

National Company Law Appellate Tribunal, New Delhi
Principal Bench
I.A. No. 1323 of 2021
In
I.A. No. 2166 of 2020
in
Company Appeal (AT) (Ins) No. 1056 of 2019

IN THE MATTER OF:

Rajesh Goyal

...Applicant

Vs.

Babita Gupta & Ors.

...Respondents

Present:

For Appellant:

Mr. Abhijeet Sinha, Mr. Saurabh Jain (Applicant in IA No. 1323/2021)

For Respondent:

**Mr. Praful Jindal, for Applicant home buyers)
 Mr. Rajesh Gupta (Impleader, home buyers)
 Mr. Anubhav Mehrotra, Mr. Pravesh Bahuguna (Impleader)**

Mr. Sumesh Dhawan, Ms. Vatsala Kak, for India Bulls)

Mr. Sudeep Kumar Shrotriya (R1-3)

Mr. Rishabh Jain, Mr. Abhindra Maheshwari, (Counsel for IRP)

Mr. Rupesh Kumar (Impleader)

Mr. Kumar Anurag Singh, Mr. Zain A Khan, Mr. NishantPiyush (for Financial Creditor, IIFL)

Mr. Ram Sharma (for IIFL)

Mr. Amandeep Singh (Intervenor)

Mr. Rudreshwar Singh, Mr. Gautam Singh (for Jan Kalyan Samiti)

Mr. Manoj Kumar (Legal Head, IIFL, FC)

O R D E R

(13th August, 2021)

Jarat Kumar Jain: J.

The Applicant "Rajesh Goyal" filed an Application I.A. No. 1323 of 2021 in I.A. No. 2166 of 2020 in CA (AT) (Ins) No. 1056 of 2019 under Rule 11 of

National Company Law Appellate Tribunal, Rules, 2016 seeking clarification of the order dated 04.03.2021.

2. Brief facts of this case are that Ms. Babita Gupta, Mr. Manoj Kr. Gupta and Ms. Sweta Gupta (Allottee-Financial Creditors) moved an Application under Section 7 of the IBC for initiation of Corporate Insolvency Resolution Process (CIRP) against the Rajesh Project (India) Pvt. Ltd. (Corporate Debtor) an Infrastructure Company. The Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi vide order dated 19.09.2019 admitted the Application. Rajesh Goyal (Promoter) has preferred the Appeal against that order CA (AT) (Ins) No. 1056 of 2019. This Appellate Tribunal decided this Appeal vide Judgment dated 05.02.2020. Thereafter, Rajesh Goyal filed an Application I.A. No. 2166 of 2020 seeking following reliefs:

- (a) pass suitable directions for extension of timeline stipulated in the Judgment dated 05.02.2020 passed by this Hon'ble Appellate Tribunal in the captioned Company Appeal in light of the change in circumstances that have occurred due to the outbreak of Covid-19 and its repercussions thereafter;
- (b) from the date of allowing the present Application and passing an order/judgment, provide an extension of 11 (Eleven) months or such other extended timeline as deemed fit from the expiry of the timelines stipulated in the Judgment dated 05.02.2020 in light of the change in circumstances that have occurred due to the outbreak of Covid-19 and its repercussions which are subsisting till date and are likely to so subsist in the foreseeable future as well;
- (c) allow the present Application;
- (d) Pass such other and further orders including consequential orders as may be necessary in the interests of justice; and
- (e) grant such other and further reliefs to the Applicant, as may be deemed fit.
- (f) pass any such other relief as deemed fit in the facts and circumstances of the present case.

3. This Appellate Tribunal vide order dated 04.03.2021 disposed of the Application. Thereafter, the Applicant has filed present Application I.A. No. 1323 of 2021 seeking following reliefs:-

- (a) pass an order to clarify that the directions in para 18 with regard to extension of time line be read as "Revised timelines with exclusion upto 04.03.2021 i.e. the date of judgment passed by this Hon'ble Appellate Tribunal and accordingly, the proposed extended time line may be revised in terms of Annexure -A hereto; and
- (b) pass an order clarifying that the portion in para 18 of the judgment dated 04.03.2021 i.e. *"the amount invested by him as financial creditor in terms of the judgment shall stand forfeited and"*.... may be removed/deleted; and/or
- (c) pass an order clarifying that the Hon'ble Adjudicating Authority should decide on the application for replacement of IRP in a time bound manner; and/or
- (d) pass any or such other order as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case in the interest of justice.

4. The present Application filed on 12.07.2021. In this matter earlier Gaurav Katiyar was appointed as IRP, however, he has tendered his resignation, therefore, the Adjudicating Authority vide order dated 01.06.2021 appointed Mr. Manoj Kulshrestha as IRP. Mr. Manoj Kulshrestha has filed the Reply of Application and Intervenor R.G. Jan Kalyan Samiti (A Registered Association of Homebuyers) and the R.G. Luxury Homebuyers Association (Regd.) have also filed Reply of the Application.

5. We have heard Ld. Counsels for the parties.

Clarification - I

6. It is submitted that the revised timeline proposed by the Applicant in the Chart dated 12.01.2021 was upto 15.01.2021 as the same was based on the assumption that the order on the application (I.A. No. 2166 of 2020) was

reserved on 07.01.2021 and that the order would be passed around 15.01.2021. However, the order was passed on 04.03.2021 i.e. after 48 days from the proposed exclusion date in the revised time lines i.e. exclusion upto 15.01.2021 for which period the Applicant could not have started the work in absence of permission granted by this Tribunal. Therefore, it is requested that the exclusion for the period when the order was passed i.e. 04.03.2021 may be granted, otherwise it would cause irreparable loss to the Applicant and also all the homebuyers. As the time granted by this Appellate Tribunal to complete the project is very limited under the Reverse-CIRP. It is also submitted that the proposed extended timeline is after exclusion extension of time annexed as Annexure D.

