

Sunil Kumar Aggarwal vs New Okhla Industrial Development ... on 31 July, 2019

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
Company Appeal (AT) (Insolvency) No. 775 of 2019

IN THE MATTER OF:

Sunil Kumar Aggarwal ...Appellant

Versus

New Okhla Industrial
Development Authority & Ors. ...Respondents

Present:

For Appellant : Dr. U.K. Chaudhary, Senior Advocate with
Ms. Manisha Chaudhary, Ms. Samridhi Gogia, Mr.
Dhruv Gupta and Mr. Sunil Kumar, Advocates

ORDER

31.07.2019 This appeal has been preferred by Mr. Sunil Kumar Aggarwal, Authorised Representative of Home Buyers (Allottees) of 'M/s. Granite Gate Properties Pvt. Ltd.' (Corporate Debtor) against the impugned order dated 10th June, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, which reads :

"The applicant - New Okhla Industrial Development Authority (for brevity 'NOIDA') has filed its claim before the Interim Resolution Professional who is supposed to have collated the claim without adopting an attitude of adversarial litigant. However, in an unwarranted manner the IRP has refused to consider the claim of the applicant- NOIDA. There is no room for argument that the limitation period of three years applies because it could not be disputed that the piece of land allotted by the applicant- NOIDA is under the first charge. Therefore, the provisions of Article 137 of the schedule of the Limitation Act, 1963 would not apply. On the contrary the provisions of Article 62 of the schedule of the Limitation Act, 1963 would apply which provides for 12 years period of limitation. It was then sought to be argued that the nature of lease given by the applicant- NOIDA is not a financial lease within the meaning of Indian Accounting Standards and therefore, it cannot be regarded as a 'Financial Creditor'.

On the contrary learned counsel for the applicant-NOIDA has argued that it has to be regarded as 'Financial Creditor' within the meaning of Section 5 (8) (d) of the Code in as much as the amount of any liability in respect of lease/hire purchase agreement and the same is regarded as a finance of capital lease under the Indian Accounting Standards. According to the applicant- NOIDA clause 62 of AS- 19 covers its case which is similar to clause 8 of AS-17.

Having heard the learned counsel for the parties we direct the IRP to examine the claim of the applicant- NOIDA and shall not reject it on the Company Appeal (AT) (Insolvency) No. 775 of 2019 ground that it is time barred or that it is a claim by an entity other than the 'Financial Creditor'." Learned Senior Counsel appearing on behalf of the Appellant submitted that the "New Okhla Industrial Development Authority" (NOIDA) has already been considered as a 'Financial Creditor' and the 'Resolution Professional' has already submitted the report. Now it is not open to any of the Authority to change the status of NOIDA from the 'Financial Creditor' to any other type of 'Creditors'. However, we find that the 'Interim Resolution Professional' is already directed to examine the claim of the NOIDA, who is the Applicant before the Adjudicating Authority and no final decision has been taken and the Adjudicating Authority has made it clear that the claim of the NOIDA cannot be rejected on the ground that it is time barred or the claim is by an entity other than the 'financial Creditor'. However, we are not inclined to express any opinion. In case, if any contrary decision is taken by the Adjudicating Authority, it will be open to the aggrieved person including NOIDA or the Appellant to move before the appropriate Form / Appellate Tribunal.

The appeal stands disposed of.

[Justice S.J. Mukhopadhaya] Chairperson [Justice A.I.S. Cheema] Member (Judicial) [Kanthi Narahari] Member (Technical) /ns/sk Company Appeal (AT) (Insolvency) No. 775 of 2019