

# Bptp Ltd vs Cpi India Real Estate Ventures Ltd on 24 April, 2018

1

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 29 of 2018

IN THE MATTER OF:

BPTP Ltd. ...Appellant

Vs.

CPI India Real Estate Ventures Ltd. & Ors. ...Respondents

Company Appeal (AT) No. 41 of 2018

IN THE MATTER OF:

BPTP Ltd. ...Appellant

Vs.

CPI India Real Estate Ventures Ltd. & Ors. ...Respondents

Company Appeal (AT) No. 49 of 2018

IN THE MATTER OF:

BPTP Ltd. ...Appellant

Vs.

CPI India Real Estate Ventures Ltd. & Ors. ...Respondents

Company Appeal (AT) No. 50 of 2018

IN THE MATTER OF:

BPTP Ltd. ...Appellant

Vs.

CPI India Real Estate Ventures Ltd. & Ors. ...Respondents

Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018

Company Appeal (AT) No. 51 of 2018

IN THE MATTER OF:

BPTP Ltd.

...Appellant

Vs.

CPI India Real Estate Ventures Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Krishnan Venugopal, Senior Advocate with Mr. Udai Rathore, Mr. Gautam Singh and Mr. Kaushik Poddar, Advocates.

For Respondents:- Mr. Vaibhav Gaggar, Ms. Sumedha Dang, Mr. Indresh Upadhyay and Mr. Adarsh Chamoli, Advocates.

ORDER

24.04.2018- These appeals have been preferred by the BPTP Ltd. (Respondents before the National Company Law Tribunal, ("Tribunal" for short), New Delhi Bench against order dated 20th December, 2017 passed in CA 208/C-II/2017 in CP No. 89(ND)/2014, whereby and whereunder the Tribunal issued a threat of initiating contempt proceeding with following observations:

"5. Since this Bench on previous dates had been given to understand that the entire payment would be liquidated by March, 2018, it is being made abundantly clear that in case of any default in this payment and/or failing to Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 take further steps on 29th January, 2018 to liquidate the entire outstanding by the end of March, 2018, the contemnor is liable to face contempt proceedings as enough indulgence has already been granted to him. Beyond a point, no further latitude can be shown, as that would be at the cost and interest of the Petitioner. The situation here has required a delicate balance in the larger interest of the businesses of JDs not collapsing as well as to ensure that the petitioner is also able to retrieve its investments in terms of the MOU at the earliest. Therefore, on the next date of hearing, i.e. 29th January, 2018, should positive steps not be taken to liquidate the entire outstanding by way of a Draft / PDC payable on or before 31st March 2018, contempt shall necessarily follow with any further indulgence."

2. The matter was heard and it was noticed that earlier the matter was settled by the erstwhile Company Law Board, but in spite of the same, the judgment and decree of the erstwhile Company Law Board was not given effect. In the aforesaid background, an application was filed by Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 the Respondents- M/s. CPI India Real Estate Ventures Limited, wherein impugned order of threat for initiating contempt proceeding was passed.

3. Normally this Appellate Tribunal do not interfere with such orders which are premature but the parties informed that they intend to settle the dispute. However, a question was raised as to what will be the rate of interest payable to the Respondents i.e. whether 18% (simple interest) as per consent decree.

4. Learned Senior Counsel appearing on behalf of the Appellants submitted that the Reserve Bank of India has not allowed 18% interest in favour of the Respondents. However, we were not inclined to accept such submissions as it is not open for the Reserve Bank of India to modify any decree or judgment passed by the Quasi-judicial or Judicial Authority. In this background, parties were allowed to decide as to how the judgment and decree passed by the erstwhile Company Law Board is executed in its letter and spirit.

5. An affidavit has been filed by the Appellant with modified proposal, which reads as follows:

the entire balance principal amount of Rs. 127 Crores on or before 31.05.2018.

However, if the Appellant is unable to do so by that date, the Appellant shall have a Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 grace period of a further one month until 30.06.2018 in order to pay the entire balance principal amount of Rs. 127 crores.

