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"Courage is resistance to fear, mastery of fear, not absence of fear"

➤ **Unregistered Sale Cannot Be The Basis For Claim On Immovable Property: NCLAT Delhi**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Smt. Sabita A. Biswa v Shri Vinodkumar Pukhraj Ambavat, has declined to entertain the claim of a creditor based on an unregistered and unstamped sale deed which was only executed before the Notary and has held that such document cannot be basis for any claim with respect to the purchase of immovable property.

Asrec India Limited had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") before the NCLT Cuttack Bench ("Adjudicating Authority"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against R.K Jain Construction India Pvt. Ltd. ("Corporate Debtor"). The Adjudicating Authority had initiated CIRP and Shri Vinodkumar Pukhraj Ambavat was appointed as the Resolution Professional.

Smt. Sabita A. Biswa ("Appellant") being a creditor of the Corporate Debtor, had filed her claim in Form-C along with the photocopy of unregistered sale deed engrossed on Rs. 100/- stamp paper, allegedly executed before the Notary on 13.01.2015. Subsequently, Appellant had filed an application before the Adjudicating Authority seeking direction to Resolution Professional to accept the claim. The Adjudicating Authority vide an order dated 07.07.2022 had rejected the Application while observing that alleged sale deed was neither registered nor stamped and cannot be looked for any purpose.

The Appellant filed an appeal before the NCLAT against the order dated 07.07.2022.

The Bench observed that the Adjudicating Authority had rightly taken the view that such kind of sale deed which is neither registered nor stamped and was executed before Notary cannot be basis for any claim with regard to the purchase of immovable property, as claimed by the Appellant. Accordingly, the appeal was dismissed.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclat-delhi-insolvency-and-bankruptcy-code-immovable-property-resolution-professional-corporate-debtor-209295>

➤ **SEBI Order No Bar To Initiation Of CIRP; NCLT Mumbai Initiates Insolvency Proceedings Against Pancard Clubs**

The National Company Law Tribunal ("NCLT"), Mumbai Bench, comprising of Justice P. N. Deshmukh (Retd.) (Judicial Member) and Shri Shyam Babu Gautam (Technical Member), while adjudicating an application filed in Mr. Nitin Suresh Satghare & Ors. v Pancard Clubs Limited, has initiated Corporate Insolvency Resolution Process ("CIRP") against Pancard Clubs Ltd., while observing that an Order passed by Securities Exchange Board of India ("SEBI") is no bar for initiation of CIRP under the IBC.

Pancard Clubs Limited ("Corporate Debtor") had started a Collective Investment Scheme (CIS) under the guise of time share scheme, for purchase of room nights in various properties and resorts owned by the Corporate Debtor. The Petitioners had collectively invested Rs. 1,55,12,880/- in the Scheme. Thereafter, the Scheme came under the scanner of Securities Exchange Board of India ("SEBI") and vide an order dated 29.02.2016 SEBI had directed the Corporate Debtor to refund monies to the tune of Rs.7035 Crore of the CIS investors within three months and directed the CIS to be wound up. The said order was upheld by the Securities Appellate Tribunal (SAT).

In 2018, the Petitioners filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), seeking initiation of CIRP against the Corporate Debtor over a default of Rs. 1,55,12,880/-.

Petitioners submitted that the Order passed by SEBI and upheld by SAT indicates that investments made by over 50 lakh investors was accepted by the Corporate Debtor under the guise of time share scheme for purchase of room nights in various properties and resorts owned by the Corporate Debtor. The scheme was in fact a collective investment scheme made by the Corporate Debtor for the purpose of earning returns on their investments against a consideration for time value of money.

SEBI submitted that after passing of the Order dated 29.02.2016, recovery proceedings were initiated by the SEBI and E-Auction notices were issued for sale of properties of the Corporate Debtor. The said E-auction notices were challenged before the Bombay High Court and vide an order dated 09.01.2019 the auction of properties was stayed until further orders. Further, since the schemes operated by the Corporate Debtor run in violation of Section 11AA of SEBI Act and CIS Regulations, the recovery proceedings are initiated by SEBI and therefore, the initiation of CIRP would be detrimental to the ongoing recovery proceedings.

The Bench observed that in 2017 a petition under Section 9 of IBC was filed against Corporate Debtor titled as Shobha Limited vs Pancard Club Ltd., wherein the NCLT

Bench had observed that there was pre-existing dispute and had dismissed the petition.

The matter went in appeal and the NCLAT in *Sobha Limited v Pancard Clubs Ltd.*, Company Appeal (AT) (Insolvency) No. 162 of 2017, had held that initiation under IBC cannot be nullified by any order passed by SEBI nor can be a ground to reject an application under Section 9 of the IBC. However, as there was an 'existence of dispute' with regard to the invoices raised by the 'Operational Creditor', the application under Section 9 of the IBC was held not maintainable.

The Bench held that it is crystal clear that an Order passed by SEBI is no bar to initiation of CIRP against the Corporate Debtor. It was observed that the Petitioners had disbursed the money against time value of money which means that the Petitioners were to receive a value higher than the invested amount, which has all the characteristics of Financial Debt. Further, the Petitioners had placed on record bank statements and financial contracts to prove the same. The Bench initiated CIRP against the Corporate Debtor and appointed Mr. Rajesh Sureshchandra Sheth as the Interim Resolution Professional.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclt-mumbai-securities-exchange-board-of-india-sebi-corporate-insolvency-resolution-process-cirp-pancard-clubs-ltd-209278>

