

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. III)**

**IA-1420/2023
in
IB-1006(ND)/2019**

Under Section 60(5) of IBC, 2016

IN THE MATTER OF:-

Mr. Devendra Kumar Sharma

..... **Financial Creditor**

Versus

M/s. JBB-Evereset Buildtech Pvt. Ltd.

..... **Corporate Debtor**

And

IN THE MATTER OF: -

Mr. Jitendra Kumar Chhabra

.....**Applicant**

Versus

Mr. Satiram Yadav & Ors.

.....**Respondent**

Pronounced on 18.05.2023

CORAM:-

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant : Mr. P Nagesh, Sr. Adv. with Adv. Akshay Sharma.
For the Respondent : Mr. Krishnendu Datta, Sr. Adv., Mr. Kunal Godhwani,
Mr. Palash Singhai, Advocates for R-1

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (J)

1. The present application has been filed by one Mr. Jitendra Kumar Chhabra Erstwhile shareholder and Director of the Corporate Debtor under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking the following prayers: -

A. Recall of the order dated 05.04.2021 passed by this Tribunal in IA-263/2021.

B. Declare that the entire CIRP of the Corporate Debtor is vitiated by fraud.

C. Direct the re-initiation of the CIRP of the Corporate Debtor from the stage of invitation of Expression of Interest.

2. Mr. P. Nagesh, Learned Senior Counsel appearing for the Applicant has submitted that IB-1006/2019 under Section 7 of IBC, 2016 was filed by Mr. Devendra Kumar Sharma seeking initiation of CIRP of the Corporate Debtor. This Tribunal vide order dated 09.08.2019 admitted the said petition and appointed IRP. Subsequently the Resolution Plan submitted by one Mr. Satiram Yadav was approved by the CoC in the meeting held on 28.12.2020. The said Resolution Plan was approved by this Tribunal vide order dated 05.04.2021 passed in IA-263/2021.

3. Mr. P. Nagesh, Learned Senior Counsel further submitted that the approval of the Resolution Plan was obtained by fraud by the Respondents and therefore order dated 05.04.2021 passed by this Tribunal approving the Resolution Plan ought to be recalled and CIRP reinitiated.

4. Mr. K. Datta, Learned Senior Counsel appearing for the Respondent vehemently opposed issuance of notice in this application. Mr. Datta, submitted that the Resolution Plan has already been approved by the CoC as well as by this Tribunal and it is under the implementation. The interest of large number of home buyers will be at stake in case the present application is allowed at this bleated stage. He further submitted that the order dated 05.04.2021 approving the Resolution Plan before the Hon'ble Appellate Authority has not been challenged by way of file an application before the Hon'ble NCLAT.

5. Having heard the submissions made by the Learned Counsel for both the parties. We are of the view that much time has elapsed, since, the order of approval of the Resolution Plan was passed and further keeping in view that fact that the implementation of the Resolution Plan has almost completed and most of the home buyers have been given possession of the flat, we do not feel it appropriate to entertain the present application

Accordingly, the present application is **dismissed**.

Sd/-

SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-

SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)