

**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-828/2024,**  
**IA-1349/2024, IA-240/2024, New IA-1852/2024**

**IN THE MATTER OF:**

**Canara Bank**

... **Applicant/Petitioner**

**Versus**

**M/s. Bulland Buildtech Pvt. Ltd.**

... **Respondent**

**Under Section: 7 of IBC, 2016 (CIRP)**

**Order delivered on 25.04.2024**

**CORAM:**

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

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

**PRESENT:**

**For the Applicant** : Adv. Sumesh Dhawan, Adv. Vatsala Kak, Adv. Sagar Thakkar, Adv. Shaurya Shyam for in 240/2024, IA-1349/2024 and for Respondent No. 1 to 3 in IA-1286/2022.

Adv. Deepak Somani, Adv. Anurag Ojha in IA-828/2024.

**For the Respondent** : Adv. Sumesh Dhawan, Adv. Vatsala Kak, Adv. Shaurya Shyam, Adv. Sagar Thakkar

**For the GNIDA** : Adv. U. N. Singh

**For the RP** : Adv. Sumant Batra, Adv. Nidhi Yadav, Adv. Sarthak Bhandari

**For the SRA** : Adv. Saransh Goel, Adv. Neeraj Gupta

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-1349/2024:** The plea espoused by the Applicant in the application is that in the order dated 29.11.2023, it could be incorrectly recorded that the Respondent No. 2 had already been proceeded against ex-parte. In terms of the averments made in the application, the Respondent No. 2 in IA-1286/2022 had never be proceeded against ex-parte. Mr. Sumant Batra, Ld. Counsel for the RP conceded the plea raised in the application and submitted that the stand taken in the application i.e. the Respondent No. 2 in IA-1286/2022 was never proceeded against ex-parte is correct. In the wake of

the averments made in the application and the submissions made by the Ld. Counsels for the parties particularly by Mr. Sumant Batra, Ld. Counsel for the RP the finding recorded in order dated 29.11.2023 qua IA-1286/2022 viz. "The Respondent No. 2 has already been proceeded against ex-parte is directed to be deleted."

**The IA stands disposed of.**

**IA-828/2024:** The IA was preferred jointly by five Applicants viz. the Applicant in the present application namely Ashok Garg, Prakash Dara, Anand Naithani, Sheesh Pal and Sutesh Kumar. It is not in dispute that the IA was dismissed for default in terms of the order dated 02.03.2023. The order dated 02.03.2023 reads thus:

***IA-2789/2022:** There is no appearance on behalf of the Applicant, despite repeated calls.*

**Hence, the IA-2789/2022 is dismissed for non-prosecution."**

It is also not in dispute that no application for recalling the order dated 02.03.2023, in terms of which IA-2789/2022 was dismissed for non-prosecution could be preferred and technically the claim preferred by the Applicant in the captioned IA stands determined. Nevertheless, the Ld. Counsel appearing for the Applicant submitted that as far as other four Applicants are concerned, their claim could be admitted by the RP irrespective of the order dated 02.03.2023, thus the Applicant herein the present IA should not be treated different. Adv. Anurag Ojha, Ld. Counsel for the Applicant submitted that his succinct plea in the application is only that the Applicant be given the same treatment as other four Applicants in IA-2789/2022 have been given. Confronted with the plea raised by Adv. Anurag Ojha, Mr. Sumant Batra, Ld. Counsel appearing for RP could draw our attention to para 5 of the reply to IA-2789/2022 and submitted that out of Rs. 66 lacs paid by the Applicant, he had already taken back Rs. 55 lacs and only Rs. 11 lacs are balance. According to Mr. Sumant Batra, once the Applicant had received major amount deposited by him with CD back, he cannot stake any claim for any flat. According to him, the case of the Applicant stands on the footings different from those on which the other co-applicants in IA-2789/2022 was there. Para 5 of the reply to IA-2789/2022 reads thus:

“5. It is also submitted that the captioned Application has 5 (five) claimants and for sake of connivence of the Hon’ble Tribunal the reply to the claims of Applicant are in prescribed herein in the tabular form:-

S.No	Name of Applicants	Reply on behalf of RP	Annexure
1.	Ashok Garg	a) The Claim of the Applicant is unable to be processed as the Applicant couldn't file the proof of payment made to the company and is only relying on the Allotment letter	1. Copy of the email correspondence with the RP is attached as <b>Annexure 1.</b> 2. Copy of the ledger of the Applicant and Corporate Debtor is attached
		and the memorandum of understanding dated 09.07.2020. b) No Proof of payment has ever been provided to the resolution professional by the Applicant.	herewith as <b>ANNEXURE 2.</b>

		<p>c) That if the ledger account of the party is verified it may be observed that he has been paid back Rs. 55 lakh out of Rs. 66 lakh given by the Applicant leaving a balance of Rs. 11 Lakh only to his credit.</p> <p>d) It is also submitted that a Bonafede homebuyer is</p>	
		<p>never paid back his booking amount.</p> <p>e) It is also submitted that records of the Corporate debtor does not show any flat booked in his name.</p> <p>f) Without prejudice the above submission the applicant have never submitted his claim in Form C as unsecured FC and till date no FORM C for verification has been received to RP and presently the Plan has been approved by COC.</p>	
2.	Prakash Dara	a) That vide email date	Copy of the Correspondence

