

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
(IB)-1744(ND)2019
IA-1449/2022, IA-1286/2022,
IA-240/2024, IA-828/2024, IA-1349/2024

IN THE MATTER OF:

(Under Section: 7 of IBC, 2016)

Canara Bank

... Applicant/Financial Creditor

Versus

M/s. Bulland Buildtech Pvt. Ltd.

... Respondent/Corporate Debtor

AND IN THE MATTER OF IA. NO. 1449/ND/2022:

(Under Section: 31(1) of IBC, 2016)

Mr. Debashis Nanda

(RP of Bulland Buildtech Private Limited)

C-304, Paradise Apartments,

Plot No. 04, IP Extension, Patparganj,

New Delhi – 110092

... Applicant

Under Section: 31(1) of IBC, 2016 (CIRP)

Order delivered on 10.04.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Deepak Somani and Adv Vipul Kumar in IA-828/2024

For the SRA : Adv. Neeraj Gupta & Adv. Divya Gattani, Adv. Saransh Goel

For the RP : Adv. Sumant Batra, Adv. Nidhi Yadav, Adv. Sarthak Bhandari, PCS Aradhana Singh, Mr. Debashish Nanda in person, Adv. Nipun Gautam

For the Respondent : Adv. Sumesh Dhawan, Adv. Vatsala Kak, Adv. Raghav Dembla, Adv. Sagar Thakkar in IA-1286/2022

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-1449/2022: Though in view of the legal position recorded on 09.04.2022, it may be safely ruled that the turn of GNIDA would come after the first charge holder, but as has been submitted by Mr. U.N. Singh, we may not ignore the concept of expression charge mentioned in IBC, 2016, which provides that the charge means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage. The provision has been reproduced hereinabove:-

“Section 3: Definitions

.....

(4) **“charge”** means an interest or lien created on the property or assets of any person or any of its undertakings or both, as the case may be, as security and includes a mortgage;”

2. In the present case, undoubtedly the plot in question is owned by the Greater Noida Industrial Development Authority and was given to the CD in terms of the provisions of the lease deed. For the purpose of mortgaging the plot, the consent of the GNIDA was needed. Apparently, while according such consent, the GNIDA had put a condition. As has been analyzed hereinabove, the condition mentioned in the letter was unilateral and admittedly the terms of the letter were not specifically accepted by the lender (First Charge Holder). But, at the same time, the condition could also be not rejected. It is not the case of either of the parties that the permission (ibid) was not needed. Thus, if permission was needed and when the same was accorded in terms of the letter dated 28.07.2016, it has to be perceived valid and all its contents would be binding on those who were party to the loan agreement. Though, on

09.04.2023 we had given opportunity to Mr. U.N. Singh to bring the loan agreement in terms of which the charge was created qua the property in question, but no such loan agreement was produced before us.

3. Nevertheless, once the land-owning agency had put a condition that it would have the first charge towards the pending payment in respect of loan plot premium/lease rent/taxes or any other charges informed by the authorities to the allottee/CD and the Bank would have second charge and at no point, it was stand of the CD or the Bank, that the condition was not accepted, the Clause B of the letter may be treated as part of the loan agreement. In any case, when one of the parties/creditors, the secured creditor could establish that it is the first charge holder qua a security and the GNIDA is also asserting itself as First Charge Holder, by operation of the statute and Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1519/2023 ruled that the GNIDA has to be treated as Secured Creditor, just to do away with the possibility that even after being treated as Secured Creditor, the land-owning agency should not remain high and dry, we need to draw some balance. The need to draw such balance is for the reason that here the plot of land was on lease with CD i.e. the Debtor and dues of the GNIDA qua the same were yet to be cleared. The GNIDA which still had its amount of claim in respect of the plot payable by the Corporate Debtor may assert that it's charge should have been the first charge. If the charge created by operation of law is always and in all circumstances is treated as second to one which is created in terms of the instruments from between the parties, then the logic of such provision in statute may get defeated. It is not so that the charge of GNIDA was created when the consideration for the charge could be

