(2023) 04 NCLT CK 0054

In the National Company Law Tribunal

Case No : IA No. 2262 of 2022 IN CP (IB) 4045/MB/2019

Rishi Gupta Vs Jaycee Home Pvt Ltd ?

Date of Decision : 28-04-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 7(1), 21(6A)(a), 21(6A)(b), 60(5), 65
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13, 14

Citation : (2023) 04 NCLT CK 0054

Hon'ble Judges : Kuldip Kumar Kareer, Member (J);Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Rohit Gupta, Atul Singh, Sahil Mahajan

Final Decision : Disposed Of

Judgement

Shyam Babu Gautam, Member Technical

1. The present Application is filed by the Applicant for intervening and seeking appropriate directions for dismissing the Company Petition as the said has been fraudulently filed by the Petitioner to devoid the genuine creditors rights and claims against the Respondent.

2. The Applicant is an Asset Reconstruction Company and a trustee of CFMARC Trust -1 Xander executed by the Applicant for the benefit of the Security Receipt holders. The debt/financial assets relating to the Financial facilities extended to the Respondent, along with the underlying securities/guarantees which have been assigned by Xander Finance Private Limited to the Applicant vide Deed of Assignment dated 20.02.2020. pursuant to the said Assignment Deed, the Applicant stepped into the shoes of the Company and became the rightful lender and a Financial Creditor of the Corporate Debtor.

3. The Applicant states that the Respondent availed a loan of Rs. 4,00,00,000/- from the Company vide a Loan agreement dated 19.06.2015. In order to secure the payment a mortgage deed dated 19.06.2015 in favour of the Company

whereby the first charge was created. As there was continuous default in repayment of the said Loan, the Company initiated proceedings under section 13 and 14 of the SARFAESI Act.

4. As the Respondent defaulted in granting timely possession of the flats, several criminal and civil proceedings in various forums were initiated against the Respondent and the matter is Sub-Judice before Hon'ble Bombay High Court.

5. The Applicant states that the present Company Petition was filed in November 2019, in a capacity of homebuyer. Subsequently by virtue of amendment in Section 7 published in gazette of India dated 13.03.2020 a threshold limit was imposed to file a petition under section 7. The amendment was as follows :-

"In section 7 of the principal Act, in sub-section (1), before the Explanation, the following proviso shall be inserted, namely :-

Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten percent of the total number of such creditors in the same class, whichever is less :

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code Amendment Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission"

6. In view of the above amendment, the petitions filed under section 7 of the code by a single homebuyer was required to be amended within 30 days from 28.12.2019. The present petition was filed on 15.11.2019. Accordingly, the Petitioner was required to amend the Petition within the statutory timeline i.e. by 27.01.2020. The Petition was listed several times and finally it was listed on 31.03.2022 for hearing after a span of 24 months the Petitioner made verbal submissions making request to amend the Petition. It is pertinent to note that neither any amendment was carried out by the Petitioner within the timeline, nor the Petition was withdrawn.

FINDINGS

7. We have considered the submissions of the parties and perused the documents and records available. Taking due note of the amendment in Section 7 (1), we are of the considered opinion that the Financial Creditors who are allottees under the real estate project, shall have to file an Application for initiating the CIRP against the Corporate Debtor, jointly by not less than one hundred of such allottees under the same real estate project or not less than ten percent of the total number of such allottees.

8. The Financial Creditor in the present case has not complied with the said amendment in the timeline as prescribed. In view of the above the present Company Petition is dismissed as non maintainable.

9. In view of the above, IA 2262 of 2022 is allowed and disposed of.

