

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 07 of 2019

IN THE MATTER OF:

Ranjit Das & Ors.

...Appellants

Vs.

MSX Mall Pvt. Ltd.

...Respondent

Present: Mr. Abhishek Anand and Ms. Radhika Rai, Advocates for 'MSX Mall'.

ORDER

07.01.2019— The Appellant- 'Resolution Professional' has challenged the order dated 26th November, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, which reads as follows:

"Order

Reply has been filed by the RP to CA 615/2018. The grievance stems from the fact that commercial space was rented out to Haldiram. This area was subsequently allotted to various buyers on receipt of full payment. The Corporate Debtor would then distribute the proportional rent to the various allottees/owners in possession in respect of their individual units from the total area of 9857.70 sq. feet leased out to Haldiram.

The RP has collected the names of all the allottees/ owners in possession whose units are under lease to Haldiram. Since legally this is an amount of rent to be paid to the owners, for their units under lease to Haldiram It is prayed that the rent due

to the various owners be kept outside the purview of the moratorium.

We find merit in the arguments advanced by the lad. Counsel. The rent due from a lessee to the actual owner should not be a subject matter of resolution as the Corporate Debtor is only collecting it on behalf of the allottees who have paid full payment. Such an act, if permitted, would neither be legal nor just and equitable to the allottees who have invested in commercial properties to supplement their monthly income. It is therefore directed that any rent received from Haldiram or any other lessee which the Corporate Debtor has allotted for a purchase consideration will be out of the purview of Section 14(2) of the Code. The RP shall ensure that this amount is not used in any CIR process, but is kept for the time being in an escrow account maintained with a bank. After ascertaining the rent due to each allottees, the same shall be disbursed by the RP to them after prior approval of this Bench.

CA 615/2018 stands disposed off in terms of the above.

Another application CA 709/2018 has been filed by the RP praying for directions to entertain claims received late i.e. beyond the period of 90 days. This Bench is of the view that receipt of the late claims beyond the period of 90 days would not entitle the claimant to be part of the COC. However, a legitimate claim of an investor or creditor cannot be turned out or rejected till it is a point of no return. In our considered view this situation shall arise only after disbursement of the liquidated estate of the Corporate

Debtor as even at the state of liquidation claims are invited.”

2. On hearing learned counsel for the parties, we find that the amount generator does not belong to the ‘Corporate Debtor’ which was collecting it on behalf of the others and, therefore, if the Adjudicating Authority has asked to release it to the concerned person, we are not inclined to interfere with the same.

3. So far as the pending arbitration proceeding is concerned, the arbitration proceedings, if so pending may continue but the award, if any, passed by the Arbitral Tribunal against the ‘Corporate Debtor’ be not given effect during the period of ‘Moratorium’.

The appeal is disposed of. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansilal Bhat)
Member(Judicial)

Ar/g