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ALLOTTEES IN REAL ESTATE PROJECTS CANNOT BE COERCED INTO SETTLEMENTS BY NCLT: SUPREME COURT

24 December 2021 **INTRODUCTION**

The Supreme Court (SC) in its judgment dated 14 December 2021, in *E S Krishnamurthy & Ors. v. M/s Bharath Hi Tech Builders Pvt. Ltd., Civil Appeal No. 3325/2020*, circumscribed the jurisdiction of the Adjudicating Authority (National Company Law Tribunal/NCLT) and/or the Appellate Authority (National Company Law Appellate Tribunal/NCLAT) in adjudication of applications instituted by allottees in real estate projects under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP).

BACKGROUND

- The Respondent was engaged in construction of real estate projects and was undertaking the development of 100 acres of agricultural land (herein after referred to as "Project") and was obligated to convey and register developed plots in the Project to the allottees/investors on or before 2016. In the event of failure to convey the plots, the Respondent undertook to repay the entire amounts along with interest component. The Respondent thereafter sought multiple extensions for conveying the developed plots to the allottees, but admittedly failed to honour its obligations. Consequently on 26.04.2019, nearly 83 aggrieved allottees/investors (including 11 appellants before the SC) instituted proceedings under Section 7 of the Code before the NCLT, Bengaluru, seeking initiation of CIRP of the Respondent due to default in making the repayment of an amount of INR 33,84,32,493/-. It may be noted that the proceedings were instituted prior to the amendments to Section 7 of the Code wherein the threshold of 10% or 100 home-buyers/allottees (whichever is less), was introduced for filing of a petition under Section 7 of the Code by allottees/ home-buyers.
- Even though the Respondent could not enter into settlement with all allottees, the NCLT passed an order on 28.02.2020 (NCLT Order) rejecting the petition, and directed the Respondent to settle the disputes with remaining allottees within a period of 3 months. The NCLT clarified that if any party was aggrieved by the settlement, then such party could approach NCLT in accordance with law. The NCLT reasoned that the Respondent had attempted to settle the disputes *bona fide*, and further noted that settlement with remaining applicants before NCLT was ongoing, which was a preferable alternative to initiation of CIRP of the Respondent.

- The NCLT Order was challenged before NCLAT by the Appellants, and the NCLAT dismissed the appeal vide Impugned Judgment dated 30.07.2020 (Impugned Judgment). The NCLAT was satisfied that the NCLT Order had sufficiently safeguarded the interests of the allottees, as settlement efforts were being undertaken at the "pre-admission stage", and even if there were aggrieved parties, they could approach NCLT.
- The Impugned Judgment was challenged before the SC by 17 Appellants, including 11 Appellants who had originally instituted the proceedings before the NCLT. In addition to this, two applications seeking impleadment in the Civil Appeal were instituted by 10 individuals, similarly placed to the Appellants.

QUESTION FOR CONSIDERATION

- Whether the NCLT and NCLAT have jurisdiction under the Code to reject an application filed by homebuyers/real estate allottees under Section 7 for admission of insolvency and issue directions to the parties to settle their disputes with the corporate debtor?

WHAT THE SUPREME COURT HELD

- The SC reiterated the settled position in ***Innoventive Industries Ltd. v. ICICI Bank [(2018) 1 SCC 407]***, viz. that following the inquiry contemplated under Section 7 of the Code, there are only two courses of action available to an NCLT - which is to either admit the application or to reject the application. It was held that the statute does not provide for NCLT to pass any other orders, and certainly NCLT cannot compel creditors to settle disputes with the corporate debtor in such proceedings.
- The Code is a self-contained code, and the statute prescribes and circumscribes the ambit of the respective jurisdictions of NCLT and NCLAT. NCLT and NCLAT cannot exercise powers as courts of equity.
- In the result, Civil Appeal was allowed and the Impugned Judgment of NCLAT and NCLT were set aside. The SC remanded the proceedings to the NCLT for fresh consideration.

CONCLUSION

- It is widely known that a large number of cases are pending before the various NCLT benches across India. Even though NCLT is statutorily mandated to ascertain the default within a period of 14 days in an application under Section 7 of the Code, however, due to the huge backlog of cases, admission applications remain pending for several years, defeating the objective of the Code.

The judgment reiterates the principle of time-bound resolution in insolvency proceedings and restricts the grounds of inquiry available to an NCLT in an application under Section 7 of the Code. The judgment seeks to bring in certainty in the approach that an NCLT should follow at the admission stage of insolvency proceedings.

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