(b) Accordingly, in the first instance, the Appellant shall give 12 cheques totaling Rs. 127 Crores dated 31.05.2018. Details of the 12 cheques to be handed over by the Appellant to Respondent No. 1 are set out in the statement annexed hereto and marked as ANNEXURE-A.

(c) In case the Appellant is able to arrange part or whole of the funds prior to 31.05.2018, the Appellant will replace cheques of the by cheques of an earlier date prior to 31.05.2018 towards payment of the principal amount to the Respondent No. 1.

(d) The Appellant shall inform the Respondent No. 1 in writing on or before 31.05.2018 regarding whether the cheques handed over by it may be deposited on 31.05.2018 or on any date thereafter but on the clear understanding that the date so specified Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 shall not be later than 30.06.2018 and that the Respondent no. 1 is entitled to deposit the cheques on that date.

(e) The Appellant has filed a calculation of the interest pursuant to orders of this Hon'ble Tribunal dated 26.03.2018. This Hon'ble Tribunal may decide what interest is payable to the Respondent No. 1, considering the order of Reserve Bank of India ("RBI") dated 06.07.2017 whereby it has denied permission for payment of interest to the Respondent No. 1.

(f) Accordingly, on a direction passed by this Hon'ble Tribunal, the Appellant will give the Respondent No. 1 a cheque dated 14.08.2018 towards payment of interest up to 31.05.2018. If the principal amount is paid prior to or after 31.05.2018, the Appellant may be permitted to replace the interest cheque with a cheque for the actual amount of interest payable till the date of payment of the principal amount.

Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018

(g) The Respondent No. 1 shall comply with its undertaking and the directions of the learned National Company Law Tribunal ("NCLT") in its order dated 05.10.2017 that the Respondent No. 1 shall comply with all statutory requirements and permissions and the amounts paid by the Appellant including interest shall not be repatriated outside India without due permission of the relevant regulatory authority and compliance of foreign exchange laws.

(h) Upon the Appellant handing over to counsel for Respondent No. 1 cheques amounting to Rs. 127 crores, this Hon'ble Tribunal may be pleased to vacate its order dated 21.03.2018, whereby it was directed that the Managing Director, Director and other responsible officers of the Appellant Company will not leave the country without prior permission of this Hon'ble Tribunal.

(i) The assets attached by the Learned NCLT by its order dated 08.09.2017 shall be released to enable the Appellant to raise Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 funds by sale or mortgage of the attached assets to pay Respondent No. 1 subject to the conditions that (i) the Appellant shall inform the Respondent No. 1 prior to any proposed sale or mortgage; (ii) no sale or mortgage will take place unless Respondent No. 1 is party to such transaction and (iii) any and all amounts raised from such sale or mortgage shall be utilized first to pay all amounts owing to Respondent No. 1 and only thereafter shall any remaining amounts go to the Appellants. Respondent No. 1 shall cooperate with the Appellant in the sale or mortgage of the attached assets.

(j) In the alternate to (i) this Hon'ble Tribunal may direct that the assets attached by the Learned NCLT by its order dated 08.09.2017 be released upon encashment of the Appellant's cheques by the Respondent No. 1 for the full principal amount of Rs. 127 crores.

(k) Upon encashment of the Appellant's cheques by the Respondent No. 1 for the full principal Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 amount of Rs. 127 Crores, (i) the directors of the Respondent No. 1 on the board of the five investee companies shall resign forthwith;

(ii) Respondent No. 1 shall stop exercising any and all shareholder rights forthwith and shall not be left with any other rights in the five investee companies; (iii) Respondent No. 1 shall transfer all of the shares of the five investee companies held by it in the name of the Appellant or in the names of its nominees within three business day's thereafter; (iv) the respective shareholders agreements shall be deemed to be terminated forthwith; and (v) Respondent No. 1 shall cooperate with the Appellant and Proforma Respondents in getting the articles of association of the five investee companies altered to give effect to the cessation of all existing rights of Respondent No. 1 in all five investee companies.

(l) In the meantime, the interim order dated 24.01.2018 of stay of proceedings before the Learned NCLT passed by this Hon'ble Tribunal shall continue. The present appeal Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 and the connected Appeals i.e. Company of 2018 and 51 of 2018 may be adjourned to be listed on or after 14.08.2018."

