

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1017 of 2023 & I.A. No. 3486,
3487, 3488 of 2023, 1709 of 2024

IN THE MATTER OF:

Mrs. Reeta Dhawan

...Appellant

Versus

Atul Kumar Kansal Resolution Professional
Universal Buildwell Pvt. Ltd.

...Respondent

Present:

For Appellants : Mr. Bharat Gupta, Adv.

For Respondent : Mr. Swapnil Gupta, Vaibhav Mendiratta,
Abhinav Mishra, Adv. for RP

O R D E R

Per: Justice Rakesh Kumar Jain (Oral)

15.05.2024: This appeal is directed against the order dated 23.05.2023 by which an application bearing I.A. No. 2008 of 2023 filed by the Appellant has been dismissed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench).

2. The grievance of the Appellant is that the impugned order is totally non-speaking as it has not dealt with the various prayers made by the Appellant in the application and has confined its order with the claim which has been admitted by the RP and has also made a reference to the email dated 15.02.2023 which has also been sent by the RP to the Appellant.

3. Counsel for the Appellant has drawn our attention to the contents of the application bearing I.A. No. 2008 of 2023 much less to the prayer which read as under:-

“The RP/CoC for effective and adequate processing of the claim of the Applicant/Financial Creditor dated 01.06.2020 lodged with the RP and in the light of the details contained in para no. 8 above and after due consideration of documents annexed therewith.”

4. Since, the details of the reliefs are mentioned in Para 8 of the application, therefore, the said paras are also reproduced as under:-

“8. That the applicant/Financial Creditor had submitted their claim to the resolution professional (in short RP) and the claims are under: -

CLAIM NO. 1

i. Space rentals w.e.f November 2011 till January 2014 @ 59.80 per sqft x 670 sqft = Rs 40,066/- x 27 (Months) Rs 10,81,782/- (Rs Ten Lakhs Eighty-One Thousand, Seven Hundred Eighty-Two only)- Till January 31st 2014

ii. Space rentals w.e.f 1st February 2014 till January 31st 2017 @ 68.77 per sqft x 670 sqft (15% escalation) = Rs 16,58,986/- - Rs 46076 x 36 (Months) = Rs 16,58,736/- (Rs Sixteen Lakhs, Fifty-Eight Thousand, Nine Hundred and Eighty-Six only)- Till January 31st 2017.

iii. Space rentals w.e.f 1 st February 2017 till January 31st 2020 @ Rs 79.08 per sqft x 670 sqft (15% escalation) = Rs 19,07, 532/- 52,987/ Rs - x36 (Months) Rs 19,07,532/- (Rs Nineteen Lakhs, Seven Thousand, Five Hundred and Thirty-Two only)- Till January 31st 2020.

iv. Space rentals w.e.f 1st February 2020 till 31st May 2020 @ Rs 90.942 per sqft x 670 sqft (15% escalation) =

Rs 60,931x4= Rs 2,43,724/- - Rs 90,942/- X 4 (Months) = Rs 2,43,724/- (Rs Two Lakhs, Forty-Three Thousand, Seven Hundred and Twenty-Four only)- Till May 31st 2020.

v. Rs 48,92,004/- (Rest Forty-Eight Lakhs, Ninety-Two Thousand and four only) is payable towards space rentals as on 31.05.2020. The further payment shall be due till actual handing over of flat no. 218 with due registration thereof.

vi. The space rentals shall be continued to be payable till the actual handing over of the flat to the FC.

CLAIM NO.2

i. Plus, overdue payment w.e.f April 2008 till July 2008 @ Rs 52 per month, i.e Rs 34,840/- x 4(Months) =Rs 1,39,360/-.

ii. Plus Outstanding rentals differentials for Rs 21 per sqft for February-March 2008 totaling to =Rs. 28,140/-Plus Outstanding for August 1st 2008 till 3rd August 2008 @ Rs 52 per sqft 1161x3 =Rs 3483/-

iii. Amount paid by FC to CD for alleged administrative charges, stamp duty and registration charges for conveyance deed
=Rs 1,01,000/-

Total claim under this head:

Rs 2,71,983/- (Rs Two Lakhs, Seventy-One Thousand Nine Hundred and Eighty-Three only)

CLAIM No.3

i. Actual handing over of possession of flat no. 237 and executing the registered sale deed of the flat no. 218 in the Universal Trade Tower to the FC or in lieu thereof Rs 1,00,00,000/- (Rs One Crore only) which is the market value of the flat.

CLAIM NO. 4

i. Since there is various breaches and material breaches of the terms and conditions of space buyer agreement therefore in terms of the undertaking, the CD is liable to pay the penalty to the petitioner to the extent of 1.70 times of the principal amount which comes at =Rs 17,85,000/-

CLAIM NO. 5

House Taxes

The amount is payable as the same was agreed between the parties and as the lease agreement of the flat of FC was executed by CD in favour of the entity (their own sister concerns) and as per clause 5 of Lease agreement dated 18th July 2007 and as per extended lease dated 24.01.2011

Rs 1,03,000/- - paid by FC to MCG on 31.03.2018

Rs 4382/- - paid by FC to MCG on 31.03.2018

Rs 7236/- on 03.07.2019

Total: Rs 1,14,618/-(Receipts as proof enclosed)

CLAIM No. 6

Interest @18% per annum on the overdue amount till realization of the same”

5. Counsel for the Appellant has submitted that the Adjudicating Authority has not looked into the claims of the appellant in regard to the rent, conveyance, house taxes etc. and has only confined itself to the claim which has been accepted by the RP and also to the email dated 15.02.2023 which too was sent by the RP denying the claim of the Appellant in regard to the rent, whereas according to the Appellant, evidence has been brought on

record to show that not only the Appellant is entitled to rent in terms of Builder Buyer Agreement but also there are authorities to cite that the RP has the competence to register the conveyance deed also.

6. On the other hand, Counsel appearing on behalf of the RP has candidly submitted that though the Appellant has made various prayers in para 8 of the application but all have taken into consideration by the Adjudicating Authority while passing the impugned order though it has not been mentioned in so many words.

7. We have heard Counsel for the parties and after perusal of the record, are of the considered opinion that this matter requires a relook by the Adjudicating Authority for the purpose of recording a finding on each prayers sought in the application after taking into consideration the pleadings as well as the evidence brought on record. As according to us, the impugned order is totally non-speaking.

8. In view thereof, the appeal succeeds and the impugned order is hereby set aside. I.A. No. 2008 of 2023 is hereby restored and the matter is remanded back to the Adjudicating Authority to

decide the application again by recording reasons while dealing with the prayers made in the application.

9. The parties are directed to appear before the concerned Adjudicating Authority on **10th June, 2024**.

10. The Adjudicating Authority who was seized of the matter is requested to decide the matter as early as possible but preferably within two months from the date of appearance of the parties. It is made clear that we have not made any observation regarding merit of the case and all the contentions are kept open for the Adjudicating Authority to decide.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

Sheetal/Ravi