

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

ITEM No. 405

IA/4573/ND/2022 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 13.10.2022

Coram:

MR. DHARMINDER SINGH
HON'BLE MEMBER (JUDICIAL)

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

PRESENT:

For the Applicant (in IA 4573/2022) : Mr. Naman Joshi, Mr. Guneet Sidhu, Advs
For the Respondent : Mr. Piyush Singh, Adv. Mr. Akshay Srivastava, Adv.
Mr. Adithya Ramani, Adv. Mr. Riddhi Jain, Adv.

ORDER

IA/4573/ND/2022

This application has been filed on behalf of Mr. Ishan Singh i.e. the Promoter and owner of land where the project has been to be raised by M/s Spaze Towers Private Limited. Earlier, an application for impleadment as a party in arrays of the applicant in the present IB-284/PB/2021 was dismissed vide order dated 26.08.2022. Therefore, the application filed by Mr. Ishan Singh cannot be entertained. Accordingly, the present application i.e. IA No. 4573/ND/2022 stands dismissed with no order as to costs.

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DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

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DHARMINDER SINGH
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-284(PB)/2021

CLARIFICATION

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016

In the matter of:

Vivek Khanna and Ors.

...Petitioners/Financial Creditors

VERSUS

M/s. Spaze Towers Private Limited

...Corporate Debtor

Order delivered on: 13.10.2022

CORAM:

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

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

ORDER

PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

We observe that this Adjudicating Authority vide order dated 18.08.2022 had directed the Directorate of Town & Country Planning, Gurgaon, Haryana ('DTP, Haryana') to bring before this Tribunal the entire record with respect to project "Spaze Arrow" Sector-78 within 5 days. However, no record has been placed before this Adjudicating Authority by DTP, Haryana.

Taking into consideration the aforesaid circumstances, the order reserved in **IB/284(PB)/2021 stands de-reserved**. The DTP, Gurgaon is directed to place on record entire record with respect to project "Spaze Arrow" Sector-78 within 14 days of communication of this Order and authorised officer of

C.P. No. (IB)-284(PB)/2021
Order dated: 13.10.2022

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DTP, Gurgaon shall remain present before this Adjudicating Authority on the next date of hearing.

The Ld. Court master is directed to communicate this order to the DTCP, Haryana immediately.

List the matter on 15.11.2022 for further proceedings.

-Sd-

(DR.BINOD KUMAR SINHA)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)

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

I.A.4085/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.

VERSUS

...Petitioners/Financial Creditors

Spaze Towers Private Limited

...Corporate Debtor

AND

I.A. 4085/ND/2022

In the matter of:

Ishaan Singh

...Applicant

Order delivered on: 13.10.2022

CORAM:

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

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

ORDER

PER: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

The aforesaid application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 on behalf of Mr. Ishaan Singh ('applicant') inter-alia seeking tagging of the main petition i.e., I.B./284(PB)/2021 with C.P.(IB) 736 of 2021 titled as Ishan Singh vs. Spaze Towers Private Limited. The prayers of the instant application are as follows: -

- (i) *"Pass an order allowing the present application and tag the captioned matter bearing C.P.(IB) 284 of 2021 along with C.P.(I.B.) 736 of 2021 titled as Ishan Singh vs. Spaze Towers Private Limited.*

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(ii) *Pass any such other orders(s) as it may deem fit and proper in the interests of justice.*”

2. Briefly stated, the facts leading to filing this application as averred by the applicant are as follows:

- a) The applicant submits that the corporate debtor in the captioned company petition i.e., C.P.(IB) 284 of 2021 has raised the issue of maintainability of the petition by misrepresenting the Second Proviso to Section 7(1) of the Code 2016 by erroneously suggesting that in case the requisite threshold of 10% of the total number of allottees in the project were to fall during the subsistence of the proceedings in the captioned matter, the petition would not be maintainable.
- b) The applicant submits that as a matter of practice, this Hon'ble Tribunal has suo-moto clubbed various applications filed by allottees against the same promoters to assess whether the threshold under the Code, 2016 is met, as it would otherwise be impossible to determine whether the threshold under Second Proviso is met or not.
- c) The applicant submits that allowing the application is imperative because a large number of unit holders have approached this Hon'ble Tribunal to initiate CIRP against the corporate debtor vide independent petitions, which clearly events that allottees have lost faith in the management of the corporate debtor.
- d) The applicant further submits that the corporate debtor has tried every trick to derail and delay the present proceedings and therefore, it would be in the interest of justice to club the captioned matter along with C.P.(IB)/284/2021.

3. Heard. Records have been examined in detail. The applicant had filed the 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") under Section 7 of the Code, 2016, in his capacity as the allottee who was issued allotment letters for 128 units in the "Spaze Arrow" project of the Corporate Debtor by virtue of the collaboration agreement dated 19.06.2010 and addendums thereto.

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4. We further find that the applicant Mr. Ishan Singh had already filed a impleadment application bearing I.A./1036/(PB)/2022 seeking intervention and impleadment in C.P.(IB)/284/PB/2021 which was dismissed by this Adjudicating Authority vide order dated 26.08.2022. Apparently, the applicant herein claiming himself to be a homebuyer whereas the applicant is also a promoter of the Corporate Debtor. Therefore, the issues present in the present C.P.(IB)/284/PB/2021 case titled *Vivek Khanna & Ors, v. Spaze Towers Private Limited* is totally different from the facts of C.P.(IB)736/ND/2021 case titled *Ishan Singh v. Spaze Towers Private Limited*. Hence, tagging of the main petition i.e., I.B./284(PB)/2021 with C.P.(IB) 736 of 2021 cannot be allowed.
5. Resultantly, the **I.A. 4085/ND/2022 in IB/284(PB)/2021, being devoid of merits stands dismissed as to no orders to costs.**

-Sd-

(DR.BINOD KUMAR SINHA)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)