

Insolvency and Bankruptcy Board of India

7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

14th April, 2023

Subject: Judgment¹ dated 5th April 2023 of National Company Law Appellate Tribunal, New Delhi in the matter of Clicbrics Technologies Pvt. Ltd. Vs. Ansal Housing Ltd, CA (AT)(Insolvency) No. 1268 of 2022

I. Brief Background

The OC was engaged as the real estate agent with CD through a MoU. For the services rendered, OC raised invoices from time to time towards real estate brokering commission. As the CD failed to make payment of the commission, an application was filed under section 9 of the Code against CD seeking initiation of Corporate Insolvency Resolution Process (CIRP) against CD- Ansal Housing Limited. AA dismissed the application holding that CD endeavoured to pay towards the outstanding dues of OC; but OC had approached with mala-fide intention and not for genuine resolution. OC/ appellant herein filed the appeal against the orders of AA.

II. Issue

Whether payment of brokerage commission in the present case amounts to an operational debt and, if so, whether a default has been committed in respect of payment of such operational debt and whether the debt was mired in disputes prior to issue of demand notice?

III. Observation

It was observed that admittedly OC was appointed as exclusive real estate agent for brokering the sale/purchase of units at the Ansal Town, Meerut residential project and the CD acknowledged the services of OC and through submission before AA, CD had admitted the operational debt due to OC.

On the dispute raised by the CD about raising invoices for the brokerage which OC was not entitled for various factors viz., premature bills, cancellation of real estate bookings, NCLAT had noted that no material has been placed on record to establish that the invoices were disputed by the CD prior to demand notice. The CD having admitted its liability is a sufficient proof of the existence of liability. Relying on the SC judgment in the SS Engineers Vs. Hindustan Petroleum Corporation Ltd., if the operational debt is due and payable, NCLAT held CIRP must commence against the CD.

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