

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

I.A.3976/ND/2022
IN
IB/284(PB)/2021

(Application under Rule 11 of the National Company Law Tribunal Rules, 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:

Manoj Kumar ...Applicant

VERSUS

Spaze Towers Private Limited. ...Corporate Debtor

Order delivered on:29.08.2022

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 Rule 11 of the NCLT Rules, 2016 on behalf of Mr. Manoj Kumar ('applicant') in I.A. 3976/ND/2022 inter-alia seeking direction from this Tribunal to delete the name of the Applicant herein, being the Applicant No. 32 in (IB)/284(PB)/2021 from the Memo of Parties of the Company Petition (IB)/284(PB)/2021 case titled Vivek Khanna & Ors. v. Spaze Towers Private Limited.

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2. Briefly stated the main contention of the applicant is that due to certain development of facts, the applicant does not wish to further pursue and will not be continuing with the proceedings against the respondent and do not wish to seek the initiation of CIRP of the respondent. Further, the applicants submits that they want to withdraw their consent to be a party to the Company Petition (IB/284/(ND)/2021) pending against the respondent company.
3. The applicant had relied upon judgment of Hon'ble Supreme Court of India in the matter of Manish Kumar Vs. Union of India, (2021) 2 SCC 1 and the order dated 03.06.2022 passed by NCLT, New Delhi in Devinder Yadav & Ors. V. GRJ Distributors and Developers Private Limited (I.B. No. 1066 (ND) of 2020) wherein in identical facts on the adjudication of withdrawal applications filed subsequent to the Section 7 Application was considered.
4. We have heard the parties and perused the case records, averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have also been examined.
5. In view of the aforementioned submissions, the prayer of the applicant is hereby allowed and the name of the applicant shall be deleted from the array of parties in the main IB No.284/ND/2021. Therefore, the instant interlocutory application i.e., **I.A. 3976/ND/2022 stands allowed.**
6. Accordingly the name of Mr. Manoj Kumar who is Applicant No.32 in (IB)/284(PB)/2021 stands deleted from the Memo of Parties of the Company Petition (IB)/284(PB)/2021 case titled Vivek Khanna & Ors. v. Spaze Towers Private Limited.
7. The registry is directed to place on record the present order along with 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
COURT-IV
AT NEW DELHI

I.A. 3870/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. 3870/ND/2022

In the matter of:

Manju Dubey ...Applicants
VERSUS
Spaze Towers Private Limited ...Corporate Debtor

Order delivered on: 29.08.2022

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 applications are filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 on behalf of the applicant i.e., Ms. Manju Dubey 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 applicant is the allottee in office space no. 712 admeasuring 1000 sq. ft. Super Area located at the corporate debtor's project styled as "Spaze Arrow" situated at Sector-78, Gurugram, Haryana, wherein the corporate debtor had

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guaranteed an investment return scheme to all allottees/applicants against the units purchased. The applicant 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 **where the corporate debtor submitted that the applicant 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, cannot 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.**
4. We have heard the parties and perused the case records, averments made in the application and reply 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.

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, the present application i.e., **I.A.3870/ND/2022** stands **dismissed as to no orders to costs.**

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 applicant with regard to her status as creditor and remedies available viz-a-viz the corporate debtor shall not be prejudiced on the grounds of dismissal of the present application.

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(DR.BINOD KUMAR SINHA)
MEMBER (T)

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29/08/2022

(DHARMINDER SINGH)
MEMBER (J)