already received by the CD from the Canara Bank, a magnanimous view is required to be taken in the matter. One may also be not oblivious to the fact that if the interest of the land-owning agency, which has a vital and material say in all such cases where the resolution plan involved the interest of home buyers is not looked after, the plan may not be implementable. Such situation could arise before Hon'ble Supreme Court in the matter titled "**Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr**". (Civil Appeal Nos. 7590-7591 of 2023) wherein the plan was approved both by this Tribunal and the Hon'ble NCLAT but in the wake of plea raised by the plot-owning agency, the Hon'ble Supreme Court viewed that the fair treatment could not be met to the Greater Noida Industrial Development Authority and the matter was remitted back. When we are conscious of an inevitable situation, we should not turn blind eyes to the same and should avoid passing our order at this stage. The IBC, 2016 viz. Section 30(2) thereof, specifically provided that while approving the plan, this Tribunal should be conscious about the implementability of the same. It is the case of all the parties before us that sans plot of land, on which the project has to develop and grow, the value of the project is zero.

4. Only being conscious of such factual scenario, we had passed the detailed order on 08.01.2024. It was thereafter, the CoC met on 23.01.2024 and after analyzing the circumstances, it viewed that though the GNIDA is secured Creditor, but the charge on the plot of land of Canara Bank being first charge, it could at best that Rs. 4 crores instead 3 crores. The Minutes of CoC dated 23.01.2024 reads thus:-

BULLAND BUILDTECH PRIVATE LIMITED

*(In accordance with Regulation 19 read with Regulation 21 of IBBF
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016)*

MINUTES OF THE SPECIAL MEETING OF COMMITTEE OF CREDITORS
IN THE MATTER OF BULLAND BUILDTECH PRIVATE LIMITED HELD
ON TUESDAY 23RD JANUARY, 2024 AT 05:30PM IN COMPLIANCE WITH
ORDER DATED 08.01.2024 PASSED BY THE HON'BLE NCLT

MEMBERS PRESENT

S. No	Name of the member of CoC	Voting Share (In %)	Name of the Representatives who attended the meeting	Designation
1	AR of Homebuyers	76.83	Mr. Devendra Umrao	IBBI Registered IP
2	Canara Bank	16.11	Mr. Anand Srivastava Mr. Ashish Kumar Miss. Shivanjali Suri	AGM CM Manager

TEAM OF THE RESOLUTION PROFESSIONAL

S. No.	Representing Whom	Name of Person	Position
1	Office of RP	Mr. Debashis Nanda	RP

LIST OF MATTERS DISCUSSED/NOTED

Item No. 1

To discuss/ approve the revised amount proposed by Successful Resolution Applicant namely Saviour Builders Pvt Ltd towards GNIDA in compliance of order dated 08.01.2024 passed by the Hon'ble NCLT in IA no. 3940/2023 and 1449/2022

The Chairman apprised the members of the CoC that the Resolution Professional in compliance with the order dated 08.01.2024 called the Special Meeting of Committee of Creditors for approval of revised amount proposed by Successful Resolution Applicant after necessary discussion with the CoC members and Resolution Professional "RP" to Greater Noida Development Authority under the resolution plan submitted by them.

The Chairman apprised the CoC that GNIDA submitted their claim in wrong form with the office of RP i.e. in Form C as Secured Financial Creditor and the same was rejected by the RP and they were advised by the RP to submit their claim in Form B but unfortunately, they have not filed it till date and now have come up with their objection to the resolution plan before the Hon'ble NCLT.

Further, the resolution plan submitted by the SRA has considered their interest in the resolution plan by treating them as genuine stakeholder on their own volition even in absence of their claim in appropriate form. It is to be noted that the amount of Rs. 3 crores offered by SRA under the resolution plan was already in compliance with the provisions of section 53 of the Insolvency and Bankruptcy Code, 2016 but the RP to comply with Para 26 of the order dated 08.01.2024 has called this special CoC meeting as per the advice of the Hon'ble NCLT and in compliance with the same, SRA has revised the amount offered to GNIDA from Rs. 3 crores to 4 crores as per email dated 23rd January 2024 (Copy enclosed)

in order to avoid any future dispute with GNIDA as their cooperation would be required for successful implementation of the resolution plan submitted by the SRA.