7. R.G. Jan Kalyan Samiti in their reply supports the reliefs sought by the Applicant and submitted that they can wait for sometime as the same will be in the large interest of all the bonafide and genuine homebuyers, therefore, it is requested that may allow extension of time.

8. Intervenor R.G. Luxury Homebuyers Association who are claiming that they are representing 640 apartments buyers, their authorize signatory Avinash Kr. opposes the prayer on behalf of the homebuyers and submitted that the Application is abuse of process of law and sheer dilatory tactic adopted by the Applicant. The Applicant committed default of the undertaking given in this Tribunal to infuse Rs. 69.27 Cr. within a period of 90 days for the construction of project. A period of 144 days passed since the order dated 04.03.2021 extending timeline for the Applicant. However, till date the Applicant has even failed to infuse the amount as per undertaking. The order

dated 04.03.2021 is unambiguous and needs no further clarification. The Application deserves to be dismissed with costs.

9. The RP in reply has placed on record present status of the project and stated that he has taken charge on 22.06.2021, after taking charge he has seriously followed Indiabulls Commercial Credit Pvt. Ltd. Which had sanctioned an amount of Rs. 12 Cr. on 25.06.2021 and the amount has been received in the bank account of the Corporate Debtor. it has also stated that IIFL HFL has sanctioned a loan of Rs. 15.00 Cr. to the Corporate Debtor out of which a sum of Rs. 2 Cr. was disbursed in the bank account of the Corporate Debtor on 22.07.2021. The work at the project site is being carried out by the promoter at a reasonable pace and there are sufficient funds at present to continue the work at the project site. Further Indiabulls Commercial Credit Pvt. Ltd. and IIFL HFL have assured to release the remaining amount of sanctioned loan shortly. On 23.07.2021, he has held a virtual meeting with the office bearers of RG Jan Kalyan Samiti and Association of home buyers of the RG Luxury Homes and had informed to homebuyers about the progress and exact status of the project. It is also stated that the IRP has assured homebuyers that he would do everything possible to ensure that the homebuyers are able to receive possession of their respective flat at the earliest in terms of the Judgment passed by this Tribunal. He has no objection for the present Application for clarification to be decided in the larger interest of the stakeholders of the Corporate Debtor.

10. We have gone through the record and considered the submissions and the progress report of the project, we hereby clarified that for completion of

the project the Applicant is entitled to get revised timeline with exclusion upto 04.03.2021 which is more specifically shown in the chart Annexure (D) which is as under: -

“Sl. No.	Event	Original Timelines as per order dated 05.02.2020	Revised timelines (exclusion upto 04.03.2021)	Proposed extended timelines (90 days)
1	Flat should be completed in all aspects (Page 62 paragraph 20(ii))	30.06.2020	30.07.2021	30.10.2021
2	All internal fit-outs for electricity, water connection (Page 62 paragraph 20 (ii))	30.07.2020	30.08.2021	30.11.2021
3	Common area such as Swimming Pool, Club house etc. as per agreement (Page 62 paragraph 20 (iii))	30.08.2020	30.09.2021	30.12.2021
4	Refund of 30% of the Principal amount to the Allottees (Page 62, paragraph 20 (iv))	22.05.2020	22.06.2021	22.08.2021
5	Refund of 70% of the Principal amount to the allottees (Page 62, paragraph 20 (iv))	30.08.2020	30.09.2021	30.12.2021
6	Interest to be paid to the allottees seeking refund (Page 62, paragraph 20 (iv))	30.08.2020	30.09.2021	30.12.2021
7	Payment to Financial Institutions/ Bank and operational Creditors (Page 62, paragraph 20 (iv))	30.08.2020	30.09.2021	30.12.2021

11. As per earlier order, the allottees were directed to deposit balance amount and pay 90% by 15.03.2020. Now, the allottees are directed to deposit balance amount and pay 90% by 31.08.2021.

Clarification –II

12. In Para 18 of the order dated 04.03.2021 this Tribunal has observed that “the amount invested by him as financial creditor in terms of the judgment shall stand forfeited and”.

13. It is stated that such observation is amounting to altering the judgment dated 05.02.2020, therefore, this condition may be removed/deleted.

14. We have gone through the record, we find no reason to remove/delete aforesaid condition.

Clarification –III

15. It is stated that this Tribunal in the order dated 04.03.2021 observed that:

“.....keeping in view the last para of directions incorporated in judgment dated 5th February, 2020, learned counsel for IRP was given liberty to approach the Adjudicating Authority for seeking substitution of the IRP as the CIRP was still underway

16. In this regard, it is submitted that the Adjudicating Authority may be directed to decide the Application for replacement of IRP in time bound manner. As we have already noted above that the Adjudicating Authority vide order dated 01.06.2021 replaced the IRP and appointed Mr. Manoj Kulshrestha as IRP, who has taken charge on 22.06.2021. Therefore, no clarification or direction is required. We make it clear that all directions in

earlier Judgment dated 05.02.2020, order dated 04.03.2021 except for the extended timelines, remaining intact.

Thus, the Application I.A. No. 1323 of 2021 is disposed of as indicated above. No order as to costs.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

New Delhi
SC