

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 06
(IB)-923(PB)/2018

IN THE MATTER OF:

Sunil Handa And Ors	...	Applicant/Petitioner
Vs		
Today Homes Noida Pvt. Ltd	...	Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016, CIRP.

Order delivered on 01.03.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Noida Authority : Mr. Rachit Mittal, Mr. Parish Mishra, Ms. Pooja Kapur,
Mr. Adarsh Srivastava Advs.
For the Respondent : Mr. Sudhir Makkar, Sr. Adv., Mr. Adhish Sharma, Mr.
Nitin Pandey, Mr. Saumya Gupta, Advs. for SRA
For the RP : Mr. Gaurav Mitra, Mr. Apooov Agarwal, Mr. Riya
Thomas, for RP

ORDER

IA-4172/2022 and IA-3615/2022

These are two interim applications filed by the New Okhla Industrial Development Authority (NOIDA) seeking the following relief.

“IA-4172/2022

(a) Allow the present application;

(b) Direct the Respondent Resolution Professional to make the payment of amounts due and payable towards the outstanding dues which have become due during CIRP or in the alternative make them a part of the CIRP cost under Regulation 31(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate persons) Regulations, 2016;

(c) Pass such other order / directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case."

"IA-3615/2022

(a) Reject the resolution plan of Respondent No. 02 – SRA approved by the Committee of Creditor and filed by Respondent No. 01 – Resolution Professional vide I.A. No.2518 of 2012;

(b) Pass such other order / directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case."

In this case the Resolution Plan was approved by the CoC and in the plan there is a provision for payment of CIRP cost.

Be that as it may, NOIDA now claims the CIRP cost post the admission of section 7 application and such dues have to be paid in full.

A similar claim by the NOIDA was considered in the case of *New Okhla Industrial Development Authority vs Sunil Kumar Aggarwal* and such claim was accepted, however, overturned by the Hon'ble NCLAT and NOIDA has filed an Appeal before Hon'ble Supreme Court *Civil Appeal No. 901/2023* in which Hon'ble Supreme Court has passed order dated 17.02.2023, which reads as follows:

“

ORDER

Learned senior advocate appearing on behalf of the appellant relies upon Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2018 to urge that the current dues have to be accounted for in the resolution plan. Current dues, he submits, would be the dues payable after/from the date of admission of application and onwards.

Issue notice, returnable in the month of September 2023.

Notices will be served by all modes, including dasti.

We clarify that we have not stayed the operation of the order dated 12.01.2023 passed by the National Company Law

Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No. 622/2022.

This observation will not prejudice the rights of the appellant if they succeed, and appropriate orders will be passed to ensure that the appellant is not put to any loss.”

Today, when the matter was taken up Ld. Sr. Counsel Mr. Sudhir Makkar appearing on behalf of the SRA and assisted by Ld. Counsel Mr. Gaurav Mitra for the Resolution Professional pleaded that the party/SRA should be allowed to negotiate with NOIDA and resolve the issue amicably for the interest of the homebuyers.

Accordingly, taking cue from the earlier interim direction of the Hon'ble Supreme Court in the matter of *New Okhla Industrial Development Authority vs Nilesh Sharma & anr. in Civil Appeal No(s). 4665/2022 dated 25.07.2022.* we direct the Resolution Professional, Resolution Applicant and others, if required to approach the NOIDA to find out some amicable solution and result of such a meeting is to be informed to this Tribunal on or before next date of hearing.

However, for the purpose of this joint meeting, we are inclined to list the matter again **on 23.03.2023.**

This order is passed without prejudicing the rights of the parties to agitate the application if no resolution arises out of this meeting.

-sd-

(RAMALINGAM SUDHAKAR)
PRESIDENT

-sd-

(AVINASH KUMAR SRIVASTAVA)
MEMBER (TECHNICAL)