

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Insolvency) No. 206 of 2023
& I.A. No. 745, 1336, 2214 of 2023

IN THE MATTER OF:

Parikshit Madanmohan Sharma

....Appellant

Vs.

M.S. Gopikrishnan & Ors.

....Respondents

Present:

For Appellant:-

Mr. Arun Kathpalia, Sr. Advocate with Mr. Viraj Praekh, Mr. Nitin Mishra, Ms. Mitali Gupta, Mr. Himanshu Vij, Advocates.

For Respondent:-

Mr. Vikas Mehta, Mr. Vishesh Kalra, Mr. Treenok Guha, Mr. Ayush Chaturvedi, Advocates for R- 1-8, 10, 11, 13 to 20.

Mr. Milan Negi, Mr. Nikhil Jha, Advocates for R-21 & 22.

Mr. Abhhirup Dasgupta, Mr. Ishaan Duggl, Ms. Ruchi Goyal, Advocates for Intervenor.

O R D E R
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain (Oral)

24.01.2024: This appeal is directed against the order dated 08.02.2023 passed by Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai) by which an application filed under Section 7 of the IBC, 2016 by some home buyers against the K.D. Lite Developers Private Limited (Corporate Debtor) for the initiation of CIRP has been admitted and Arihant Nenawati has been appointed as the IRP and moratorium has been imposed.

2. Sr. Counsel for the Appellant has submitted that since this application has been filed by some of the home buyers, therefore, it was incumbent upon them to cross the threshold as provided in Section 7(1)

Second proviso. It is submitted that the appellant had raised various issues including the issue of threshold and the limitation but none of the issues have been decided by the Tribunal and therefore, impugned order is a totally non-speaking order. He has referred to para 2 and 3 of the impugned order to contend that the total number of home buyers are 209 and therefore, threshold of 10% is 21 whereas the application has been filed by home buyers less than that. It is argued that the Tribunal had only noticed Section 7(1) in paragraph 7 of the impugned order and a decision of this Tribunal rendered in the case of Tiger Logistics (India) Ltd. Vs. Jaguar Overseas Ltd. in which it has been held that threshold limit is to be seen on the date of filing of application under Section 9 of the Code and then appointed the resolution professional by admitting the application filed under Section 7. It is submitted that nowhere in the impugned order, a finding is recorded in respect of the issue as to whether the respondent had crossed the threshold as provided Section 7(1) and that as to whether the application filed by the applicants before the Tribunal was within limitation. It is also submitted that the other issues which were raised have not even been noticed in the impugned order.

3. Be that as it may, Counsel for the Respondents could not deny these facts that there is no finding recorded by the Tribunal on these issues raised by the Appellant.

4. On the other hand, Counsel for the Respondent nos. 1 to 20 except 9 and 12 has submitted that the contention of the appellant is incorrect because the total number of allottees are 124.

5. In such a circumstance, where there is a dispute on facts as to whether the number of allottees are 209 as stated by the appellant or 124 as stated by the Respondent nos. 1 to 20 except 9 and 12, the Tribunal should have decided this question of fact first then the question of law but there is no discussion in regard to this fact as to whether the contention of the appellant is correct or not. In such circumstances, it is apparent that the impugned order is non-speaking and against the principle of natural justice. Therefore, the present appeal is hereby allowed. Impugned order is set aside and the matter is remanded back by restoring CP (IB) No. 1420/MB-IV/2020 to the Tribunal who was seized of this matter, to decide it again after hearing all the parties by giving them opportunity of hearing and by passing a speaking order. The parties are directed to appear before the Tribunal on 12.02.2024 and raise all the issues. We request the Tribunal to make all endeavours to complete the hearing and pass the speaking order within a period of two months from the date of appearance of the parties before the Tribunal. All the pending applications are closed. It is made clear that all the contention has been kept open and no finding has been recorded on the merit of this case.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

R.N./R.R./