

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 605 of 2020

IN THE MATTER OF:

**Kashi Viswanathan Sivaraman,
Resolution Professional, Kindle Developers Pvt. Ltd. ...Appellant**

Versus

New Okhla Industrial Development Authority ...Respondent

Present:

For Appellant: Mr. Gaurav Mitra, Mr. Prateek Kushwaha, Mr. Kanish Khetan, Advocates with Mr. Kashi Vishwanathan (IRP).

For Respondent: Mr. Rachit Mittal, Advocate.

**ORDER
(Through Virtual Mode)**

27.07.2020: After hearing learned counsel for the Appellant, we find that I.A.1592/2019 in CP No. IB-470(ND)/2017 was filed by Noida Authority before the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court II, alleging that the lease of the land being the substratum of the Corporate Debtor's project has been cancelled vide letter dated 31st Mach, 2015 for want of deposit of necessary lease rent/ charges in terms of the allotment. It was also pointed out that the Committee of Creditors has approved the Resolution Plan on the wrong assumption that the land belonged to the Corporate Debtor. The Adjudicating Authority observed in the impugned order dated 20th February, 2020 that when the

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lease of the allotted land stood cancelled by the Noida Authority way back in 2015, the Resolution Plan could not be considered by it for approval. The Adjudicating Authority further observed that Corporate Debtor's prayer for considering the Corporate Insolvency Resolution Process de novo was a blatant instance of wanting to perpetuate their criminal intent of cheating the Home Buyers/ Allottees. While it observed that the Corporate Debtor had knowledge that no project could be implemented or flats constructed and delivered when there was no land, it directed the Resolution Professional to look into the matter and file a proper complaint with the EOW Cell of the Delhi Police. It also agreed to consider the issue raised by the Corporate Debtor for de novo Corporate Insolvency Resolution Process, provided the Corporate Debtor was able to demonstrate that a lease of a plot for completion of the project was subsisting in their favour. The Adjudicating Authority accordingly adjourned the matter for further consideration.

2. On bare perusal of the impugned order, it emerges that the Adjudicating Authority declined to consider the Resolution Plan as the Noida Authority alleged that it had cancelled the lease for want of deposit of lease rent/ charges in terms of the allotment. Learned counsel for the Appellant referred to reply provided in response to a RTI query which shows that the amount of rent was outstanding. But there is nothing in the letter to show that the lease was subsisting or had been

cancelled. Thus, on the strength of this reply alone it cannot be held that the lease was subsisting.

3. Learned counsel for the Appellant further submits that the Resolution Professional moved I.A. 1664/2019 under Section 30(6) of the I&B Code for approval of the Resolution Plan by the Adjudicating Authority which has not been considered. On perusal of the impugned order we find that the application of Resolution Professional has not been disposed of and the matter has been directed to come up for further consideration.

4. Learned counsel for the Appellant – Resolution Professional submits that in compliance to the direction given in the impugned order, the Resolution Professional has already filed a complaint with the EOW Cell of Delhi Police on 20th May, 2020. Learned counsel for the Appellant further submits that the lease is still subsisting and the Resolution Professional's application for consideration for approval of the Resolution Plan is required to be considered on its own merit. While Mr. Rachit Mittal, learned counsel representing Noida Authority re-iterated that the lease of land favouring the Corporate Debtor stands cancelled on 13th August, 2015, learned counsel for the Appellant submits that on 14th June, 2016, the Corporate Debtor has approached the Noida Authority for restoration/revival of the lease which is still pending consideration with the Noida Authority.

5. In the given circumstances, we find that the instant appeal is not maintainable as no final decision has been taken by the Adjudicating Authority in regard to approval of the Resolution Plan and matter has been adjourned for further consideration. We dispose of this appeal with direction that the Adjudicating Authority shall accord consideration to the matter in the light of the application filed before it which is pending consideration and after taking interests of all stakeholders into consideration. The Adjudicating Authority will record a clear finding in regard to cancellation/ subsistence of the lease after providing opportunity and hearing all concerned parties before passing order in regard to approval or otherwise of the Resolution Plan. It is expected that the Adjudicating Authority will accord top priority to the matter keeping in view the timelines and decide the matter expeditiously. The Appeal is disposed off with aforesaid direction.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[V. P. Singh]
Member (Technical)**

**[Shreasha Merla]
Member (Technical)**

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