

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins) No. 471 of 2019

IN THE MATTER OF:

Ajeet Kumar Saxena & Ors.

....Appellants

Vs.

Shubhkamna Buildtech Pvt. Ltd. & Ors.

....Respondents

Present:

Appellants: Mr. Prakhar Singh, Advocate

Respondents: Mr. Arun Batta, Advocate for R-2.

**Mr. Gaurav Mitra, Sr. Advocate with Ms. Simran Jyot Singh
and Mr. Sonbhadra, Advocates**

O R D E R

03.09.2019: The Appellants are allottees of (Corporate Debtor) of M/s Shubhkamna Buildtech Pvt. Ltd. (Corporate Debtor) and they have challenged the order dated 26.11.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Court No. 4, New Delhi, whereby the application under Section 9 preferred by M/s Concord Infrastructure Pvt. Ltd. (Operational Creditor) has been admitted. Mr. Ajeet Kumar Saxena, the first appellant submitted that if the Corporate Insolvency Resolution Process initiated against M/s Shubhkamna Buildtech Pvt. Ltd. is allowed to continue, there will be the likelihood of failure of resolution. It is submitted that the Successful Resolution Applicant may raise the price of the flats/ shops and may change the specifications of the plan already approved including the flats/ shops for which appellants and other allottees have applied.

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Mr. Gaurav Mitra, Sr. Advocate appearing on behalf of the Resolution Professional submitted that the appeal is barred by limitations being filed after 120 days but as per Mr. Ajit Kumar Saxena and others, who are present in the court, they have come to know of the impugned order dated 26.11.2018 recently. Learned counsel for Resolution Professional submitted that one Insolvency Professional has been now appointed on behalf of the allottees, who will take care of the grievance of all allottees including the appellant. It is submitted that the appellant's presumption that Successful Resolution Applicant may increase the rates of their flats/ shops or they will change the plan etc. are premature and no presumption can draw at this stage. It is only after receipt of the Resolution Plan(s) from the eligible person(s) the matter will be looked by the Resolution Professional in terms of Section 30 (2) of the I&B Code as amended by notification dated 06.08.2019 and the plans which are viable as feasible and fulfil other requirements laid down by the I&B Code will be placed before the 'Committee of Creditors'. It is also submitted that the allottees or their representatives will be members of the 'Committee of Creditors' and they may protect the interest of the allottees. It is informed that allottees have 87.3% voting share and therefore they have major role to play in the 'Committee of Creditors'.

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In the facts and circumstances, without going into the question of maintainability while we are not inclined to interfere with the impugned order dated 26.11.2018, we give liberty to the Appellant or any aggrieved person that if any resolution plan is approved without taking into consideration the interest of the allottees, including the terms of agreement as reached with the Corporate Debtor, they shall be entitled to assail the same.

The appeal stands disposed of with aforesaid liberty. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

sa/gc