(2023) 06 NCLT CK 0046

In the National Company Law Tribunal

Case No : IA-1531/2023 In IB-85/ND/2021

Ashwani Kumar Kaura Vs Devendra Umrao RP ?

Date of Decision : 16-06-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9
National Company Law Tribunals, 2016 — Rule 11

Citation : (2023) 06 NCLT CK 0046

Hon'ble Judges : Bachu Venkat Balaram Das, Member (J);Atul Chaturvedi, Member (T)

Bench : Division Bench

Advocate : Harish Gurbani

Final Decision : Dismissed

Judgement

Bachu Venkat Balaram Das, Member (Judicial)

1. This application has been filed by the Applicant who purchased two commercial units i.e. SCOs bearing No. CB-05 and CB-06 from the Corporate Debtor by paying a sum of Rs. 1,25,00,000/- towards commercial building CB-05 and CB-06 in City Centre, Sector 115, SAS Nagar, Mohaliand a sum of Rs. 1,25,00,000/- towards in respect of commercial building CB-06 in City Centre, Kharar Landran Road, SAS Nagar, Mohali.

2. The Applicant has submitted that the Corporate Debtor neither gave possession of the said property nor refunded the amount alongwith interest despite several requests being made by the Applicant. Subsequently, the Applicant made payment of Rs. 4,42,007/- on 31.08.2013 with respect to CB-05 and also paid the same amount with respect to commercial building CB-06 on a subsequent demand made by the Corporate Debtor. However, the possession was not delivered to the Applicant. The Applicant filed a civil suit bearing CS CJ No. 183-2015 before the Civil Court, Chandigarh, seeking refund of the entire amount.

3. Pursuant to the order dated 17.04.2021 passed by this Tribunal initiating CIRP

against the Corporate Debtor, Mr. Devendra Umrao was appointed as the Interim Resolution Professional who made a public announcement in Form-A and called for submission of claims by the creditors of the Corporate Debtor on or before April, 23, 2021. Pursuant to the said public announcement, the Applicant filed its claim in its capacity as a Financial Creditor in Form-CA, through e-mail dated 26.05.2021. The IRP vide e-mail dated 27.05.2021 requested the Applicant to file its claim in Form-F, since the offer of possession of the property in question has already been made. The Applicant gave a reply to the IRP on 01.07.2021 stating that since the project was not completed at the time when the possession was offered and the completion certificate was also not issued at the time of offering possession, his claim in Form CA should be considered. Since, the Applicant did not receive any response from the IRP, the Applicant submitted its claim in Form-F.

However, the Applicant did not receive any response. Therefore, the Applicant has filed the present application seeking a direction to the IRP to consider the claim of the Applicant in Form CA as Financial Creditor and to admit the entire claim of the Applicant as claimed by him.

4. The Resolution Professional has filed a reply affidavit denying the allegations made by the Applicant. The Resolution Professional has submitted that he had received the claim in Form CA from the Applicant vide e-mail dated 26.05.2021 with respect to Unit No. CB-05 and CB-06 wherein the Applicant claimed a total amount of Rs. 10,43,96,532/- out of which Rs. 2,58,84,014/- is towards the principal amount and Rs. 7,85,12,518/- is towards interest. The Resolution Professional while assessing and verifying the claim alongwith documents found that the Applicant approached the Corporate Debtor through an agent called Monga Realtors, and entered into an agreement vide allotment letter dated 16.12.2019.

5. Clause 12 of the said agreement/letter provides that:

“The allottee hereby unconditionally undertakes and agrees to take the physical possession of his/her respective unit within 30 days of the receipt of letter offering possession after making the payment of his/her due. In the event of failure, the allottee unconditionally undertakes to make the holding charges as fixed by the company”

6. The Resolution Professional, therefore, submitted that since the Applicant was offered possession of the Unit, he cannot be treated at par with the Home Buyers as class of creditors and therefore the Resolution Professional vide email dated 27.05.2021 asked the Applicant to submit his claim in Form-F in the category of other creditors for claiming the outstanding dues as per the allotment agreement. The Applicant after a lapse of one month replied to the email dated 27.05.2021 issued by the Resolution Professional stating that the project City Centre and the completion certificate was not complete at the time of possession. Therefore, the Applicant requested the Resolution Professional to

consider his claim under in Form-CA.

7. However, the Resolution Professional upon certifying from the ex-management of the other buyers came to know that the Applicant is in possession of his unit i.e., CB-05 and CB-06 since 2015. Subsequently, the Applicant submitted his claim in Form F. The Resolution Professional on verification of the ledger account and records of the Corporate Debtor found that an amount of Rs. 1,2500,000/- has been received by the Corporate Debtor towards each unit and a further sum of Rs. 4,26,203/-towards each unit was also received by the Corporate Debtor.

8. Thus, the Resolution Professional found that there is no debt owed by the Corporate Debtor towards the Applicant under the category of Form-F and Resolution Professional has duly intimated the same to the Applicant vide email dated 02.09.2022 and that the claim has been admitted basing on the records of the Corporate Debtor.

9. It is further submitted that the Resolution Plan submitted by M/s. Singla Builders and Promoters Limited (SBP Group) has already been approved by the CoC in its 8th meeting with 100% votes and an application for the approval of the Resolution Plan is pending before this Adjudicating Authority.

Further, in this said Resolution Plan, the Successful Resolution Applicant has already made provisions for the creditors including the claim of the Applicant as per the admitted amount.

10. We have heard the submission of Mr. Harsh Gurbani, Ld. Counsel appearing for the Applicant and have perused the records. The Resolution Professional has already admitted the claim of the Applicant on the basis of records available with the Corporate Debtor and the CoC has already approved the plan. A provision has also been made in the Resolution Plan by the SRA for treatment of the admitted amount of the claim of the Applicant. Further, the CoC in its commercial wisdom has already approved the Resolution Plan by 100% votes. We, therefore do not see any reason to interfere with the same.

11. In view of the above, IA dismissed. No order as to costs.