

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 259 of 2019

IN THE MATTER OF:

Sukhbeer Singh Appellant

Vs

Dinesh Chandra Agarwal,
(Resolution Professional),
Maple Realcon Pvt. Ltd. & Ors. Respondents

Present:

For Appellant: Mr. Mrinal Harsh Vardhan and Mr. Kartik Sarin, Advocates

For Respondents: Mr. Nakul Mohta, Ms. Anju Jain, Mr. Hitesh Sachar and Ms. Namita Jose, Advocates for Respondent No.3.

Mr. Shobhan Mahanti, Mr. S.S. Bhati, Mr. Takrim, Ms. Priyanka, Advocates for Resolution Professional.

ORDER

07.08.2019 By our order dated 16th July, 2019, we have observed as follows: -

“In the present case, as we find that the matter relates to real estate and there are number of allottees (Home Buyers), who are Members of the ‘Committee of Creditors’, we are of the view that before exclusion of any period for accepting any ‘Resolution Plan’, let the proposal of the Appellant be placed before the ‘Committee of Creditors’, which may exercise its powers in terms of Section 12A of the Insolvency and Bankruptcy Code, 2016. If it is approved with the 90% voting shares of the ‘Committee of Creditors’, this Appellate Tribunal may consider as to whether in such case, the application under Section 9 should be allowed to be withdrawn, and

on failure, the Appellate Tribunal may decide whether proposed 'Resolution Plans' are to be considered or not?

2. Now it is stated that the proposal given by the Appellant/ Promoters has not been placed before the 'Committee of Creditors' by the 'Resolution Professional' on technical ground that the Promoters cannot file application under Section 12A of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code'). We reject such objection, if any, raised by the 'Resolution Professional'. It is the Promoters, who can settle the matter with all the 'Financial Creditors', 'Operational Creditors' including the Allottees and for that they may give their proposal and the 'Resolution Professional' is bound to place it before the 'Committee of Creditors', which is supposed to consider such application in the light of Section 12-A and the order of this Appellate Tribunal dated 16th July, 2019 as quoted above. The Allottees (Home Buyers) are also Members of the 'Committee of Creditors', therefore, while calling meeting of the 'Committee of Creditors', they should also be called for voting in accordance with the existing provisions of law. In that view of the matter, we direct the 'Resolution Professional' to place the proposal of Appellant/ Promoters before the 'Committee of Creditors'. If necessary, the date of meeting of the 'Committee of Creditors' be fixed in the manner as prescribed under the Regulations and information be given to the 'Financial Creditors' including the allottees to take part.

3. The 'Committee of Creditors' will consider the same taking into consideration the interest of the Allottees and will also take into consideration the viability and feasibility of the proposal.

4. So far as, the Bank Guarantee is concerned, we make it clear that if the 'Committee of Creditors' approves the proposal with 90% voting shares, it may also ask the Promoters to give Bank Guarantee, as it may propose, failing which the Applicant, who has filed the application under Section 9, may not make prayer for withdrawal of the application. We expect that the 'Resolution Professional' will call for meeting of the 'Committee of Creditors' at an early date, preferably within three weeks to take decision in either way.

In case of rejection, the Appeal would be heard on merit. Parties will inform the development on the next date.

Place the case 'for orders' on **4th September, 2019**.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Ash/GC