6. Learned counsel appearing on behalf of the Respondents submitted that the Respondents have gone through the proposal aforesaid and have agreed to the terms and conditions as mentioned therein.

7. In so far as the interest is concerned, on 26th March, 2018, this Appellate Tribunal allowed the Appellant to file an affidavit showing the principal amount and interest, if calculated @ 18% (simple interest) from the due date till the date of payment. They were also allowed to give cut- off date of payment of principal amount such as 31st May, 2018 or 30th June, 2018 and payment of interest as on 31st July, 2018 or 14th August, 2018.

8. Pursuant to the said order, the Appellants filed an affidavit enclosing the copy of Chart showing the calculation towards the interest, which is quoted below:

Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 "Interest Calculation CPI India Real Estate Ventures Ltd.

INTEREST PAYABLE ON PRINCIPAL AMOUNT						
			Amount	192	ROI	
Date	End Date	No. of Days	Opening Balance	Add ition	Repayment	Net Principal/s
11-Jul-17	31-Jul-17	21	1,920,000,000	-	-	1,920,000,000
1-Aug-17	31-Aug-	31	1,920,000,000	-	-	1,920,000,000
1-Sep-17	7-Sep-17	7	1,920,000,000	-	-	1,920,000,000
8-Sep-17	30-Sep-	23	1,920,000,000	-	150,000,000	1,770,000,000
1-Oct-17	4-Oct-17	4	1,770,000,000	-	-	1,770,000,000
5-Oct-17	31-Oct-	27	1,770,000,000	-	300,000,000	1,470,000,000
1-Nov-17	7-Nov-17	7	1,470,000,000	-	-	1,470,000,000
8-Nov-17	30-Nov-	23	1,470,000,000	-	50,000,000	1,420,000,000

1-Dec-17	30-Dec-	30	1,420,000,000	-	-	1,420,000,000
31-Dec-17	31-Dec-	1	1,420,000,000	-	50,000,000	1,370,000,000
1-Jan-18	14-Jan-	14	1,370,000,000	-	-	1,370,000,000
15-Jan-18	24-Jan-	10	1,370,000,000	-	50,000,000	1,320,000,000
25-Jan-18	31-Jan-	7	1,320,000,000	-	50,000,000	1,270,000,000
1-Feb-18	28-Feb-	28	1,270,000,000	-	-	1,270,000,000
1-Mar-18	31-Mar-	31	1,270,000,000	-	-	1,270,000,000
1-Apr-18	30-Apr-	30	1,270,000,000	-	-	1,270,000,000
1-May-18	31-May-	31	1,270,000,000	-	-	1,270,000,000

Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 Total 237, 378,082  
INTEREST PAYABLE ON 31.07.2018 ON THE INTEREST AMOUNT Amount 192  
ROI 18.00% Date End Date No. of Opening Add Repayment Net Principal Interest  
Days Balance itio O/s n 1-Jun-18 30-Jun-18 30 237,378,082 - - 237,378,082  
3,511,895 1-Jul-18 31-Jul-18 31 237,378,082 - - 237,378,082 3,628,958 TOTAL  
7,140,853 INTEREST PAYABLE ON 14.08.2018 ON THE INTEREST AMOUNT  
Amount 192 ROI 18.00% Date End Date No. of Opening Add Repayment Net  
Principal Interest Days Balance itio O/s n 1-Jun-18 30-Jun-18 30 237,378,082 - -

237,378,082 3,511,895 1-Jul-18 31-Jul-18 31 237,378,082 - - 237,378,082 3,628,958  
 1-Aug-18 14-Aug-18 14 237,378,082 - - 237,378,082 1,638,884 TOTAL 8,779,737  
 "Interest Calculation CPI India Real Estate Ventures Ltd.

