

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI BENCH**

**IA NO. 5659/ND/2023
IN
CP IB NO. 1051/ND/2019**

*An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

ANAND PRAKASH SONI & ORS.

...APPLICANT

VERSUS

M/s. HECTOR REALTY VENTURE PRIVATE LIMITED

...RESPONDENT

AND IN THE MATTER OF:

BHARTI GOYAL

D-119, Kabir Marg,
Bani Park, Jaipur-302016

...APPLICANT

VERSUS

1. M/s. HECTOR REALTY VENTURE PRIVATE LIMITED & ORS.

Through its Director

M-24, First Floor,
Srinivaspuri, New Delhi-110065

...RESPONDENT NO. 1

2. PIYUSH GARG

Erstwhile Interim Resolution Professional

Hector Venture Private Limited

MPR & Co., E-62, LGF, Lajpat Nagar-II,
New Delhi- 110024

...RESPONDENT NO. 2

3. INSOLVENCY & BANKRUPTCY BOARD OF INDIA

Through its Chairman

IA No. 5659/ND/2023

In

CP IB No. 1051/ND/2019

Order Delivered on: 14.05.2024

7th Floor, Mayur Bhawan, Shankar Market,
Connaught Circus, New Delhi- 110001

...RESPONDENT NO. 3

Order Delivered on: 14.05.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : Mr. Bilal Ali, Adv.
For the Respondent :

ORDER

PER: MAHENDRA KAHNDELWAL, MEMBER (JUDICIAL)

1. The present I.A. No. 5659 of 2023 is an application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") along with Rule 11 of the NCLT, Rules, 2016. The present application is preferred by Ms. Bharti Goyal, one of the homebuyers of the Corporate Debtor ("**Applicant**") seeking recall of CIRP withdrawal order dated 07.09.2022, passed by this Adjudicating Authority.
2. The Applicant has made the following prayers in the application:
 - a) *Allow the present Application and recall its order dated 07.09.2022, through which CIR process against the Corporate Debtor has been withdrawn, being obtained from this Hon'ble Tribunal by committing a fraud upon it, as well as by concealment of material facts from it.*
 - b) *Revive the CIR Process of the Corporate Debtor to be held afresh for the period of 90 days, from the date of order in the present application, in the interest of home*

buyers/stake holders whom have been subjected to repeated on-going frauds, as well as for the revival/ resolution of the Corporate Debtor.

- c) Appoint the Insolvency Professional whose consent form (AA) is attached along with the present application, as new Resolution Professional of the Corporate Debtor, in the place of Res no.2.*
- d) Allow exclusion of complete time taken in the past CIRP of the Corporate Debtor, which has been conducted improperly and withdrawn fraudulently, under Section 12 of the Code or any other appropriate Section/Rules or Judgment to that effect, in the interest of justice and fairness.*
- e) Refers the conduct of collusion of Erstwhile Resolution Professional to IBBI (Res no.3) in terms of Insolvency and Bankruptcy board of India (grievance and complaint handling procedure) Regulations, 2017, on account of him being privy to all the frauds committed and failure occurred, during conducting the CIR process of the Corporate Debtor.*
- f) Pass any such other or further order(s) that this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant case and in the interest of justice.*

Contentions of the Applicant

- 3. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows:
 - i) The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was initiated by this Adjudicating Authority vide its order dated 09.12.2019, in an application bearing CP IB No. 1051/ND/2019 filed under Section 7 of the Code. However, the Erstwhile Resolution Professional filed an Interlocutory Application bearing I.A. 4821 of 2022 for seeking withdrawal of Section 7 application and the same was permitted to be withdrawn by this Adjudicating Authority vide its order dated 07.09.2022.
 - ii) Thereafter, an appeal was filed before the Hon'ble NCLAT bearing Company Appeal (AT) (Insolvency) no.1380 of 2023 against an order dated 07.09.2022 passed by this Adjudicating Authority. However, the appeal was withdrawn by the appellants on the account of settlement between the parties.

