

IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III

Item No. 101

New IA-3234/2023 IA-1146/2022 IA-82/2022 IA-1432/2022

In

IB-1348(ND)/2019

IN THE MATTER OF:

M/s. Nisus Finance & Investment Managers LLP & Anr.

.....APPLICANT/PETITIONER

Vs

M/s. Earthcon Universal Infratech Pvt. Ltd.

.....RESPONDENT

SECTION

U/s 7 of IBC, 2016

Order delivered on 14.06.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP/CD

: Mr. Rishabh Jain, Advocate.

For the NPCL

: Mr. Anil Dutt, Mr. Sarthak Garg, Advocates.

ORDER

New IA-3234/2023:-

This application has been filed seeking modification of the order dated 14.03.2023 passed by this Tribunal in IA-1146/2022.

The order dated 14.03.2023 reads as under: -

“Ld. Counsel for the Resolution Professional is present. Ld. Counsel for the Applicant in the matter is also present. The Ld. Counsel for the Sole Resolution Professional accepts notice and seeks two weeks time to file reply. The prayed for is granted and Ld. Counsel for the RP is directed to supply a copy of reply to Counsel for the Applicant for filing rejoinder, if any, in another one week.

In the meantime, the Respondents and other residents of the project are directed to make payment of all pending dues towards the electricity charges and the maintenance charges as already decided by the CoC. Further, RP/CoC is directed not to take any action with regard to disconnection of electricity of the resident's flats.”

Mr. Rishabh Jain, Learned Counsel appearing for the Resolution Professional has submitted that the allottees are not paying the maintenance charges which include the electricity charges and a total amount of Rs. 1.58 crores including GST of Rs. 24.10 lakhs.

Mr. Jain, further submitted that the arrears of maintenance charges which include the electricity charges of the common area amounts of Rs. 1.58 crores including GST of Rs. 24.10 lakhs. He further submitted that in view of the order passed by this Tribunal on 14.03.2023 directing the Resolution Professional not to take any action with regard to disconnection of electricity of the resident's flats, as he is not in a position to collect the electricity dues from the residents and therefore, he is not able to deposit the amount with Noida Power Company Limited (NPCL). In this regard, we may clarify that the order dated 14.03.2023 specifically mentions that the Resolution Professional shall not take action with regard to disconnecting the electricity of residents flats. Therefore, the Resolution Professional is free to take coercive steps with regard to the non-payment, and maintenance charges which include the electricity charges of the common area.

Order dated 14.03.2023 is modified accordingly.

IA disposed of.

IA-1146/2022:-

None appears for the Applicant despite repeated calls.

IA dismissed as infructuous.

IA-82/2022:-

List on **01.08.2023.**

IA-1432/2022:-

This application has been filed by the Applicant (Noida Power Company Limited) seeking the following directions:-

“Allow the present Application and pass an Order vacating the direction (to not to disconnect the electricity Connection of the Corporate Debtor) issued vide order dated 19.10.2020 in IA No. 3379/2020 and Order dated 20.01.2022 in IA No. 82 of 2022”.

We have heard the submissions made by the Learned Counsel appearing for the Applicant as well as Learned Counsel appearing for the Resolution Professional/Corporate Debtor.

Vide order dated 08.06.2023, on the submissions made by the Learned Counsel appearing for the Resolution Professional, liberty was granted to the Resolution Professional to file an application i.e. IA-3234/2023 seeking modification of the order dated 14.03.2023, with respect to the directions given to the Resolution Professional not to disconnect the electricity of the resident's flats. The Resolution Professional/Corporate Debtor has filed an IA-3234/2023 seeking modification of the order dated 14.03.2023 in which vide order dated 14.06.2023 it has been clarified that the Resolution Professional is free to take coercive steps with regard to the non-

payment and maintenance charges which including the electricity charges of the common area.

Since, we have clarified that the said order and granted liberty to the Resolution Professional to take necessary steps in case of failure of payment towards maintenance and electricity charges of the common area, the Resolution Professional shall make all efforts to collect the maintenance and electricity dues from the residents and make the payment with NPCL within one month and file a progress report thereafter. We may further clarify that we will consider the issue as to whether the NPCL can take coercive steps against the Resolution Professional in case of non-payment of dues on the next date of the hearing.

List on **01.08.2023**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)