
(2020) 03 NCLT CK 0071

In the National Company Law Appellate Tribunal

Case No : (IB) No. 1896/ND Of 2019, Company Application No. 1277/C-V/ND Of 2020

Intec Capital Ltd.

APPELLANT

Vs

GSS Procon Pvt. Ltd.

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Person) Regulations, 2016 — Regulation 16(A)(1)
Insolvency And Bankruptcy Code, 2016 — Section 19(2), 19(3), 21(6A), 21(6A)(b)
Companies Act, 2013 — Section 425

Citation : (2020) 03 NCLT CK 0071

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;Kapal Kumar Vohra, Member (Technical)

Bench : Division Bench

Advocate : Dhruv Gupta, Sunil Agarwal, Vaibhav Tyagi, Deepak Anand, Vipul

Judgement

CA-82/2019:-

An application bearing No. CA-82/2019 under Section 21(6A) (b) of the IBC, 2016 filed on behalf of RP praying therein to appoint Mr. Ajay Kumar Siwach IBBI Regn. No. - IBBI/IPA-002/IP-N00668/2018-19/12214 as Authorised Representative of Creditors of the class- Home Buyers.

In continuation of earlier application dated 04.11.2019, RP has filed another application dated 16.12.2019 by which he informed that 161 home buyers are raised their claims and out of them 145 participated in the voting and he further submitted that out of 142 only 118 cast their votes in favour of Mr. Ajay Kumar Siwach which is about 81.37% of the members present for voting. He further submitted that so far the members who had not participated in the voting is concerned, on this regard he placed reliance upon the decision of Hon'ble NCLAT given in Company Appeal (AT) (Insolvency) No. 198 of 2018 in which Hon'ble NCLAT in para 45 page 26 held that A meeting of the Committee of Creditors

who is not present in the meeting either directly or through Video Conferencing and thereby no considered its feasibility and viability and such other requirements as may be specified by the Board, their voting shares, therefore, cannot be counted for the purpose of counting the voting shares of the members of the Committee of Creditors. Therefore, we hold that only the members of the Committee of Creditors who attend the meeting directly or through Video Conferencing, can exercise its voting powers after considering the other requirements as may be specified by the Board. Those members of the Committee of Creditors who are absent, their voting shares cannot be counted.

In view of Section 21(6A)(b) of the IBC, 2016 read with Regulation 16A (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 for appointment of Authorized Representative for class of creditors-Home Buyers.

Considering the facts mentioned in the application as well as averment made in the decision, we hereby appoint Mr. Ajay Kumar Siwach IBBI Regn. No. - IBBI/ IPA-002/IP-N00668/2018-19/12214 as Authorised Representative of Creditors of the class- Home Buyers.

At this juncture, we would like to direct the RP to take necessary steps for getting the occupancy certificate from the concerned department and also the flats in which home buyers have already been in possession get registered in accordance with the provisions of law. RP is directed to inform this adjudicating authority regarding the development within 15 days from today. No further adjournment will be granted on any ground. List the CA-82/2019 on 20.03.2020.

CA-340/2020:-

An application bearing No. CA-340/2020 filed on behalf of RP under Section 19(2) & 19(3) of the IBC, 2016 for praying therein for issuance of necessary directions to respondents to comply with the instructions of applicant and provide the requisite information and documents and control over the assets of Corporate Debtor and co-operation to the applicant.

Mr. Vikas Gupta, Vice President of the M/s. Crossroad Society, Resident Welfare Association (RWA) of Victory Crossroads, Sector-143B Expressway, Noida-UP appeared on behalf of President and submitted that in pursuant to the letters received from the RP, he has already handed over the required documents.

On the other hand, Ld. Counsel for RP submitted that entire documents have not been furnished and reminder has also been sent to the President (RWA) while e-mail dated 29.11.2019 and 04.01.2020 annexed at page 56 and 58 of the application.

Considering these facts, Vice President of the M/s. Crossroad Society, Resident Welfare Association (RWA) of Victory Crossroads, Sector-143B Expressway, Noida-UP is directed to handed over all the documents and informed this Adjudicating Authority by filing supplementary affidavit enclosing the copy of the documents which the society has not handed over to the RP.

So far the Ex-Directors who are respondent No. 1 to 4 are concerned. Ld. Counsel for RP submitted that notice was duly delivered upon them and in support of that affidavit of service has been filed on behalf of RP.

In light of the submissions made on behalf of parties, we have gone through affidavit of service filed by the RP and we find that notice to Respondent No. 1, Ramesh Rao, Ex-Director, A-179, A Block, Anandvas Shakurpur, Saraswati Vihar, North West Delhi-110034 is duly delivered and notice to Respondent No. 3, Mr. Laxman Singh Mehra, G-53, 55, JJ Colony, Shakurpur, Sarwati Vihar, North West Delhi-110034, New Director appointed is duly served whereas upon respondent No. 2 & 4 are concerned, we find that notice was returned, one was unserved and other was unclaimed (Addressee left with instruction).

Considering the aforesaid facts, we find that since the notice was duly served upon Respondent No. 1 & 3 even they did not appear. Therefore, issue Non-Bailable Warrant of Arrest against these respondents. So far respondent No. 2 & 4 are concerned, RP is directed to take fresh steps to serve notice upon these respondents.

CA-343/2020:-

An application bearing No. CA-343/2020 filed on behalf of RP under Contempt of Courts Act, 1971 read with Section 425 of the Companies Act, 2013.

Ld. Counsel for RP submitted that notice was duly served upon the respondent i.e. Mr. Ramesh Rao, Suspended Director, A-179, A Block, Anadvas Shakurpur, Saraswati Vihar, North West Delhi-110034 and in support of that RP has filed the affidavit of service which shows that it was duly delivered upon the respondent.

Considering the facts, we find that since the notice was duly served upon the respondent/contemnor, none appeared on behalf of them. Therefore, we think it proper to issue the Non-Bailable Warrant of Arrest against the contemnor.

List the CA-340 & 343 on 30.03.2020.