- iii) The present application is being preferred by the Applicant in lieu of the liberty granted by the Hon'ble NCLAT vide its order dated 31.08.2023, passed in I.A 1143/2023 (Intervention Application), filed in Company Appeal (AT) (Insolvency) no.1380 of 2023 against the order dated 07.09.2022, in respect of liability (either to build the Flat as per BBA or to provide a refund of amount already deposited) owed to her by the Corporate Debtor.
- iv) The Applicant submits that the IRP has concealed the fact regarding the constitution of the Committee of Creditor from this Adjudicating Authority and has obtained the order for withdrawal of the Insolvency Resolution Process after a period of 933 days.
- v) The Applicant is an Allottee of the same project of the Corporate Debtor namely 'Marvella City' having Unit No. NRIA-204 located at Haridwar, Uttarakhand, in relation to which CIR Process was initially initiated by this Adjudicating Authority. The total sale consideration came up to the tune of Rs. 15,63,315 out of which the Applicant initially transferred an amount of Rs. 6,60,500 to the Corporate Debtor in two tranches namely, Rs.1,00,000/- and Rs. 5,60,500 on 23.01.2014 and 25.01.2014 respectively. Thereafter, the Applicant entered into a Builder Buyer Agreement dated 27.06.2015 and the aforesaid unit was allotted to the Applicant by the Corporate Debtor.
- vi) The Applicant submits that after entering into the Builder Buyer Agreement dated 27.06.2015, the Applicant made further payments to the Corporate Debtor of Rs. 8,14,011/- and Rs. 79,622/- on 29.06.2015 and 14.06.2017 respectively. Henceforth, only an amount of Rs. 9,182/- is remaining to be paid by the Applicant to the Corporate Debtor.
- vii) The Applicant further submits that the land of the Corporate Debtor over which the unit of the Applicant was being constructed has been sold by the Corporate Debtor to the third party in violation of the moratorium imposed by this Adjudicating Authority.
- viii) Hence, the present application is filed by the Applicant Allottee seeking recall of order dated 07.09.2022.

4. No reply has been filed on behalf of the Respondents.

5. We have gone through documents on record filed by the applicant and heard the arguments advanced by counsels of the Applicant.
6. In the present case, the Applicant is an allottee of the Corporate Debtor having a unit in Haridwar, Uttarakhand in the project titled "Marvella City" of the Corporate Debtor in respect of which the CIRP was initially initiated by this Adjudicating Authority vide its order dated 09.12.2019. However, the same was "dismissed as withdrawn" by this Adjudicating Authority Vide its order dated 07.09.2022.
7. It is observed that an appeal was filed before the Hon'ble NCLAT bearing Company Appeal (AT) (Insolvency) No. 1380 of 2023 against the order dated 07.09.2022 and in the said appeal, the Applicant, herein, has filed the Intervention Application bearing I.A. No./1143/2023. However, the said appeal was withdrawn by the appellants (Financial Creditors) on the account of settlement between the parties. It is observed that the Hon'ble NCLAT vide its order dated 31.08.2023 permitted the Applicant, herein, to seek such remedy as available in law.
8. It is observed that out of the total sale consideration of Rs. 15,63,315, the Applicant has paid an amount to the tune of Rs. 15,54,133 to the Corporate Debtor and as of now only an amount of Rs. 9,182/- is remaining to be paid. The Applicant has annexed the payment receipts issued by the Corporate Debtor under Annexure A-4 of the application.
9. It is the case of the Applicant that the CIRP withdrawal order dated 07.09.2022 passed by this Adjudicating Authority was obtained by the Erstwhile Interim Resolution Professional and the Corporate Debtor after 933 days by practicing fraud and concealment of the material fact as to the constitution of CoC. Therefore, the Applicant, herein, seeks the recalling of the CIRP withdrawal order dated 07.09.2022.
10. The Applicant is relying on the judgment of the Hon'ble NCLAT in the case of **Puneet Kaur, through her Attorney Amrit Pal Singh Vs K V Developers Private Limited [Company Appeal (AT) (Insolvency) No. 390 of 2022]**, wherein, the Hon'ble NCLAT has held that the Resolution Professional shall collate the claims of all the allottees whose liability are reflected in the books of account of the Corporate Debtor. However, it is observed that the judgment of the Hon'ble NCLAT in **Puneet Kaur (supra)** pertains to the collation of all the claims during

CIR Process. Further, the judgment explicitly makes it clear that such collation of claims including the claims of the allottees shall be included in the Information Memorandum. Further, a fair treatment to the claims of the allottees shall be given in the Resolution Plan and it shall be the duty of the Resolution Applicant to look after all the claims filed. The relevant extract of the said judgment is reproduced hereunder as:

“27..... we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan.”

