

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-IV
AT NEW DELHI

I.A. 3795/ND/2022
I.A. 3796/ND/2022
I.A. 3799/ND/2022
IN
IB/284(PB)/2021

(Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Vivek Khanna and Ors. ...Petitioners/Financial Creditors
VERSUS
Spaze Towers Private Limited. ...Corporate Debtor

I.A. 3795/ND/2022

In the matter of:

Surinder Pal Singh & Ors. ...Applicants
VERSUS
Spaze Towers Private Limited. ...Corporate Debtor

AND

I.A. 3796/ND/2022

In the matter of:

Prakash Agarwal & Ors. ...Applicants
VERSUS
Spaze Towers Private Limited. ...Corporate Debtor

AND

I.A. 3799/ND/2022

In the matter of:

Amit Kumar Manglam ...Applicant
VERSUS
Spaze Towers Private Limited. ...Corporate Debtor

Order delivered on: 26.08.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

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COMMON ORDER

PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

1. The aforesaid applications are filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 on behalf of the applicants i.e., Mr. Surinder Pal Singh, Mr. Harjas Chhatwal, Ms. Neena Chhatwal in I.A.3795/ND/2022, Mr. Prakash Agarwal, Ms. Sunita Agarwal in I.A. 3796/ND/2022 and Mr. Amit Kumar Mangalam in I.A.3799/ND/2022 inter-alia seeking intervention and impleadment in the main petition i.e., IB/284(PB)/2021.
2. Briefly stated the main contention of the applicants is that the applicants had purchased their respective units in the commercial project 'Spaze Arrow' situated at Sector 78 Gurgaon from the corporate debtor, wherein the corporate debtor had guaranteed an investment return scheme to all allottees/applicants against the units purchased. The applicants further submits that the HRERA, Gurugram site inspection report dated 11.09.2019, shows that as on the date of the report the building/ project was only 30-35% complete.
3. The corporate debtor had filed its reply in **I.A. 3795/ND/2022, I.A. 3796/ND/2022, I.A. 3799/ND/2022 where the corporate debtor submitted that the applicants have no locus to approach this Adjudicating Authority seeking intervention and impleadment in the IB/284(PB)/2021** as it is a settled law that no person who is not a party to the main petition, such as applicants herein, can claim a right to be heard in a pre-admission stage of a petition under Section 7 of the Code, 2016. To support the contention, the corporate debtor placed reliance on the citations **DEB Kumar Majumder & Ors. V. State Bank of India (2019), SCC OnLine NCLAT 26, Prayag Polytech Private Limited v. Hind Tradex Limited, Company Appeal (AT)(Insolvency) No. 535 of 2019, Vekas Kumar Garg v. DMI Finance Pvt Ltd & Anr, Company Appeal (AT) (Insolvency)No. 113 of 2021.**

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4. We have heard the parties and perused the case records, since the factual grounds and the relief sought in all the three interlocutory applications are identical, we are dealing with all the application in this common order.

5. Adverting to the facts of the case in hand, we are of the view that in an application filed under Section 7 of the Code, 2016, the Financial Creditor and the Corporate Debtor alone are the necessary parties and the Adjudicating Authority, at the pre-admission stage is only required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides, the application being complete as mandated under Section 7(5) of the Code. Consequently, there is no requirement for intervention of any other 'Financial Creditor' or any other party before admission of an application under Section 7 of the Code, 2016.

6. The Hon'ble NCLAT in **Shobhnath & ors. Vs. Prism Industrial Complex Ltd., in Appeal (AT) (Insolvency) No. 557 of 2018** held that in an application filed under Section 7 of the Code no other party than the Applicant & Corporate Debtor can be entertained and intervention by any party cannot be considered for. The relevant extract of the judgement is reproduced herein below: -

5. From the impugned order, we find that the Adjudicating Authority has allowed intervention applications filed by different creditors, which is not the requirement of the 'I & B Code'/law.

11. This Appellate Tribunal in numerous cases has stated that notice is to be given only to the 'Corporate Debtor' in an application under Sections 7 or 9 of the 'I & B Code'. The question of intervention by a third party before the admission of the application under Sections 7 or 9 does not arise.

