

(2023) 05 NCLT CK 0094

In the National Company Law Tribunal

Case No : ?IA(I.B.C) 1747 Pf 2022

Allahabad Bank Vs M/s Skyhigh Infraland Private Limited ?

Date of Decision : 30-05-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 19(2), 60(5)
National Company Law Tribunals, 2016 — Rule 11

Citation : (2023) 05 NCLT CK 0094

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Ramesh Chander, G S Sarin

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

1. The IA Nos. 1745/2022, 1746/2022, 1747/2022, and 1748/2022 being filed by flat owners whose claims have been rejected by the Resolution Professional being on identical facts and with the same prayers are taken up together.

IA Nos.1745/2022, 1746/2022, 1747/2022, and 1748/2022:

2. The present applications have been filed by the applicants under section 60(5) of the insolvency and bankruptcy code, 2016, read with Rule 11 of the NCLT Rules to hand over the actual physical possession of the allotted flats.

3. The applicants being the allottees of respective flats in Prime Residency Sector-32, Karnal, a project purported to be developed by the Corporate Debtor, deposited the amounts in several instalments pursuant to the said allotment. The CIRP was initiated on 02.11.2018, subsequent to the order dated 29.10.2018 of this adjudicating authority admitting the application. The IRP made a public announcement in Form A dated 03.11.2018 for the initiation of commencement of the Corporate Insolvency Resolution Process of Corporate Debtor and calling creditors to submit their claims along with proofs in the prescribed format. The applicants, therefore, filed their claims in Form CA Declaration in the class of

Home Buyers on 13.12.2019. The Resolution Plan of the successful resolution applicant M/s INR construction dated 11.11.2019 was approved along with the Addendum dated 17.01.2020 by this Adjudicating Authority vide order dated 06.10.2021.

4. In the present case, the applicants submitted their claims on 13.12.2019, before Shri Jalesh Kumar Grover, Resolution Professional, much before the approval of the Resolution Plan by this Adjudicating Authority on 06.10.2021. It is submitted that the resolution professional failed to give any information regarding the claims of the applicants, and thus, their claims have been excluded from the resolution plan. It is further stated that even though the claims could not have been filed in time, the details of amounts from the account of the applicants existed in the record of the corporate debtor. It is also submitted by the applicants that after the issuance of allotment letters to the home buyers, there lies an obligation on the part of the real estate company to provide possession of the houses along with other attached liabilities and such liabilities towards these home buyers are required to be included in the information memorandum.

5. The identical replies filed by the RP to these applications are summarized as under:

5.1 It is stated by the respondent-Resolution Professional that he was appointed as a Resolution Professional by order of this Adjudicating Authority dated 02.11.2018 and made a public announcement in Form A on 03.11.2018, fixing the last date for submission of claims on 16.11.2018. It is further stated that the RP has only administrative powers.

5.2 It is also stated that in the capacity of an RP, the respondent has accepted and identified the claims received by him till the last date of the Resolution Plan by the CoC; however, the claims of the applicants are not part of the admitted claims of the corporate debtor because the claims have been filed under Form CA on 19.12.2019, i.e. after the approval of the Resolution Plan. It is also stated that the RP did not have access to the records/data with respect to the unit sold by the corporate debtor as the ex-directors/promoters of the corporate debtor had not provided any information relating to the corporate debtor, an application under Section 19(2) in this regard has also been filed by the Resolution Professional.

5.3 It is stated that RP has become functus officio after the approval of the Resolution Plan by the CoC on 14.11.2019. Hence, the RP could not place the claim of the applicant before the CoC, which was also not in existence at the time of the filing of the claims.

6. We have heard the learned counsel for the parties and have perused the records carefully.

7. In the present case, the claims of the flat owners were filed on 13.12.2019,

and subsequently, the Resolution Plan was approved by this Adjudicating Authority on 06.10.2021. Even the present applications with a prayer to get possession of the flats have been filed on 19.10.2022, i.e. nearly a year after the approval of the plan by this Authority. Thus, the applicants have obviously slept over their rights for a very long time. It is trite law that the Resolution Process is a strictly time-bound process. Strict timelines have been laid down for filing of the claims and also for consideration of the same. Allowing the stakeholders to file their claims after the approval of the Resolution Plan will only make the Resolution Process an unending process and will adversely affect the value realisation of the corporate debtor. This will be in total contravention of the objects of the code. The prayers of the applicant cannot, therefore, be acceded to.

8. In the result, IA Nos. 1745/2022, 1746/2022, 1747/2022, and 1748/2022 are dismissed and disposed of accordingly.