On the perusal of the above quoted para, it is clear that the Hon’ble NCLAT in Puneet Kumar (supra) specifically talks about the stage where company is undergoing CIRP and the Resolution Applicant is expected to present a Resolution Plan. However, in the case in hand, the CIRP order has been withdrawn by this Adjudicating Authority vide order dated 07.09.2022. Hence, the facts in the present case are not in line with the facts of the Puneet Kumar (supra) and henceforth, the decision of the Hon’ble NCLAT in that matter, is not applicable in the present case.

11. At this juncture, it is pertinent to refer to the decision of the Hon’ble Supreme Court in of **Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Anr. (2024) 2 SCR 258**, wherein, the Hon’ble Supreme Court in para 50 of the judgment laid down grounds wherein, the application for recall of an order is maintainable. Such grounds are reproduced hereunder as:

*“(a) the order is without jurisdiction;
(b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and
(c) the order has been obtained by misrepresentation of facts or by playing fraud upon the Court /Tribunal resulting in gross failure of justice.*

It is observed that the Applicant in the present case is seeking recall of the CIRP withdrawal order dated 07.09.2022 on the ground falling under (c) category of the above laid grounds. However, it is observed that the Applicant has failed to prove the practice of fraud by the Erstwhile Resolution Professional and the management of Corporate Debtor. Further, the Applicant has not enclosed any document to substantiate its contention. Hence, the contention raised by the Applicant is considered as a mere averment, which, in the absence of any substantiating document, cannot be acted upon.

12. It is further observed that the Applicant had raised several other contentions such as the concealment of the fact of the CoC by the Erstwhile Resolution Professional and the management of Corporate Debtor, however, it is observed that the Applicant has not annexed any document which shows that the CoC was constituted and the withdrawal of the CIRP was not at a pre-CoC constitution stage. Further, no report from the Erstwhile Resolution professional certifying that the CoC was constituted has been placed on record. Hence, this contention raised by the Applicant does not hold any ground. Further, the Applicant contends that the claim of the Applicant is reflected in the books of accounts of the Corporate Debtor, however, the Applicant has not filed the books of Accounts of the Corporate Debtor before this Adjudicating Authority. It is observed that the Applicant has made all the contentions without any supporting evidence. Further, mere averment, in the absence of substantiating document, cannot be acted upon.
13. It is further reiterated that the CIRP withdrawal order has already been passed by this Adjudicating Authority on 07.09.2022 and the same has been passed in accordance with the express provisions of the Code. The relevant extract of the order dated 07.09.2022 passed by this Adjudicating Authority is reproduced hereunder for ready reference as:

“New IA/4281/2022

This is an application filed on behalf of Interim Resolution Professional under Section 12A of IBC, 2016 read with relevant rules and regulations framed thereunder seeking the withdrawal of Section 7 application bearing IB No. 1051/ND/2019.

Counsel for Interim Resolution Professional has submitted that in this matter the CoC has not yet been formed. Counsel has further submitted that all the 7 Financial Creditors have given their consent for withdrawal of the matter, therefore, Interim Resolution Professional has moved this present application. The settlement agreement between the applicant and Corporate Debtor, copies are also annexed.

Having noted the contents of this application as well as prayers made therein, we allow the present application and permit the IRP to withdraw the main Company Petition bearing No. IB-1051/ND/2019. Therefore, the Section 7 application is now dismissed as withdrawn in terms of Section 12A read with Regulation 30A of CIRP Regulations 2016. Consequently, the Corporate Debtor, Mr. Piyush Garg is relieved from his duties and responsibilities as IRP and he is directed to handover the charge to Corporate Debtor Counsel for IRP has confirmed that the fees of IRP has been received.

.....”

14. In view of the aforesaid discussion, we do not see any reason to entertain the application filed by the Applicant. Hence, at this stage, we are not inclined towards entertaining the application filed by the Applicant. However, the Applicant is at liberty to file the recovery of its claim before the appropriate forum.
15. Resultantly, the present application i.e., **I.A./5659/ND/2023, being devoid of merit, stands dismissed** and accordingly, disposed off. No orders to cost.

**Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)**

**Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)**