7. In view of the aforementioned facts and circumstances, we are of the view that no third party intervention is contemplated at this stage. Accordingly all the three interlocutory applications i.e., I.A.3795/ND/2022, I.A.3796/ND/2022, and I.A.3799/ND/2022 stands **dismissed as to no orders to costs.**

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8. We make it clear that any observations or findings made by this Adjudicating Authority in this order should not be construed as expressing opinion on merits. The right of the applicants with regard to their status as creditors and remedies available viz-a-viz the corporate debtor shall not be prejudiced on the grounds of dismissal of the present applications.

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-IV
AT NEW DELHI

I.A.1036/PB/2022
IN
IB/284(PB)/2021

(Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Vivek Khanna and Ors. ...Petitioners/Financial Creditors
VERSUS
Spaze Towers Private Limited. ...Corporate Debtor

AND

I.A. 1036/PB/2022

In the matter of:

Ishaan Singh ...Applicant

Order delivered on: 26.08.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

1. The aforesaid application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 on behalf of Mr. Ishaan Singh ('applicant') inter-alia seeking intervention and impleadment in the main petition i.e., IB/284(PB)/2021.
2. Briefly stated, the facts leading to filing this application as averred by the applicant are as follows:
 - a) The applicant submits that the present application had been necessitated in light of the reply filed by the corporate debtor to the main petition, wherein it has been stated that 10 units in the said project were purchased by the homebuyers from the applicant and not

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from the corporate debtor, pursuant to which, the applicant received queries from the unit holders and thus compelled to approach this Hon'ble Adjudicating Authority.

- b) The applicant further submits that the submissions by the Corporate Debtor are totally misconceived and blatant lie as all sales to the 37 unit holders before the NCLT in the project identified as "Spaze Arrow" of license no 56 of 2012 are made by the corporate debtor. There is only one project and all the money has been received by the corporate debtor in his bank account.
 - c) The applicant submits that the applicant has locus to intervene in the present matter, as the applicant qualifies as a financial creditor w.r.t to the aforesaid project bearing license no. 56 of 2012 dated 06.06.2012 as granted by DTPC since the applicant has been given allotment letter for 128 units which is more than 10% of the total number of units of the project. The applicant adds that the applicant's entitlement to these 128 units and additional units for which no allotment letter have been issued are on the basis of collaboration agreement dated 19.06.220, as amended from time to time executed between the applicant and corporate debtor
 - d) The applicant further submits that like all other unit holders/ Allottees the applicant was also promised possession by 27.08.2016, however, the same has not been given till date and therefore the corporate debtor is in breach of the collaboration agreement, according to which it is the complete responsibility of the corporate debtor to complete the construction, development and marketing of the said project.
3. The corporate debtor has filed its reply and the averments of the corporate debtor in the reply are stated below in brief:-

- a) The corporate debtor submits that the applicant being the land owner of the project and being a party who have received sale consideration from the sale of his allocation of units from the project, cannot claim to be an allottee/financial creditor himself before this Hon'ble Adjudicating Authority, only by virtue of being entitled to 33% share of the area under the Collaboration agreement dated 19.10.2010 and subsequent agreements and addendums executed between the parties. To support the contention, the corporate debtor placed its reliance on citations **M/s. Vipul Limited v. Solitare Buildmart Pvt. Ltd [Company Appeal (AT)(Ins) 550 of 2020], Mukesh N. Desai v. Piyush Patel[Company Appeal (AT)(Ins) 780 of 2020] and Bank of India v. Wadhwa Buildcon LLP [C.P.(IB) 2946/MB/2019].**
- b) The corporate debtor further submits that the applicant is misleading through frivolous facts and is engaged in forum shopping as the

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arbitration proceedings between the applicant and corporate debtor are pending wherein the issues pertaining to the alleged irregularities committed by the corporate debtor are pending consideration.

4. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply and rejoinder filed by the parties. The relevant documents annexed with the respective submissions have also been examined.
5. Adverting to the facts of the case in hand, we are of the view that in an application filed under Section 7 of the Code, 2016, the Financial Creditor and the Corporate Debtor alone are the necessary parties and the Adjudicating Authority, at the pre-admission stage is only required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides, the application being complete as mandated under Section 7(5) of the Code. Consequently, there is no requirement for intervention of any other 'Financial Creditor' or any other party before admission of an application under Section 7 of the Code, 2016.
6. The Hon'ble NCLAT in **Shobhnath & ors. Vs. Prism Industrial Complex Ltd., in Appeal (AT) (Insolvency) No. 557 of 2018** held that in an application filed under Section 7 of the Code no other party than the Applicant & Corporate Debtor can be entertained and intervention by any party cannot be considered for. The relevant extract of the judgement is reproduced herein below: -
 5. *From the impugned order, we find that the Adjudicating Authority has allowed intervention applications filed by different creditors, which is not the requirement of the 'I & B Code'/law.*
 11. *This Appellate Tribunal in numerous cases has stated that notice is to be given only to the 'Corporate Debtor' in an application under Sections 7 or 9 of the 'I & B Code'. The question of intervention by a third party before the admission of the application under Sections 7 or 9 does not arise.*

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7. We further find that the applicant Mr. Ishan Singh had already filed a petition under Section 7 of the Code, 2016 on 22.11.2021 having C.P.(IB)736/ND/2021 case titled *Ishan Singh v. Spaze Towers Private Limited*, for initiating the corporate Insolvency Resolution Process against M/s. Spaze Towers Private Limited ('Corporate Debtor') and the said company petition is pending for adjudication before this Adjudicating Authority.

8. In view of the aforementioned facts and circumstances, the **I.A. 1036/PB/2022 in IB/284(PB)/2021 stands dismissed as to no orders to costs.**

9. We make it clear that any observations or findings made by this Adjudicating Authority in this order should not be construed as expressing opinion on merits. The right of the applicant with regard to determination of his status as the financial creditor and remedies available viz-a-viz the corporate debtor shall not be prejudiced on the grounds of dismissal of the present application seeking impleadment of the applicant as intervener in the main petition.

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(DR.BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No.401

New IA/3976/ND/2022, New IA/4085/ND/2022, IA/3870/ND/2022,
IA/4242/PB/2021,
IN
IB/284/(PB)/2021

IN THE MATTER OF:

Vivek Khanna & Ors. ... Applicant
Versus
Spaze Towers Pvt Ltd. ... Respondent

Order under Section 7 OF IBC, 2016

Order delivered on 26.08.2022

Coram:

MR. DHARMINDER SINGH
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicants : Pushpendra S. Bhadoriya for Applicants in I.A. No. 3799 & 3870 of 2022
I.A no. 3976 Kumar Anurag Singh, Anando Mukherjee, Zain A. Khan Advs
For the Respondent : Adv Sumesh Dhawan, Vatsala Kak and Shaurya Shyam for Respondent

ORDER

IA/4242/PB/2021

This application has been filed on behalf of the respondent under Section 60(5) read with Section 65 and 75 of the Code.

At this stage Ld. Counsel for the respondents, during the course of arguments, he stated that he wants to withdraw the present application seeking liberty to raise all these contentions at the time of arguments on behalf of the respondent in the main petition.

Accordingly, the present application i.e. IA/4242/PB/2021 stands **dismissed as withdrawn** with the liberty to take all those contentions.

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IA/3870/ND/2022 & New IA/3976/ND/2022

Arguments heard. Application i.e. IA/3870/ND/2022 & New IA/3976/ND/2022 stands **reserved for orders**.

IA/4085/ND/2022

This application has been filed on behalf of the Ishant Singh for seeking tagging of the caption matter along with No. CP(IB) 736 of 2021. Ld. Counsel for the applicant is not able to connect.

Let the main matter as well as present application i.e. IA/4085/ND/2022 be fixed for **31.08.2022**.

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**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

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**DHARMINDER SINGH
MEMBER (JUDICIAL)**