

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1203 of 2024

[Arising out of order dated Order dated 12.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-IV in C.P. No. (IB) 305 of 2022]

IN THE MATTER OF:

Mr. Ram Kishore Arora,
Director (powers suspended) of
M/s Supertech Realtors Private Limited ...Appellant

Vs.

Bank of Maharashtra & Anr. ...Respondents

Present:

For Appellant: Mr. Arun Kathpalia, Sr. Advocate and Mr. Abhijeet Sinha, Sr. Advocate with Mr. Siddharth Bhatli, Ms. Lashita Dhingra and Mr. Bhupendra Premi, Advocates

For Respondents: Mr. Sudhir Makkar, Sr. Advocate with Mr. Nishant Awana, Ms. Rini Badoni, Ms. Soumya Gupta, Ms. Nitya Sharma and Rebecca Mishra, Advocates

**Ms. Rashmi Raj, Mr. Rohil Malhan, Advocates
for IRP**

ORDER
(Hybrid Mode)

03.07.2024 - This Appeal by Suspended Director of the Corporate Debtor – M/s Supertech Realtors Pvt. Ltd. has been filed challenging order dated 12.06.2024, by which Section 7 Application filed by Bank of Maharashtra (Respondent herein) has been admitted. The Appellant aggrieved by the order has come up in this Appeal.

2. We have heard Shri Arun Kathpalia and Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant and Shri Sudhir Makkar, learned

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Senior Counsel appearing for the Bank of Maharashtra. IRP has also appeared in person.

3. Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellant submits that the Appellant is not raising any dispute regarding the debt and default of the Bank of Maharashtra. It is, however, submitted that the Corporate Debtor has taken Financial Facilities from Consortium of Lenders, Union Bank of India being lead Banker with Bank of Maharashtra as one of the Consortium Member. It is submitted that during pendency of Application under Section 7, the Corporate Debtor has submitted a proposal to the Consortium of Lenders for settlement of dues from the Investor, namely M/s Kotak Advisors Limited (“**Kotak**”) via an ARC sale. It is submitted that the offer made by Corporate Debtor was 75% of the Running Ledger Book Balance of the Consortium Lenders and the lead Bank acknowledged the receipt of the revised proposal and informed the Corporate Debtor that the same shall be put in the Meeting of the Joint Lenders’. It is submitted that Joint Lenders’ Meeting was held on 18.03.2024, in which Bank of Maharashtra had also participated. The lead bank after taking note of the proposal has principally agreed with the proposal. The Bank of Maharashtra took time stating that it be given 2-3 days’ time, so that they can consult their Head Office and inform about their decision. It is submitted that in view of the Joint Lenders’ Meeting dated 18.03.2024, where the proposal has been principally accepted by the lead Bank and is under consideration, no purpose be served in initiating Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor, which is a real-estate Company. The real-estate Project namely – Supernova Project, which is being undertaken by the

Corporate Debtor is 80% complete and an Investor has also offered to infuse funds for construction and completion of the Project. The object of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) is resolution of the Corporate Debtor and in view of the above, the Corporate Debtor shall be resolved.

4. Shri Sudhir Makkar, learned Senior Counsel appearing for the Bank of Maharashtra submits that OTS proposal, of the Corporate Debtor, which was earlier approved by the Bank of Maharashtra, was not honoured. It is submitted that the OTS proposal, which was considered in the Joint Lenders’ Meeting dated 18.03.2024, was also brought into the notice of the Adjudicating Authority, when the matter was heard on 22.03.2024 before the Adjudicating Authority, but despite the said, the Adjudicating Authority has proceeded to admit the Application. It is further submitted that Union Bank of India has also filed an Application under Section 7 against the Corporate Debtor, which came to be disposed of as infructuous, in view of the impugned order passed by the Adjudicating Authority. It is submitted that there is no reason to not initiate the CIRP against the Corporate Debtor, there being no denial to debt and default. It is submitted that in the CIRP, it is the Interim Resolution Professional/Resolution Professional, who shall carry out the Project and complete the Project.

5. We have considered the submissions of learned Counsel for the parties and have perused the record.

6. The Application under Section 7 was filed by the Bank of Maharashtra, claiming a debt of Rs.168,04,59,415/- and the Corporate Debtor has committed default on 16.03.2022. Learned Senior Counsel for the Appellant

in his submission has not disputed the debt and default. Submissions, which have been pressed by the learned Senior Counsel for the Appellant is that OTS proposal through Investor Kotak, under which the offer of 75% of Running Ledger Book Balance of Members of the Consortium was put, which was a prudent way to resolve the insolvency of the Corporate Debtor and no useful purpose will be served by admitting the CIRP. It is submitted that in the Project, more than 600 Homebuyers have already been handed over possession and they are living in their units and rest of the Project shall also be completed with the amount offered to be infused by the Kotak. It is submitted that even if the submission of Counsel for the Respondent is accepted that during the hearing on 22.03.2024 before the Adjudicating Authority, the Minutes of the Joint Lenders' Meeting was informed to the Adjudicating Authority, the Adjudicating Authority did not consider the said fact and event, which was relevant for considering of initiation of CIRP against the Corporate Debtor. The learned Senior Counsel for the Appellant has referred to the Minutes of the Meeting of Joint Lenders dated 18.03.2024, which was issued on 21.03.2024, under Item No.2, 'Discussion of proposal submitted by M/s Supertech Realtors Pvt. Ltd. for Supernova project- Revised Offer ...' was considered in detail. Discussion on Item No.2 is as follows:

"2. Discussion of proposal submitted by M/s Supertech Realtors Pvt. Ltd. for Supernova project- Revised Offer from Investor M/s Kotak Investment Advisors Limited via-ARC Sale.

