(2020) 02 NCLT CK 0067

In the National Company Law Appellate Tribunal

Case No : Company Application No. 1415, 1417 Of 2019 In (IB) No. 496(ND) Of 2018

Bindals Merchandise And Ors APPELLANT

Vs

Maple Realcon Private Limited And Ors RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Citation : (2020) 02 NCLT CK 0067

Hon'ble Judges : Ina Malhotra, J;L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Punkaj Jain, Srishti Badhwar, Mrinal Harsh Vardhan, Kartik Sarin, Hitesh Sachar, Shobhan Mahanti, S.S. Bhati, Rakesh Kumar, Apoorv Rastogi

Final Decision : Dismissed

Judgement

Ina Malhotra, J

IA 1415/2019 & 1417/2019

1. Vide this common order this Bench proposes to dispose off 2 IAs filed by an Objector M/s. Soho Infrastructure Pvt. Ltd., resisting the resolution plan submitted by the RP for the consideration of this Bench. The applicant M/s. Soho Infrastructure Private Limited is also under Insolvency Resolution Process and has approached this Bench for grant of relief through its RP. Though the resolution plan is listed before this Bench, it would be expedient to deal and dispose of the two applications before proceeding further.

2. As per averments made in IA 1417/2019, it is submitted that a construction contract dated 07.09.2015 had been entered into between the applicant company and the Corporate Debtor for carrying out the construction work at their project "Misty Heights", at Greater Noida. The applicant had filed a claim of Rs. 45,70,80,961/- for the construction work carried out at the Corporate Debtor's project "Misty Heights", against which the RP has only admitted their claim to the extent of Rs. 17,01,182/-. Aggrieved by the same, they have prayed

for direction to the Resolution Professional of the Corporate Debtor (Maple Realcon Private Limited) to accept and admit their entire claim of Rs. 45,70,80,961/-.

3. Upon notice being issued to the RP, the matter has been taken up for consideration and has been argued out. It is submitted that the present application has been filed highly belatedly with the mischievous and mala fide intention of stalling the resolution plan.

4. The RP has argued that the claim is based on fabricated facts and is not sustainable. It appears that Soho Infrastructure also held a sizeable equity in the Corporate Debtor. The alleged agreement for construction on which reliance has been placed and alleged to be executed between the Corporate Debtor through its Director, Mr. Virender Kumar Kaushik with the applicant company is patently a fabricated document. The agreement is stated to have been executed on 07.09.20 15, while the stamp paper issued is dated 21.03.2016. Further, Mr. Virender Kumar Kaushik appeared in court and has categorically denied the execution of this agreement and has stated that his signatures have been forged. Keeping in view that the document relied upon appears, prima-facie, to be a fabricated document, no reliance on the same can be made. It is also pointed out that as per the UPRERA, the contractor for the project is R. K. Contractors and not the applicant. The RP of the Corporate Debtor has submitted that the aforesaid claim of the applicant has been admitted for Rs. 17,10,182/-, based on the books of accounts maintained by the Corporate Debtor, and the documents made available to him for verification.

4. Accordingly, we find no grounds to interfere with the decision of the Ld. RP in rejecting the claim of the applicant and/or admitting it to the extent of Rs. 17,10182/-only. Quantifying the extent of the liability or verifying its correctness is beyond the scope and jurisdiction of this adjudicating authority to consider.

5. This application is therefore dismissed.

CA 1415/2019

6. The 2nd Application IA 1415/2019 filed by M/s. Soho is for seeking possession of their equipment lying at the Corporate Debtor's project site. They have claimed ownership of certain machinery/equipment worth Rs. 6,64,00,000/-, used at the Corporate Debtor's site for the construction of the project "Misty Heights". The applicant, claims this machinery belongs to them and prays for its return. Details of the equipment have been filed along with the application in support of their prayer. It is stated that a Term Loan had been availed from a bank and as per the invoices raised on them by the supplier, these were delivered directly to the Corporate Debtor's site "Misty Height". As the applicant M/s. Soho Infrastructure is also under a resolution process, proposals for a resolution plan can only be invited by disclosing the Information Memorandum and making the same available to interested Resolution Applicants. While Ld. Counsel for the applicant has supported her claim with bills, Ld. Counsel for the

RP for the Corporate Debtor has resisted this prayer. It is submitted that M/s. Soho was stake holder in the project and field an equity of 55%. A settlement was made between the Directors agreeing the machinery and equipment lying at the site of the Corporate Debtor would fall to the Corporate Debtor's share. It is submitted that it is for this reason that the applicant company had not shown any outstanding recoverables from the corporate debtor herein in its income tax returns.

7. Be that as it may, we find that the dissensions between the two companies are also on account of the fall out between the Directors. The Director of the applicant company also held a stake in the Corporate Debtor herein. Each one is out to grab whatever assets they can lay their hands on. As per the Directors of the Corporate Debtor present in Court, the machinery and equipment installed at their site "Misty Heights" was settled in their favour. They seek to corroborate this fact from the income tax returns of the applicant company which does not show any outstanding from the Corporate Debtor after their settlement.

8. This Bench cannot go into the settlement arrived at. However, this claim was never agitated earlier and now when the resolution plan has been submitted before this Bench, such like applications which have the effect of stalling a resolution plan cannot be entertained. Whatever be the business relationship between the two corporate entities, being raised at. this stage of the resolution plan, where one party claims an ownership while the other submits that the same has fallen to their share upon a settlement, cannot be gone into by the Adjudicating Authority.

9. There is no explanation to the inordinate delay in claiming the plant / equipment till acceptance of the resolution plan by the COC. even though the CIR process of the Maple Infrastructure Pvt. Ltd. was admitted on 18/07/2019. It is surprising that M/s. Soho Infrastructure which had an equity of 55% in the Corporate Debtor, would not have asked for removal of their equipment at an early stage. It would not be out of place to mention that the Directors of the Corporate Debtor are also at loggerheads, with one of them allegedly colluding with the Director of the applicant company by issuing a letter of confirmation that the applicant's equipment and machinery were still lying at their construction site. The applicant has used this correspondence to its advantage and is trying to stall the resolution plan.

10. We therefore do not find any merit in the prayer made by the applicant for release of the plant and machinery which is vital in considering the resolution plan for completion of the real estate project of the Corporate Debtor.

11. The prayer of the applicant, at this stage is unacceptable and prima facie appears to have been filed to stall the resolution plan.

12. IA 1415/2019 stands dismissed.

