation 30A(2)(b) and (7) of the CIRP Regulations alongwith obligations as undertaken in the 12A Proposal.*
- d) *Pass such other or further and other relief(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

3. It is submitted that this Adjudicating Authority vide order dated 24.05.2023 directed the Applicant to handover all assets, documents records pertaining to the Corporate Debtor-Company forthwith. The said order needs certain clarifications with respect to the compliances in terms of Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 (“CIRP Regulations”) prior to effective withdrawal of the Corporate Insolvency Resolution Process. It is further submitted that as per the Section 12A proposal, the Respondent No. 2 has to take certain steps which has not been done by the Respondent No. 2.

4. It is submitted that the Respondent No. 2 has not completed any of the requirements as envisaged under Regulation 30A of the CIRP Regulations,

2016 and other formalities i.e. required in the case of allowing for approval of Section 12A Proposal.

5. The said application was listed on 04.07.2023. Ms. Varsha Banerjee, Ld. Counsel appearing for the Applicant has submitted that the prayers are confined to prayer 'c' only. The said order is reproduced below:

"New IA-3312/2023:-

This application has been filed by the Erstwhile RP seeking clarification of the order dated 24.05.2023.

Heard the submissions of Ms. Varsha Banerjee, Ld Counsel appearing for the Applicant. The Applicant has submitted that her prayers are confined to prayer No. C only.

Issue notice to the Respondents.

The Applicant is directed to serve notice along with a copy of this IA on the Respondents and file proof of service along with an affidavit within one week.

The Respondents are directed to file reply affidavit within one week thereafter.

The Applicant is at liberty to file a compliance affidavit as directed by this Tribunal vide order dated 14.06.2023 in Contempt Application 36/2023. The Registry is directed to accept the same.

List the matter on 21.07.2023."

6. The Respondent No. 2 (Mr. Sidharth Chauhan, Promoter/Managing Director) filed a short reply affidavit denying the allegations made by the Applicant in the present application with respect to the CIRP Cost in question which amounts to Rs. 11.82 Crore.
7. It is submitted that the CoC in its 27th Meeting dated 10.01.2023 has passed the resolution with regard to the CIRP cost declaring as **"Not Approved"** with 80.43% votes. It is also submitted by the Respondent No. 2 that all the Members of CoC have disputed the CIRP Cost in question. It is also submitted that the order dated 24.05.2023 passed by this Adjudicating Authority in IA-753/2023 has been challenged before the Hon'ble NCLAT in Company Appeal (AT) (Ins.) No. 791 of 2023 titled as **"Devendra Singh Vs. Homebuyers of Sidhartha Buildhome Pvt Ltd & Ors."** and said appeal is sub-judice before the Hon'ble NCLAT.
8. We have heard the submissions made by the Ld. Counsel appearing for both parties and perused the records.

9. As indicated earlier, the prayer in this application has been confined to Prayer 'c' which is as follows:

“Direct the Respondent No. 2 to ensure compliances of the provisions of Section 12A read with Regulation 30A(2)(b) and (7) of the CIRP Regulations along with obligations as undertaken in the 12A Proposal.”

10. Be that as it may, the only controversy raised in this application is with regard to payment of CIRP Cost. It is quite evident from the records that the CoC in its 27th Meeting held on 10.01.2023 has rejected the claim for CIRP Cost by 80.43% of votes.
11. The Hon'ble Supreme Court in the matter of **K. Sashidhar Versus Indian Overseas Bank & Ors.** in Civil Appeal No. 10673 of 2018 has held that the commercial decision of CoC is non-justiciable.
12. In light of the above-quoted judgement, it is clear that the “Commercial wisdom of CoC” is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The CoC in its Commercial wisdom in its 27th Meeting held on 10.01.2023 has rejected the claim for CIRP Cost by 80.43% of votes, this Adjudicating Authority cannot interfere in the same.
13. We may indicate that since the prayer is confined to Prayer No. 'c' which relates to CIRP Cost. It is not necessary to decide the other issues.
14. We are, therefore, not inclined to entertain this application. Accordingly, IA-3312-2023 stands **dismissed**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

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