

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH**

**NEW DELHI**

**COMPANY APPEAL (AT)(INS) NO.893/2023**

(Arising out of judgement and order dated 6<sup>TH</sup> July, 2023 passed by the National Company Law Tribunal, Kolkata Bench in Company Petition (IB) No.324/KB/2022)

**In the matter of:**

Goutam Kumar Sahoo

Appellant

Vs

Rajkumar Dey/Asha Dey & Ors

Respondent

For appellant: Appeared but not marked appearance.

For Respondent: Mr. Abhishek Gupta and Mr. Soumaya Dutta, Advocates for R1 to 22.

Mr. Kaushik Chatterjee, Advocate for RP.

Mr. Arun Kumar Gupta in person.

Mr. Kaushik Chatterjee and Ms Samridhi, Advocates for IRP/RP/R-23.

**JUDGEMENT**

**JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)**

This appeal is filed against an order dated 6<sup>th</sup> July, 2023 passed by the National Company Law Tribunal, Kolkata in Company Petition being CP(IB) No.324/KB/2022 wherein the petition under Section 7 of the IBC, filed by Home Buyers was admitted.

2. The company petition was filed under Section 7 of the Code on 18<sup>th</sup> November, 2022 before the National Company Law Tribunal, Kolkata Bench. The total amount claim in default was Rs.3,80,34,952.90 (Rupees Three crore eighty lakh thirty four thousand nine hundred and fifty two and ninety paise only) (Principal amount of Rs.3,42,50,611/- together with interest and other charges calculated at the rate of 8% p.a.).

3. It was the submission of the learned counsel for the appellant that no proper notice of the petition was served upon the appellant by the Ld. NCLT and hence it had severally prejudiced the case of the appellant and an admission of petition under Section 7 of the Code, without any opportunity to them of being heard is violative of principle of natural justice.

4. We have heard the arguments and perused the record. Admittedly the appeal was filed on the premises that no notice were ever served upon the appellant herein. We have perused an additional affidavit dated 06.09.2023 filed by the Respondent, which reveals the summons were sent twice by the Ld. NCLT at the registered office of the appellant. Those summons (copies) are annexed. One of the summons is of 29.12.2022 for dated 15.02.2023 and second is of 2.03.2023 for dated 12.04.2023. As per tracking report(s) both these summons were served upon the appellant at the registered office of the appellant. The appellant was also sent three emails at the email Id of the appellant as mentioned in the master data, procured on 18.02.2023 from MCA website. The learned counsel for the appellant herein contends in the year 2022 and till March, 2023 their email ID was different. There may be numerous email IDs of the company but suffice to say once an email Id of the appellant is on the master data of the MCA website and once the summons are sent on such email ID and also sent physically at the Registered office of the company, such service would be treated as *sufficient* as has been rightly noted so by the Ld. NCLT.

5. At this stage the learned counsel for the appellant argued as per the contract between the parties, the Corporate Debtor was to make the flats

ready for financial creditors/home buyers within 24 months from the date of the execution of agreement for sale and was obliged to hand over its physical possession upon making payment of the sale consideration to the corporate debtor. It was argued the said period of 24 months lapsed in the year 2020, i.e. the period as is prescribed under Section 10A of the Code, hence if the default occurs within the said period, no petition under Section 7 would be maintainable. We are not inclined to accept this argument as in the said agreement(s) for sale there also exist a clause wherein the corporate debtor was liable to pay interest @ 8% p.a. to the financial creditors if any default occurs in delivery of possession of flats by the corporate debtor within 40 months from the date of execution of the respective agreement for sale.

6. The effect of both these above clauses would be if the flats were not complete within 24 months, then the flat buyers would have to wait for 40 months from the date of execution of respective agreement(s) for sale, but for the period between 24 months - 40 months, they shall be entitled to interest @ 8% on the amount payable to them by corporate debtor. It was only after expiry of 40 months, the home buyers were at liberty to take legal action. Admittedly the said period of 40 months did not fall within the period prescribed under Section 10 A of the Code, hence it cannot be said that the proceedings are vexatious.

7. Even otherwise vide order dated 18.07.2023 a liberty was given to run corporate debtor as a going concern with the assistance of its ex Management, its officers and employees as there was submission made on behalf of the appellant that project *Ushashi Exoticaa* has been constructed upto a

substantial extent and in next six months time the corporate debtor shall be in a position to hand over its possession. Such order was vacated on 18.02.2024 when it was noticed that the Corporate Debtor had failed to construct the flats and hand over its possession to flat buyers till that date. Rather the complaint of RP was the ex-directors were not cooperative.

8. In the circumstances we see no reason why a reasoned order passed by the Ld. NCLT be set aside. The appeal thus has no merit and is accordingly dismissed.

**(Justice Yogesh Khanna)**  
**Member (Judicial)**

**(Mr. Indevar Pandey)**  
**(Member (Technical))**

**Dated:23-8-2024**  
**bm**