

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 848 of 2019

IN THE MATTER OF:

Deepakk Kumar

...Appellant

Versus

M/s. Phoenix ARC Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : Mr. Dilip Singh, Advocate

For 1st Respondent: Mr. Suresh Dutt Dobhal, Advocate

For 2nd Respondent : Mr. Goutham shivshankar, Advocate for RP

Mr. Balakrishnan, Resolution Professional

WITH

Company Appeal (AT) (Insolvency) No. 934 of 2019

IN THE MATTER OF:

State Bank of India

...Appellant

Versus

Phoenix ARC Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. Amish Tandon and Mr. Lakshay, Advocates

For 1st Respondent: Mr. Suresh Dutt Dobhal, Advocate

ORDER

04.12.2019 'M/s. Phoenix ARC Pvt. Ltd.' (Financial Creditor) filed an application under Section 7 of the 'Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**') for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Sovereign Developers and Infrastructure Ltd.' The Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by impugned order dated 16th July, 2019 admitted the application which is under challenge in '*Company Appeal (AT)(Insolvency) No. 848 of 2019*'.

2. In the 'Corporate Insolvency Resolution Process', the 'State Bank of India' wanted to intervene but the Adjudicating Authority by impugned order dated 16th July, 2019 rejected the intervention application for which we hold that the Adjudicating Authority has rightly rejected the application as 'State Bank of India' being a 'Financial Creditor' could have filed the claim before the 'Resolution Professional'. The appeal ('*Company Appeal (AT) (Insolvency) No. 934 of 2019*') preferred by the 'State Bank of India' is accordingly dismissed

3. Insofar as the '*Company Appeal (AT) (Insolvency) No. 848 of 2019*', which is preferred by the 'Promoter' of 'M/s. Sovereign Developers and Infrastructure Ltd.' is concerned, learned counsel for the Appellant submitted that 90% of the project is complete and the 'Promoter' is agreed to complete rest part of the project. He further submits that 300 Flats are ready for Registration which can be allotted on receipt of 'No Objection Certificate' from 'M/s. Phoenix ARC Pvt. Ltd.'. It is further intimated that the total work will be completed within a short period.

4. An affidavit has been filed by the 'Promoter' – 'Mr. Deepakk Kumar Singh' giving time frame of 60 days to complete the project. It is intimated that the flats are complete and all the allottees can be accommodated.
5. It is further stated that the total project will be completed within six months that is less than the period of 'Corporate Insolvency Resolution Process'.
6. It is further stated that the Appellant is ready for investment approximately Rupees Seven Crores or more for the purpose of completion of 300 flats. The Appellant also submitted that the Appellant (Mr. Deepakk Kumar Singh) has made arrangement with another investor namely 'Bharti Electricals Pvt. Ltd.', who is agreed to invest another sum of Rs. 6.5 Crores to ensure that the rest of the project will be completed within six months.
7. The details of the time frame and the amount which will be spent has been shown in the Annexure at page 15 of the affidavit filed by the Appellant – 'Deepakk Kumar Singh', which reads as follows:

ANNEXURE-A/B

Block-wise time required for unfinished work

S.No.	Block	Towers	Survey No	% of Unfinished work	Time Required
1.	A	A1-A4	511	5%	45 Days
2.	B	B1-B8	511	5%	60 " "
3.	C	C1-C8	516	16%	90 " "
4.	D	D1-D5	516	17%	90 " "

ANNEXURE-A/C**Block-wise Fund required for unfinished work**

S.No.	Block	No. of Flats	Average cost of Block	Cost of Unfinished work	Balance Electricity and Water Supply Cost
1.	A	252	51 Cr	2.56 Cr	2.1 Cr.
2.	B	479	102 Cr.	5.13 Cr	4.4 Cr
3.	C	512	116 Cr.	19.47 Cr.	4.8 Cr.
4.	D	320	69.6 Cr.	12.69 Cr.	3.7 Cr.

ANNEXURE-A/D**Block-wise Flats ready for Registration**

S.No.	Block	Towers	Total No. of Flats	Flats already registered	Flats ready for registration
1.	A	A1-A4	252	84 (Including A & B Block)	300 (Including A & B Block)
2.	B	B1-B8	479		
3.	C	C1-C8	512	1	16
4.	D	D1-D5	320	3	15

Deepak Kumar

ANNEXURE-A/E**Block-wise Balance Receivable from Customers**

S.No.	Block	Towers	Total No. of Flats	Amount Receivable from Customers
1.	A	A1-A4	252	Rs. 8.4 Cr
2.	B	B1-B8	479	Rs.33.99 Cr
3.	C	C1-C8	512	Rs.28.30 Cr.
4.	D	D1-D5	320	Rs.29.04 Cr.

ANNEXURE-A/F**Payments to be made to Customers in Litigation**

	Cases in HC	Cases in State Commission	Cases in District Forum
No. of Cases	1	36	24
Stages of Case	Direction to pay with interest	Warrant issued against the suspended Directors in Execution proceedings	Warrant issued against the suspended Directors in Execution proceedings

ANNEXURE-A/G**TENTATIVE DATE OF HANDING OVER POSSESSION**

	BLOCK A	BLOCK B-1 to 4	BLOCK B-5 to 8	BLOCK C-1 to 4	BLOCK C-5 to 8	BLOCK D
Handing Over Possession	February 2020	March 2020	March 2020	April 2020	April 2020	May 2020

8. Mr. Balakrishnan, Resolution Professional submits that he has received only one claim from financial institution namely – ‘M/s. Phoenix ARC Pvt. Ltd.’ and rest are allottees (Financial Creditors). However, according to the learned counsel for the Appellant, there are other lenders who have also invested money but they have agreed to co-operate with the ‘Promoter’ for completion of the Project. Though the aforesaid stand, as taken by the ‘Promoter’, has not been made clear as to how much amount it intends to pay to ‘M/s. Phoenix ARC Pvt. Ltd.’ and other lenders, for the said reason we allow the Appellant to negotiate with ‘M/s. Phoenix ARC Pvt. Ltd.’ and other lenders and inform them the

timeframe by which the 'Promoter' to complete the project under the supervision of the 'Resolution Professional'. If such agreement is signed between the parties, this Appellate Tribunal will dispose of the matter for the purpose to save time frame of the 'Corporate Insolvency Resolution Process' in a complicated case of infrastructure company where large number of allottees were awaiting for allotment of their flats/shops. The Appellant is directed to sit with 'M/s. Phoenix ARC Pvt. Ltd.' and other lenders for one time settlement and for terms of payment. It is expected that the parties will reach settlement within 2 weeks.

9. So far as the 'State Bank of India' is concerned, we are not passing any order with regard to it as they have given loan to the allottees pursuant to the 'tripartite agreement'. It is only after completion of the flats/shops of the infrastructure, if allottees occupied it, then we will consider the case of the 'State Bank of India'.

Post the case 'for orders' on **19th December, 2019**. The parties may file the 'Terms of Settlement' by the next date.

'Resolution Professional' will ensure that the 'Corporate Debtor' remains a going concern as ordered earlier and may proceed in accordance with law.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

/ns/gc