

(2020) 01 NCLT CK 0068

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition No. (IB)-1128(PB) Of 2019

Rupa Kumari And Ors.

APPELLANT

Vs

Alchemist Infra Realty Limited

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 32

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 4

Insolvency And Bankruptcy Code, 2016 — Section 7

Citation : (2020) 01 NCLT CK 0068

Hon'ble Judges : M.M. Kumar, CJ;Santanu Kumar Mohapatra, Member (Technical)

Bench : Division Bench

Advocate : Yash Tandon, Tanuj Kumar, Sonia Dube, Kanchan Yadav

Final Decision : Allowed

Judgement

Santanu Kumar Mohapatra, Member (T)

1. Ms. Rupa Kumari & 59 others claiming as financial creditors, have filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Alchemist Infra Realty Limited referred to as the corporate debtor.

2. A perusal of the case records reveals that the present application was heard and order was reserved on 16.07.2019. The respondent corporate debtor had filed a writ petition under Article 32 of the Constitution of India before Hon'ble Supreme Court along with an application for stay seeking the following reliefs:

"Grant ex-parte ad-interim stay of the proceedings before the Hon'ble National

Company Law Tribunal, Principal Bench, being CP (IB) No. 1128 of 2019 filed by Respondent No. 4 to 63 under Section 7 of the Insolvency and Bankruptcy Code, 2016"

3. In the aforementioned Writ Petition Hon'ble Supreme Court granted stay of further proceedings before the National Company Law Tribunal, Principal Bench on 29.07.2019.

4. The writ petition (Civil) No. 918 of 2019 pending between the parties was tagged with writ petition (Civil) No. 43 of 2019 and was finally disposed of on 09.08.2019. The last paragraph of the judgment dated 09.08.2019 envisages that:

"89. All writ petitions and the civil appeal are disposed of in the light of this judgment Stay orders granted by this Court to continue until the NCLT takes up each application filed by an allottee/ home buyer to decide the same in light of this judgment. No order as to costs."

5. Precisely the NCLT was directed to decide the present application afresh in the light of the Pioneer's judgment after affording all defences to the respondent corporate debtor as have been outlined in the said judgment.

6. The position becomes clearer on the reading of the order dated 06.11.2019 of Hon'ble Supreme Court reproduced below:

"IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Miscellaneous Application No. 2303 of 2019

IN

Writ Petition (Civil) No. 456 of 2019

STG Softtek Put. Ltd. and Ors.

Petitioner(s)

Versus

Union of India and Ors.

Respondent(s)

Order

1. This Court, in Pioneer Urban Land and Infrastructure Ltd. & Anr. v. Union of India & Ors. reported as (2019) 8 SCC 416, has categorically stated in paragraph 104 as follows:

"104. All writ petitions and the civil appeal are disposed of in the light of this judgment. Stay orders granted by this Court to continue until the NCLT takes up

each application filed by an allottee/home buyer to decide the same in light of this judgment. No order as to costs."

Despite this, the National Company Law Tribunal (hereinafter referred to as 'NCLT' for brevity) by order dated 22.10.2019, has stated that it will continue with the Section 7 application as already admitted prior to our judgment.

The purport of paragraph 104 of our judgment has been completely missed. It is clear that the stay that was granted by this Court on 26.04.2019 will continue until the NCLT determines the matter afresh in accordance with Pioneer's judgment, which will include the applicant being entitled to take all defences as have been outlined by the said judgment.

Consequently, we set aside the order dated 22.10.2019 and direct the NCLT to rehear the Section 7 application from, the beginning as has been mandated by us in our judgment.

The NCLT may consider the application moved by the applicant in order to restore the status quo ante on facts also in the light of our judgment.

The miscellaneous application stands disposed of."

(Emphasis given)

2. In compliance of the aforesaid directions the present matter is required to be determined afresh in accordance with the Pioneer's judgment after affording all defences to the respondent corporate debtor as have been outlined in the said judgment.

3. In that view of the matter the respondent is afforded an opportunity to file appropriate reply affidavit in the light of the aforesaid judgment passed by the Mailable Supreme Court inter alia making it clear the present position of the project by placing relevant documents like completion certificate, possession details etc. in support of its contention, It is open to the applicant to file response to the affidavit within a week of the receipt of the affidavit of the respondent.

4. The next date of hearing be fixed on 07.01.2020. Let copy of the order be served to the parties.