INTEREST PAYABLE ON PRINCIPAL AMOUNT					
Amount			192		
Date	End Date	No. of Days	Opening Balance	Addition	Repayment
11-Jul-17	31-Jul-17	21	1,920,000,000	-	-
1-Aug-17	31-Aug-17	31	1,920,000,000	-	-
1-Sep-17	7-Sep-17	7	1,920,000,000	-	-
8-Sep-17	30-Sep-17	23	1,920,000,000	-	150,000,000
1-Oct-17	4-Oct-17	4	1,770,000,000	-	-
5-Oct-17	31-Oct-17	27	1,770,000,000	-	300,000,000
1-Nov-17	7-Nov-17	7	1,470,000,000	-	-
8-Nov-17	30-Nov-17	23	1,470,000,000	-	50,000,000
1-Dec-17	30-Dec-17	30	1,420,000,000	-	-
31-Dec-17	31-Dec-17	1	1,420,000,000	-	50,000,000
1-Jan-18	14-Jan-18	14	1,370,000,000	-	-

Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 15-Jan-18 24-Jan-18 10  
 1,370,000,000 - 50,000,000 1,320,000,000 6,509,589 25-Jan-18 31-Jan-18 7  
 1,320,000,000 - 50,000,000 1,270,000,000 4,384,110 1-Feb-18 28-Feb-18 28  
 1,270,000,000 - - 1,270,000,000 17,536,438 1-Mar-18 31-Mar-18 31 1,270,000,000 -  
 - 1,270,000,000 19,415,342 1-Apr-18 30-Apr-18 30 1,270,000,000 - - 1,270,000,000  
 18,789,041 1-May-18 31-May-18 31 1,270,000,000 - - 1,270,000,000 19,415,342  
 1-Jun-18 30-Jun-18 30 1,270,000,000 - - 1,270,000,000 18,789,041 Total 256,167,1  
 INTEREST PAYABLE ON 31.07.2018 ON THE INTEREST AMOUNT Amount 192  
 ROI 18.00% Date End Date No. of Opening Add Repayment Net Principal Interest  
 Days Balance itio O/s n 1-Jul-18 31-Jul-18 31 256,167,123 - - 256,167,123 3,916,199  
 TOTAL 3,916,199 INTEREST PAYABLE ON 14.08.2018 ON THE INTEREST  
 AMOUNT Amount 192 ROI 18.00% Date End Date No. of Opening Add Repayment  
 Net Principal Interest Days Balance itio O/s n 1-Jul-18 31-Jul-18 31 256,167,123 - -

256,167,123 3,916,199 1-Aug-18 14-Aug-18 14 256,167,123 - - 256,167,123 1,768,606  
TOTAL 5,684,805

9. Learned counsel appearing on behalf of the Respondents submits that the Respondents have agreed with the calculation of interest as shown by the Appellants and noted above.

10. Taking into consideration the suggestions made by the parties and as the Respondents agreed to the terms of proposed settlement offered by the Appellants, we direct that the terms and conditions of settlement mentioned in the affidavit and quoted above be complied in its letter and Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018 spirit and be paid along with the simple interest @ 18% in favour of the Respondents. The principal amount of Rs. 127 crores be paid by 30th June, 2018. The Appellants will pay the interest taking into consideration the actual date of payment of principle amount, for which the permission of Reserve Bank of India is not required.

11. The Tribunal is directed to release the property and other assets attached by its order dated 8th September, 2017, on payment of principal amount of Rs. 127 crores to enable the Appellants to pay the interest within the stipulated time. The terms and conditions mentioned in the affidavit and quoted above be treated to the directions of this Appellate Tribunal.

12. Learned counsel for the Appellant has handed over the post-dated cheques to the learned counsel for the Respondents for onward transmission to the Respondents which they may encash on or after 31st May, 2018. However, it will be open to the Appellants to intimate the Respondents to encash one or other cheque in advance or to deposit the cheques after 31st May, 2018 but before 30th June, 2018.

13. The Tribunal is directed not to proceed with contempt proceeding or the Company Petition for the present, and keep them pending to ensure that the order of this Appellate Tribunal is complied in its letter and spirit within the time.

Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018

14. The appeals stand disposed of with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice S.J. Mukhopadhaya) Chairperson (Justice Bansi Lal Bhat) Member(Judicial) Ar/g  
Company Appeals (AT) Nos. 29, 41, 49, 50 & 51 of 2018