		20.12.2021 the claim of the Applicant have been admitted as per law.	between RP and the Applicant is attached as <b>ANNEXURE 3</b>
3.	Anand Naithani	a) That vide email dated 25.03.2022 the claim of the Applicant have been admitted.	Copy of the Correspondence between RP and the Applicant is attached as <b>ANNEXURE 4</b>
4.	Sheesh pal	a) That the claimant has relinquished the rights to through memorandum of understanding dated 12.04.2018 in favour of Applicant no.3 Anand Naithani and the claim of the Applicant No. 3 is already admitted .	Copy of the Correspondence between RP and the Applicant is attached as <b>ANNEXURE 5</b>
5.	Sutesh Kumar	b) That the claimant has relinquished the rights	Copy of the Correspondence between RP and the Applicant is
		through memorandum of understanding dated 12.04.2018 in favour of Applicant no.3 Anand Naithani and the claim of the Applicant No. 3 is already admitted .	attached as <b>ANNEXURE 5</b>

At the first place, the IA-2789/2022 could be rejected and the Applicant never sought recall of the order in terms of which the same was dismissed for want of prosecution. Secondly the Applicant is unable to substantiate his plea that his claim is Pari Materia to other co-applicants in IA-2789/2022. From the reply filed in IA-2789/2022 it is apparent that the factual position in respect of the Applicants in IA-2789/2022 was not identical and were different from each other. When the Applicant before us had taken his money substantially back i.e. out of Rs. 66 lacs he could take back Rs. 55 lacs, the claim of Mr. Prakash Dara and Mr. Anand Naithani could be admitted. Mr. Sheesh Pal and Mr. Sutesh Kumar had relinquished their claim in favour of Mr. Anand Naithani and the claim of Mr. Anand Naithani could be admitted. May be there is some veracity in the grievance espoused by the Applicant qua the affairs of RP, in dealing with the claim of other Applicants, but it is stair decisis that two wrongs would not make one right. We need to examine the claim of the Applicant on it's own merits. Once the Applicant could take refund of substantial amount of money deposited by him, he cannot at this stage that claim he should also be treated as allottee. In the wake, the present application is disposed of, in view of the statement made by Mr. Sumant Batra, Ld. Counsel for the Applicant that the Applicant will be treated as FC in respect of his balance amount of Rs. 11 lacs, which will be dealt with from the contingent provisions made in the plan.

**The application stands disposed of.**

**IA-1286/2022, IA-240/2024:** The application viz. IA-1286/2022 has been preferred, alleging fraudulent transaction and the IA-240/2024 has been preferred for impleadment of the Applicant in IA-240/2024 as Respondent in IA-1286/2022. There is provision in the Resolution Plan that regarding the appropriation of the proceeds of the avoidance applications as also for pursuing the application even after the Resolution Plan. In the wake, as prayed by the Ld. Counsel appearing for the RP, the hearing in IAs is deferred to 03.06.2024.

**IA-1449/2022, IA-1852/2024:** The prayer made in IA-1449/2022 is for approval of the Resolution Plan and the same in IA-1852/2024 is for taking the addendum to Resolution Plan on record. Mr. Sumant Batra, Ld. Counsel

appearing for the RP submitted that after the order dated 09.04.2024 & 10.04.2024 passed by this Adjudicating Authority, another CoC meeting was held on 15.04.2024 and in terms of the resolution passed by the CoC in the said meeting, the land owing agency i.e. GNIDA would be paid Rs. 16.45 crores i.e. an amount more than what is provided for secured creditor viz. Canara Bank. It is also his plea that the amount offered to GNIDA is almost at par with the liquidation value of the CD. He also submitted that the GNIDA has been treated as secured creditor and it is in due deference to the observations made by this Tribunal in order dated 09.04.2024 & 10.04.2024 that the aforementioned provision has been made in favour of the GNIDA. Nevertheless, he insisted on his plea that GNIDA cannot be treated as first charge holder over the plot of land allotted by it to the CD. Mr. U.N. Singh, Ld. Counsel for the GNIDA argued with vehemence that the GNIDA has to be treated as first charge holder and whatever may be the consequence of such treatment, should follow. Relying upon the judgment of the Hon'ble Supreme Court in New Okhla Industrial Development Authority vs. Anand Sonbhadra he submitted that in the said case the Noida was treated as OC, as it had already been given the 41% of its admitted claim. With reference to the judgment of the Hon'ble Supreme Court in M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder in Civil Appeal No. 1682/2022, 1683/2022, he submitted that once the Resolution Plan is hit by the legal provision, the application for approval of the plan is liable to be rejected. With reference to the judgment of Hon'ble Supreme Court in Andhra Pradesh Industrial Infrastructure Corporation Limited vs. Asia Graphic Semi Construction (in liquidation represented by the Official Liquidator and another, he argued that the GNIDA being owner of the plot cannot be deprived of the same. It is also his plea that during the CIRP, the GNIDA was entitled to CIRP cost and if such cost is not paid to it, the plan should not be approved.

Arguments heard. **Order reserved.**

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

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