UBI informed that M/s Supertech Realtors Pvt. Ltd. vide its letter dated 12.03.2024 submitted the revised proposal for Supernova Project from investor M/s Kotak Investment Advisors Limited via ARC Sale, which has been received by UBI on 13.03.2024. UBI requested representative

of Supertech Realtors Pvt.Ltd. (SRPL) to present the proposal before lenders' forum.

Mr. Mohit Arora, Director of SRPL informed that they have offered OTS proposal of Rs.310.00 Crore which is 75% of running ledger/book balance of consortium lenders. In response to the same UBI informed that the offer is approx. 69.27% of Running ledger of Rs.447.53 Cr. (CBol 89.83+BOM 90.67+ PNB 96.29+ UBI 170.84). The representative of SRPL informed that there is some confusion in reconciliation of running ledger balance of consortium lenders and it will be sorted out. Lenders noted for the same. Further, Mr. Mohit Arora informed that Kotak will invest in the SRPL through ARC. So, the proposal will be sale to ARC.

UBI invited representative of Kotak & requested him to make them understand about proposal. Mr. Suresh from Kotak informed that they have offered the amount considering complexity of project, Noida dues, etc. BOM enquired from Kotak that in proposal it is mentioned that “Payment to be made to the lender banks within 3 months of final sanction and completion of conditions precedent (under clause 19 of term sheet attached) stipulated therein.” BOM requested Kotak to clarify the clause 19. Kotak informed that they have mentioned some points in clause 19 which is important in nature. He, further, informed that after okay from lenders' side they will start their due diligence (technical, financial & legal due diligence). SRPL Informed that they are in touch with Noida Authority and the conditions will be complied.

UBI informed that this proposal is for. ARC sale and should not mix with all complexity mentioned in the proposal, UBI, further, informed that they have tried to sale the account to ARC which was failed due to want of bidder. UBI informed that they are in principally agreed with the proposal to sale to ARC and requested the lenders to offer their views. In response to the same, BOM and CBol informed that they can't take decision right now as the delegation for ARC sale is with their head office. So, they requested for 2-3 days so that they can consult from their head office and informed about their decision. PNB informed that as per valuation the value is much higher, and it will be difficult to consider the current proposal. In response to the same, UBI informed

that they have received revised valuation considering latest dues of Noida Authority submitted by SRPL. Valuers will submit the valuation report within 1-2 days. Lenders requested UBI to share the latest valuation reports along with Noida Authority letter. UBI informed that they will share the report at the earliest. PNB has also informed that after receiving the revised valuation report they will also require 2-3 days so that they can consult their competent authority for the same.

UBI propose that since lenders are required 2-3 days , so this meeting will be postponed and resume on 21.03.2024 (Thursday) @04.30 PM. In response to the same, lenders have requested to share the minutes of the meeting and convene fresh meeting.

BOM further enquired from SRPL that company has submitted the proposal and mentioned improved proposal, however, they have reduced the offered amount from 312.00 Crore to Rs.310.00 Crore and there is not clarity of timelines of repayment. CBol has also informed that there is no upfront amount offered in the proposal. In response to the same, SRPL informed that considering current cash flow, huge Noida dues, Kotak has submitted the proposal of Rs.310 Cr. Via sale to ARC.”

7. When we look into the above discussion of the Joint Lenders’ Meeting, the lead Bank has agreed principally with the proposal. It was noticed on behalf of the lead Bank that proposal is approximately 69.27% of the running ledger, whereas the Corporate Debtor’s case is that it is 75% of the Running Ledger Book. Whether it is 69.27% or 75% of Running Ledger, it is for the Consortium of Bank to take a call. It is further relevant to notice that in the Minutes, the representative of the Bank of Maharashtra requested 2-3 days’ time to consult from their Head Office and inform about their decision. It is clear that the Bank of Maharashtra, thus, took time to communicate their decision. During the submissions advanced by Shri Sudhir Makkar, learned

Senior Counsel for the Bank, although, reference has been made to the earlier OTS proposal, but no further submissions have been made.

8. In the facts of the present case, we are of the view that the revised OTS proposal, which was submitted by Corporate Debtor and which is under consideration of the Consortium of Bank and lead Bank having principally agreed with the offer, it is appropriate to await the decision of Consortium of Members and the decision of lead Bank, with regard to OTS proposal in order to proceed further in the matter. As noted above, the Project is a real-estate Project, which is an ongoing Project and as per the Appellant, more than 600 unit holders have been allotted units and they are residing there and rest of the Project shall be completed by the Corporate Debtor with the agreed offer and amount to be infused by the Kotak.

9. Considering the submissions of the learned Counsel for the parties, we are of the view that decision of Consortium of Bank as well as the decision of lead Bank on the revised offer submitted by the Corporate Debtor from Investor, Kotak Advisors Limited needs to be awaited, for which purpose, we are of the view that Appeal needs to be heard after four weeks to enable the parties to bring on record the decision of Joint Lenders' Meeting on the revised offer as noted above.

10. In the meantime, we direct that Committee of Creditors be not constituted. However, the ongoing Project may be continued with under the supervision of the IRP and the IRP shall be extended all cooperation by the Corporate Debtor, its officers and employees in carrying out the construction. Bank accounts of the Corporate Debtor shall be operated only with the joint signature of the IRP, only for the purpose of carrying out construction.

11. Issue notice. Let replies be filed within three weeks. Rejoinder, if any, be filed within one week thereafter.

12. List this Appeal on **8th August, 2024**. Interim direction as above, shall be operative till the next date.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Mr. Arun Baroka]
Member (Technical)

Ashwani