It is not out of place to mention here that after due consideration of their status as secured operational creditor and their eligibility in reference to section 53 of the Insolvency and Bankruptcy Code, 2016, being zero on the constructed site of the project, the first charge of which being with Canara Bank, whose claim itself is more than the Liquidation value, the revised value of Rs. 4 crores by SRA is put before the CoC for its necessary approval in order to make the following resolution as the integral part of the resolution plan filed with the Hon'ble NCLT for its necessary approval.

Resolution: To consider and if found fit, to pass with or without modification the following:

Resolved that the liquidation value payable to GNIDA was considered by CoC in terms of the order dated 08.01.2024 passed by the Hon'ble NCLT in the matter of Bulland Buildtech Private Limited. The CoC noted that the liquidation value of debt of GNIDA as secured operational creditor, calculated in accordance with Sec 30(4) read with section 53 of IBC Code 2016 is Nil, the first charge on the Group Housing Project is being with Canara Bank, whose claim itself is more than the Liquidation value

Further Resolved that the CoC however noted the amount of Rs. 3 crore proposed by Saviour Builders Pvt Ltd – Successful resolution applicant, in their Resolution Plan towards payment to GNIDA duly increased from Rs. 3.00 Crore (Rupees Three Crore only) to Rs. 4.00 Crore (Rupees Four crore only) and CoC has hereby taken on record the same and approved as integral part of the plan submitted by them.

Further Resolved that the SRA may file an addendum to the resolution plan to this effect which can be placed before Hon'ble NCLT by the RP."

Vote of Thanks

There is no such matter from any member of the Committee of Creditors, the meeting was concluded with a vote of thanks by Resolution Professional.

SD/-

(Debashis Nanda)

Resolution Professional

In the matter of Bulland Buildtech Private Limited

Email: ip.bulland@gmail.com / dnanda.cma@gmail.com

IBBI IP Registration No. IBBI/IPA-003/IP-N00040/2017-18/10316

Date: 23.01.2024

Place: Ghaziabad

5. Ld. Counsel appearing for the GNIDA expressed his dissatisfaction not only qua the amount, but also qua the procedure. In his submission, once the GNIDA is secured Creditor, it should be reflected in the plan within such

category and with the classification as secured Financial Creditor only, then the proper view has to be taken. At best, the ramification of argument of Mr. U.N. Singh may be that the claim of GNIDA should get priority over the Canara Bank which accorded loan to the Corporate Debtor. Both the Canara Bank and GNIDA are in a way, the instrumentality of the State and it hardly makes much difference that to which instrumentality the distribution amount goes. In such a situation, one possible view may be that on the amount which is to be distributed amongst the secured creditor qua Plot No. GH-03A, Sector 16(C) the claim of both of them may be on pari pasu basis.

6. Nevertheless, in terms of the aforementioned view, apparently the resolution plan would be modified. Mr. Batra is justified in making his submission that at the first instance this Tribunal has no jurisdiction to modify the plan. Secondly, if the plan has to be modified at all, same has to be with the approval of the CoC only. It is no longer res-integra that, this Adjudicating Authority can always remand the plan back to the CoC.

8. The above view was objected by the Ld. Counsel for the RP who submitted that before the order is finalized, he need to be heard further in the matter. The Ld. Counsel for GNIDA insisted that the order has been dictated, thus the same has attained finality. An order is not final till signed by the Members of the Bench. Since, the counsels for the parties wish to make further submissions in the matter, the above order as dictated in open court is held in abeyance till next date. List on 24.04.2024.

IA-1286/2022, IA-828/2024, IA-1349/2024, IA-240/2024:- List on
24.04.2024.

**Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**

Satya Prakash/Gaurav/Ruchita