

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1396 of 2022 &
I.A. No. 4350 of 2022 & I.A. No. 69 of 2023

IN THE MATTER OF:

Flat Buyer Welfare Association, Blue Solitaire Tower C Appellants
& Ors.

Vs.

Dhingra Jardine Infrastructure Pvt. Ltd. & Ors. Respondents

Present:

For Appellants: Mr. Rakesh Kumar, Ms. Preeti Kashyap, Mr. Ankit Sharma, Mr. Varun Pandit, Advocates.

**For Respondents: Mr. Dushyant Yadav, Advocate for R-3.
 Mr. Gautam Singhal, RP (In person).
 Ms. Swaralipi Deb Roy, Advocate for RP.**

O R D E R

29.08.2023: Heard Learned Counsel for the appellant as well as Learned Counsel appearing for the Operational Creditor and Learned Counsel for the Resolution Professional. This appeal has been filed against the order dated 16.09.2022 passed by Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court-V) by which order Adjudicating Authority has admitted Section 9 application filed by the Operational Creditor.

2. Operational Creditor filed an application under Section 9 claiming to be a contractor appointed by the Corporate Debtor for carrying out the construction and appellant's claim that there are total dues of Rs. 3,88,12,122/-. It is submitted that Adjudicating Authority has issued notice on the application of Section 9. The Corporate Debtor appeared but did not file any reply nor

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contested the matter. Adjudicating Authority by the impugned order finding the debt and default admitted Section 9 application and appointed the IRP.

3. Aggrieved by the said order this appeal has been filed by Flat Buyer Welfare Associations. There are four appellants in this appeal who claimed to be the association of Flat Buyers of 4 towers namely; (i) Flat Buyer Welfare Association, Blue Solitaire, Tower C, (ii) Flat Buyers Welfare Association Solitaire, Tower D, (iii) Tower E, California Country Buyers Association, Sector 80, Faridabad, (iv) Flat Buyers Welfare Association, Gemini Groove Duplex, REGD Sector 80, Faridabad.

4. The appellant's case in the appeal is that the Corporate Debtor having unable to complete the construction, the complaints were filed before the HRERA Authority and an order under Section 8 was passed on 15.03.2022 by which the project was handed over to the appellants to complete the projects. In view of the order passed HRERA Authority the towers are completed and the home buyers were also residing in some of them.

5. It is submitted that Corporate Debtor neither appeared before the Adjudicating Authority nor brought all subsequent events including the order passed under Section 8 of the HRERA Authority, hence, the Adjudicating Authority being unaware of the subsequent development and statutory order has admitted Section 9 application. It is submitted that as per the order of the HRERA Authority passed in Section 8 the appellant's have steps into the shoes of the Corporate Debtor and they were required to be heard before any decision

is taken to proceed with insolvency. He submits that they also cannot be held liable for any past debt.

6. Learned Counsel appearing for the Operational Creditor submits that there are dues of the Operational Creditor which remained unpaid, it is further submitted that appellant's are not representing the entire project and they are only representing three towers. It is submitted that Adjudicating Authority has rightly admitted Section 9 application.

7. We have considered the submissions of counsel for the parties and perused the record.

8. The application under Section 9 was filed in the year 2021 inspite of notice issued by the Adjudicating Authority Corporate Debtor did not file any reply and apparently did not contest the proceedings. Appellants have brought on the record the copy of the order passed by HRERA Authority dated 15.03.2022. In paragraph 13 of the order of the HRERA Authority following has been directed:

“13. Authority further decides to issue following directions/ guidelines to Association of Towers Gemini Grove Duplex and Blue Solitaire Tower-C who have been handed over their respective towers for completion at their level: -

i) Record of Income and Expenditure should be maintained by the Association meticulously. Statement of all receipts and payments made during a month should be placed before General Body of the Association. Minutes of said meetings of the General Body should be placed before Authority on the dates of hearing.

ii) All payments should be approved by Governing Body of the respective Associations.

iii) After handing over of Tower Gemini Grove and Blue Solitaire to respective Associations, they have stepped into the shoes of promoters of the project in respect of their Towers. An issue was raised by one of the representatives that respondent-promoter is not allowing the Association to function freely, and in fact is causing damage to the structure. Authority hereby clarifies that in pursuance of Section 8 of RERA Act, 2016 now respective Associations have become promoters of the project. They are like owners in possession of the project. Authority decides to send a copy of this order to the Police Commissioner, Faridabad with a direction that on a request made by respective Association, full police protection should be provided to them and miscreants, if any, who stops the Association from working freely should be proceeded against as per law.

iv) SE/XEN/SDO concerned of DHBVN is directed to release temporary connections to respective Associations of Towers Gemini Grove Duplex and Blue Solitaire Tower-C whenever they approach them.

v) Associations shall be deemed to have not inherited any liability which may have been incurred by respondent-promoter in the past. The liability, if any, in respect of these Towers which may have been incurred by respondent-promoter shall remain the obligation of respondent-promoter only to be discharged. In simple words, the Associations have taken over the project free from all charges, liabilities or incumbrances. All local authorities or State authorities may raise their demand, if any, against respondent-promoter in respect of liabilities incurred prior to taking over of the project.

vi) Respective Associations are free to deal with non-member allottees or non-paying allottees at their own level in any manner consider appropriate. However, decision in such regard should be taken in the General Body meeting of the Associations”.

9. The subsequent events including the order dated 15.03.2022 indicate that appellant were handed over the certain towers for construction and they have steps into the shoes of promoters for the purposes of the project. Before the Adjudicating Authority neither the Corporate Debtor nor the Operational Creditor brought all these facts into the notice of the Adjudicating Authority and Adjudicating authority without taking into consideration the subsequent events which have bearing on the CIRP process has admitted Section 9 application by initiating CIRP.

10. The appellants who have been handed over the projects and who under the statutory orders have submissions which need to be looked into by the Adjudicating Authority before passing any order under Section 9.

11. We, thus, are of the view that the order impugned cannot be sustained and is set aside, however, the application IB-625(ND) of 2021 is revived before the Adjudicating Authority to be preceded and decided again in accordance with law.

12. Appellants are impleaded to the Section 9 application and they are permitted to file their reply.

13. Learned Counsel for the Resolution Professional submits that CIRP process was carried for some period and expenses have been incurred, it shall

be always open for the Resolution Professional to file an appropriate application before Adjudicating Authority for fee and expenses.

14. In view of setting aside the impugned order the Resolution Professional stands discharged.

15. The appeal is allowed to the above extent.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

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