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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 1st October, 2020

+ **CM (M) 483/2020 and CM APPL. 24567-568/2020**

BARUN MITRA

..... Petitioner

Through: Mr. Krishnan Venugopal, Sr.
Advocate, Mr. Aditya Dewan, Mrs.
Ritwik Sneha, Mr. Siddharth
Chechani, Advocates

versus

AVP BUILDTECH PVT LIMITD & ORS.

..... Respondents

Through: Mr. Nitesh Jain, Advocate for R-1
and R-2 with Mr. Manish Kumar
Gupta, IRP
Mr. Piyush Singh, Advocate for R-3
and R-4.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been held through video conferencing.
2. The Petitioner is an allottee/homebuyer in a project of AVP Buildtech Pvt Ltd. The said company is undergoing insolvency proceedings and an Insolvency Resolution Professional (*hereinafter*, “IRP”) has already been appointed. The IRP, Mr. Manish Kumar Gupta, is present before this Court today.
3. The submission of Mr. Venugopal, Id. Sr. Counsel appearing for the Petitioner, who is one of the allottees, is that the National Company Law Appellate Tribunal (*hereinafter*, “NCLAT”) did not agree to implead the allottee in the proceedings pending before it, and there was a freeze ordered on the claims to be filed before the IRP, vide order dated 13th March, 2020.

However, despite the said order, thereafter, the IRP has been permitted to go ahead and finalise the terms of settlement, if any, between the allottees, creditors and the companies.

4. He submits that an application was then filed by the allottees before NCLAT, on 22nd September, 2020, which has not been listed for hearing yet. Thus, the grievance of the Petitioner is that the IRP is proceeding to finalise the terms of settlement without hearing all the allottees. Mr. Venugopal, Id. Sr. counsel, urges that only 189 out of 480 allottees have been issued notice in the first instance, and the committee of creditors has not yet been constituted. Accordingly, he prays that the application before the NCLAT ought to be heard as there is an urgency in the matter, since the voting was under way between 21st September to 26th September, 2020 and the decision is likely to be taken by the IRP. As of this morning, terms of settlement are stated to have been drawn by the IRP.

5. Mr. Piyush Singh, Id. counsel for Respondent No. 3 and 4, who are also original allottees and financial creditors, submits that he has already filed a civil appeal challenging the order dated 13th September, 2020 before the Id. Supreme Court and the same is likely to be listed next week.

6. The IRP along with Mr. Nitesh Jain, Id. counsel for the Respondent No. 1, have appeared before this Court, and submitted that as of today, notice had been issued to all allottees by the IRP and the submissions of the Petitioner, that all allottees were not called, is not correct. He submits that the terms of settlement were placed before the committee of creditors or allottees of creditors, and 334 allottees have already voted. In terms of the order dated 13th March, 2020. the terms of settlement had to be placed before the NCLAT.

7. The court has heard all the parties. The short grievance of the Petitioner, who is an allottee of a flat in the project of Respondent No. 1, is that his application, under rule 11 of the NCLAT Rules, has not been taken up by the NCLAT, and his claims have not been considered by the IRP.

8. Irrespective of whether the Petitioner is an allottee or not, and whether the IRP issued notice to them or not, there can be no doubt that the Petitioner being an allottee would have to be heard by the NCLAT, before the settlement is finalised. For the said purpose, the Petitioner's application, that has been filed before the NCLAT, ought to be heard at an early date, in order to ensure that before finalizing the terms of settlement and resolution plan, all allottees are heard and their grievances are properly addressed.

9. Accordingly, in terms of the order dated 13th March, 2020, the IRP shall file the terms of settlement before the NCLAT. The NCLAT shall hear the Petitioner and any other financial creditors and allottees, who may wish to make submissions in respect of the future course of action to be adopted. Upon hearing all the interested parties and addressing the grievances in accordance with law, NCLAT shall pass orders in respect of the settlement, which may be placed before it by the IRP. Until then, the terms of settlement and the further course of action, shall not be implemented by the company or by the IRP.

10. In view of the fact that there is urgency in this matter, it is directed that the applications filed by the Petitioner, and any other allottees or financial creditors, shall be listed before NCLAT, for hearing, on 12th October, 2020.

11. It is made clear that this Court has not examined the merits of the matter either on behalf of the allottees and financial creditors. or the IRP, as

there are several allegations that have been made by them against each other. The same shall be considered by the NCLAT, without being affected by any observations made in this order.

12. This petition and all pending applications are, accordingly, disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 1, 2020
MR/Ak

