(2021) 02 NCLT CK 0113

In the National Company Law Tribunal

Case No : Company Petition (IB) No. 2054 Of 2019

Sujata Shekhar Shah — APPELLANT

Vs

Mirador Construction Private Limited — RESPONDENT

Date of Decision : 23-02-2021

Acts Referred:
Insolvency And Bankruptcy Code, 2016 — Section 7

Citation : (2021) 02 NCLT CK 0113

Hon'ble Judges : H.V. Subba Rao, J;Shyam Babu Gautam, Member (Technical)

Bench : Division Bench

Advocate : Shubhabrata Chakraborti

Final Decision : Dismissed

Judgement

Heard the counsel appearing for the applicant and perused the record. The Corporate Debtor except filing reply, neither addressed any oral arguments nor filed any written submissions.

The above Company Petition is filed under Section 7 of the Code by the applicant, Sujata Shekhar Shah acting for self and in the capacity of Authorized Representative of 14 other petitioners in the above company petition.

The respondent, Corporate Debtor strongly opposed the admission of the above company petition contending that the alleged disputes raised by the petitioner are purely contractual disputes between the parties and the alleged claims of the petitioners can never be treated as a debt in the eyes of law and if at all at the very best the petitioners would have recourse to the remedies in the civil law before the competent court for their alleged claims. The respondent further contends that M/s Karvy Wealth Pvt. Ltd. acted as facilitator in between the petitioners and the respondent/Corporate Debtor. The respondent further contends that in the event they were unable to pay the secured amounts with interest to the petitioners, the petitioners were given alternative facility to take alternative flats from the Corporate Debtor subject to payment of stamp duty and registration charges from their end. The corporate debtor further contents that they were orally and via email with approval of M/s Karvy Wealth Pvt. Ltd. offered petitioner the flats in the respondent companies other projects near the same site but the petitioners did not respond to that offer. Be that as it may, disregarding the contentions of both sides, the issue that falls for consideration is; Whether the above company petition filed by 14 individual flat allottees in a real estate project is maintainable in view of the recent amendment?

Admittedly, all the above petitioners are investors in the real estate project namely "Oasis Avani" launched by the Corporate Debtor. The company petition was filed on 27th May, 2019. Subsequently, Section 7 of the code was amended through amendment which was published in Official Gazette dated 13.03.2020 prescribing minimum 100 allottees or not less than 10 percent of the total number of such allottees under the same real estate project whichever is less for filing petition under Section 7 of the code. Liberty is also given to single applicant in the pending company petitions which are pending for admission to bring the required number of remaining applicants and continue the company petition within 30 days from the date of amendment came into force. Admittedly, the petitioners are less than 100 members in the present case and they have not brought the required number of minimum allottees for continuing and admission of the above company petition. In the light of the above legal position, this tribunal is left with no option except to dismiss the above company petition as withdrawn for want of required minimum number of allottees as per the amendment.

Even otherwise as rightly contended by the respondent the alleged disputes raised by the petitioners are purely contractual disputes which cannot be decided by this Tribunal under Section 7 of the Code in a summary proceedings.

For the foregoing reasons, the above company petition stands dismissed without costs on both the counts.

However, the above order does not preclude the petitioner from initiating necessary recovery proceedings before appropriate legal forum.

