

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

IA-1380(PB)/2021

In

(IB)-272(PB)/2019

Order under Section 60(5) of Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

Greater Noida Industrial Development Authority ... Applicant/Petitioner
Vs
Mr. Prabhjit Singh Soni ... Respondent

IN THE MATTER OF:

Ranjeet Ramkrishna Yadav ... Applicant/Petitioner
Vs
JNC Construction Pvt Ltd. ... Respondent

Order dictated on 23.03.2021
Order delivered on 05.04.2021

CORAM:

SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Ritesh Agrawal, Mr. Teejas Bhatia,
Ms. Aishwarya Adlakha, Advs.
Mr. U N Singh Adv. G. Noida Authority in IA-1380/2021
& I. A. No. 344 of 2021.

ORDER

IA-1380(PB)/2021 (Heard and dictated in the Open Court on 23.03.2021)

It is an application filed against the Resolution Professional (RP) and the Resolution Applicant (RA) by Greater Noida Industrial Development Authority (Noida) u/s 60(5) of IBC for recall of the order dated 04.08.2020 passed in IA-



2201(PB)/2020 on account of not being given hearing before passing the impugned order.

On perusal of the facts, it appears that this applicant provided a plot of land mentioned in this application to the corporate debtor on lease, whereupon the CD constructing residential plots/residential flats, for doing the same, Noida itself approved plan over the land belonging to Noida. The lease deed was executed in between them on the premise ^{that} CD would pay the lease amount along with interest as agreed in the lease deed. That has admittedly not been paid; therefore the CD has remained defaulter. Noida says it is the financial creditor of the corporate debtor for the reason that the land has been provided as capital asset to the Corporate Debtor so that it would develop the land with the lease hold right and it would pay the lease amount along with interest in instalments.

Thereafter, since CIRP was initiated against the corporate debtor on 30.01.2020, this applicant filed claim application for ₹43,40,31,951.00, i.e., defaulted amount towards lease of the land. Subsequent thereto, the resolution plan came before this bench for approval; this bench, looking at the plan filed, approved the resolution plan on 04.08.2020. When the plan was approved, this applicant did not appear before us. It appears that this applicant did not even pursue the claim application dated 30.01.2020 after filing; it also appears that the Resolution Professional has also not decided the claim application filed by the applicant. Without deciding the claim application, the RP has got the plan approved, for there being no objection at the time of approval; this Bench must

have approved it. It is the case of Noida that it has come to know of the approval of the plan only when Noida has received intimation of approval of the Plan from the Monitoring Agency of the JNC Construction Pvt. Ltd. (Mr.Yogesh Gupta) on 24.09.2020.

Considering the approval of the Plan without deciding its claim application as its grievance, Noida has filed claim appeal before this Bench on 06.10.2020, while that application ^{is} pending, Noida has filed this application for recall of the order of approval of the Resolution Plan and other consequential directions. As we have gone through the factual aspects, we have noticed that Noida did not raise any objection either against inaction of the RP over its claim application or at the time plan came for approval before this Bench. In the backdrop of this factual situation, it cannot be assumed that Noida has not been aware of initiation of CIRP because it has filed the claim application in the month of January 2020 itself. Despite seven months gone by in between the date of filing of its claim application and the date of the approval of the plan, the applicant did not take any action against the Resolution Professional for not taking any decision over the claim application filed by the applicant.

In the light of the facts, this Bench is not in a position to adjudicate the claim application after the CIRP is complete, if the RP consciously avoided dealing with its claim application, the applicant can pursue the recourse against the RP. As to the ratio that claim application shall be decided before approval of the plan, since this issue did not come before us before approval of the plan, that ratio is not applicable to the plan approved on 04.08.2020.

In any event, the plan being approved, the applicant having not timely brought this issue to the notice of this Bench, this Application is liable to be dismissed, accordingly this application is hereby dismissed. Consequently, the claim application pending before this Bench is also hereby dismissed.

-Sd-

**(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT**

-Sd-

**(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)**

23.03.2021
Deepak Kumar