

# Japna Estates Private Limited vs Shubhkamna Buildwell And Estates ... on 9 November, 2022

**Author: Navin Chawla**

**Bench: Navin Chawla**

\$~11 (company)

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CO.PET. 989/2015, CO.APPL. 801/2021

JAPNA ESTATES PRIVATE LIMITED ..... Petitioner  
Through: Mr.Arun Vohra and Mr.Dilip  
Kumar, Advs.  
versus

SHUBHKAMNA BUILDWELL AND ESTATES PRIVATE  
LIMITED ..... Respondent  
Through: Ms.Ruchi Sindhwani, Sr. Standing  
Counsel for OL with Ms.Megha  
Bharara, Adv.  
Mr. Alok Kumar Aggarwal,  
Ms.Anushruti and Ms.Simran  
Arora, Advs. for applicant in CA  
No.801/2021  
Mr. Ninad Dogra, Advocate for  
applicants in CAs No. 771-72/2021

CORAM:  
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 09.11.2022 CO.APPL. 771/2021 & CO.APPL. 772/2021

1. These applications have been filed on behalf of the 122 applicants, who claim themselves to be the homebuyers in a residential project of the Respondent-Company, praying for transfer of the present proceedings/petition to the learned National Company Law Tribunal (hereinafter referred to as the 'NCLT') and stay of the liquidation proceedings against the respondent-Company.

2. The present petition was admitted and the Official Liquidator (in short, 'the O.L.') attached to this Court was appointed as a Provisional Liquidator for the Respondent-Company vide order dated 06.08.2018.

3. As reported by the learned counsel for the O.L., the earlier attempt to dispose of the properties of the Respondent-Company did not bear any fruit. In view of the above, therefore, no irretrievable steps have been taken with respect to the Respondent-Company.

4. The learned counsel for the O.L. submits that though the O.L. has no objection to the transfer of the present petition to the learned NCLT, the O.L. has incurred expenses of around Rs.81 Lakh towards security and other expenses with respect to the property of the Respondent- Company, being Plot No.GH-02/A, Sector-12, Greater Noida, Uttar Pradesh. She submits that the said cost has to be recovered from the assets of the Respondent-Company.

5. The learned counsel for the petitioner also expresses his no objection to the transfer of the present petition to the learned NCLT, provided that, the petitioner is not burdened with the costs incurred by the O.L. and the present petition starts from the stage it is at before this Court.

6. The objection to the transfer is raised on behalf of Mr. Harendra Singh Khokhar, who claims himself to be the shareholder/former Director of the Respondent-Company.

7. The learned counsel for the Objector submits that there was a fraud committed by the Ex-management of the Respondent-Company, namely, Mr. Piyush Tiwari, Mrs. Shikha Tiwari and Mr. Diwakar Sharma, which requires further investigation by this Court.

8. As far as the objection raised by Mr. Harendra Singh Khokhar is concerned, in the order dated 06.08.2018, similar submission made on his behalf was rejected by this Court observing as under:-

"I have heard learned counsel for the parties. Learned senior counsel appearing for the respondent has urged that there was a collusion and fraud carried out by Mr.Tiwari and his wife Mrs.Tiwari from whom the present promoters have got the respondent company. On 16.2.2015 it is urged that Tiwari family had sold their shares and management rights to the present management. The post dated cheques it is urged have been issued on 1.9.2015 when the Tiwari Family had no right to issue the cheques. On a question posed about the fact that the loan agreement was much prior to the purchase and sale of the shares by Tiwari family learned senior counsel for the respondent confirms that books of accounts of the respondent company do reflect the outstanding dues of the petitioner.

Several adjournments have been given to the respondent to try and sort out the matter but it has not been possible to sort out the matter."

9. It is also admitted that Mr. Khokhar's own case is that he resigned from the Directorship of the respondent-Company prior to the admission of this petition by this court. Clearly, Mr. Khokhar has no right to object to the transfer of the present petition. Though, Mr. Khokhar submits that he is the majority shareholder of the respondent-Company, when asked to disclose the affairs of the Company, he pleads ignorance. The intent of Mr. Khokhar is clearly doubtful.

10. As far as the submission of the learned counsel for the O.L. is concerned, Section 53 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') provides that the proceeds from the sale of the liquidation assets shall be distributed with priority accorded to the Insolvency Resolution Process Costs and the Liquidation Costs being paid in full. The claim of the

O.L., therefore, can be safeguarded by directing that the expenses incurred by the O.L. shall be considered as Insolvency Resolution Process Costs and shall be dealt with in accordance with Section 53 of the Code. At the same time, as these costs already stand incurred, they shall not be burdened on the petitioner at the initial stage.

11. Keeping in view the ratio of the judgment of the Supreme Court in Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd., (2021) 2 SCC 641, in my opinion, as no irretrievable steps had been taken in furtherance of the order of this Court admitting the present petition, it is a fit case for transferring the petition to the learned NCLT, to be taken up by the learned NCLT from the stage it is at before this Court.

12. As there will be a hiatus between the transfer of the present petition to the learned NCLT and the learned NCLT taking further action on the same, the properties of the Respondent-Company would have to be secured in the interregnum. For this purpose, the O.L. shall continue to act as the Provisional Liquidator for the Respondent-Company and take measures for the protection of the properties of the Respondent- Company. Any and all expenses incurred by the O.L. during this period shall be borne by the applicants. The O.L. shall inform the applicants, through its counsel, of the expenses being incurred by the O.L. on a monthly basis, and the same shall be reimbursed by the applicants to the O.L. within a period of one month thereafter. Further directions in this regard shall be issued by the learned NCLT and the parties shall remain bound by the same.

13. The applications are disposed of in the above terms.

14. The OLRs stand disposed of in view of the order passed above.

15. In view of the order passed hereinabove, the present petition is transferred to the learned NCLT, to be taken up from the stage it is at before this Court.

NAVIN CHAWLA, J NOVEMBER 09, 2022 s