

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1434 of 2023

IN THE MATTER OF:

Serveall Land Developers Pvt. Ltd.

...Appellant

Versus

Shailendra Ajmera

...Respondents

**RP for Harvest Hotels and Serviced Apartments Pvt.
Ltd. & Anr.**

Present:

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Shivek Trehan, Mr. Rajat Sinha, Advocates

For Respondent: Mr. Pulkit Deora, Maitreyee Mishra, Vaishnavi Varshney, Advocates for RP
Mr. Abhijeet Sinha, Mr. Ravilochan D., Advocates for R-2

ORDER

06.11.2023: Heard Learned Counsel for the parties.

2. This Appeal has been filed against the Order dated 06.10.2023 by which order while reserving the Order on I.A. No. 5029 of 2023 which was an application for plan approval order, the Adjudicating Authority passed following order:

“IA-5029/2023

Argument Heard, Order Reserved.

Ld. Counsel is directed to file an affidavit from the sole CoC Member that the sole Member has gone through the Plan as well as the Financial Statement of the Successful Resolution Applicant (SRA) and he is satisfied with the same.

He may also indicate that he has tested the plan for feasibility and viability and is satisfied on both counts. The 5 service Apartments relatable to the 4 IAs may be kept apart from the approved Resolution Plan, pending their adjudication.

The documents referred to in the 5th CoC meeting namely the Letter of Intent by the Union Bank of India dated 24.08.2023 in favour of the SRA to be placed on record.”

3. Learned Counsel for the Appellant submits that as far as second direction and fourth direction is concerned there is no objection and appropriate affidavit has been filed as directed. It is submitted that in so far as the 3rd direction which is *“He may also indicate that he has tested the plan for feasibility and viability and is satisfied on both counts. The 5 service Apartments relatable to the 4 IAs may be kept apart from the approved Resolution Plan, pending their adjudication.”* taking out of five service apartments from the Resolution Plan, amounts to modification of the plan which cannot be done at this stage.

4. Learned Counsel for the Resolution Professional submits that I.As has already been filed for avoiding transactions relating to service apartments which are pending consideration. It is submitted that however the pendency of I.A.s cannot be reason for getting the said service apartments out of the resolution plan.

5. Learned counsel, Mr. Abhijeet Sinha appearing for CoC submits that CoC with 100% votes has approved the plan and the plan was approved relating 102 units as the assets of the Corporate Debtor and the Adjudicating Company Appeal (AT) (Insolvency) No. 1434/2023

Authority has to consider the plan approval application treating the 102 units as an assets of the Corporate Debtor.

6. We are of the view that the direction for keeping five service apartments relatable to the four I.As from the consideration of Resolution Plan needs to be deleted from the order dated 06.10. 2023.

7. We thus dispose of the Appeal by deleting the aforesaid direction, rest of the order is affirmed. We make it clear that we have not expressed any opinion on merits of the plan approval application.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

[Mr. Arun Baroka]
Member (Technical)

Basant/nn