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## **NCLAT: Creditors of erstwhile developer can initiate CIRP against the successful auction purchaser and such initiation does not preclude them from filing claims in the CIRP of the current developer**

In the recent decision of the *Anjani Kumar Prashar (Suspended Director of Grandstar Realty Pvt. Limited) v. Manab Dutta*<sup>1</sup>, the National Company Law Appellate Tribunal (“NCLAT”) has held that the auction purchaser would also be a financial creditor *vis-à-vis* the creditors of the entity whose assets were purchased by the auction purchaser. The NCLAT clarifies that the filing of a claim in the ongoing corporate insolvency resolution proceedings (“CIRP”) of the erstwhile developer does not preclude the initiation of fresh insolvency proceedings against the current developer.

### **Brief Facts**

In 2012, one Akme Projects Limited (“Akme”) started developing a parcel of land situated in Haryana. Akme executed ‘Builder-Buyers Agreements’ with various real estate allottees for the construction of flats. For this purpose, Akme had taken a loan from Yes Bank Limited (“Yes Bank”). Akme defaulted on its loan. Consequently, Yes Bank instituted proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (“SARFAESI”) Act, 2002 (“SARFAESI Act”). In 2016, Yes Bank issued an auction sale notice for the sale of the property.

One, Grand Star Realty Private Limited (“Appellant”) was declared as the successful auction bidder and Yes Bank issued the sale certificate/sale confirmation advice in its favour. The sale certificate recorded, *inter alia*, that secured assets (the flats) are being sold to the Appellant on an “as is where is” and “as is what is” basis. It also recorded that the Appellant would be liable to honour all lawful allotments in favour of the allottees and abide by the terms of the existing arrangements between the allottees, the Yes Bank, and Akme and that the rights of the allottees would not undergo any change on account of the auction process.

Both Akme and the Appellant challenged the sale certificates separately before the Delhi High Court and the Debt Recovery Tribunal, respectively. Both sets of proceedings were dismissed.

In the meantime, Akme was admitted into CIRP. In 2018, the allottees of the project filed their claims against Akme.

Separately, in 2020, the allottees in the project also filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) seeking initiation of CIRP against the Appellant. The NCLT also admitted the Appellant into CIRP. Aggrieved, the Appellant challenged the admission before the NCLAT.

<sup>1</sup> Company Appeal (AT) (Insolvency) No.1366 of 2023)

## Issue

Whether the auction purchaser (under the SARFAESI Act) can be the financial creditor of the respondent allottees, who were issued allotment letters by the corporate debtor's predecessor?

## Findings and Rationale

The NCLAT dismissed the appeal, found that there is a "financial debt" and upheld the NCLT's order admitting the Appellant into CIRP. The NCLAT made the following findings:

1. The Appellant (being the successful auction purchaser) was bound to honour the rights of the allottees under the Builder Buyers Agreements with Akme. The obligation of Akme towards the allottees has been continued and attached with the purchase of assets by the Appellant. The obligation under agreement(s) is an obligation to be discharged by the Appellant.
2. In the definition of "financial creditor", The crucial word in the definition is "any person to whom a financial debt is owed" becomes a Financial Creditor. Further, the expression "includes a person to whom such debt is legally assigned or transferred to" is only an incidence of further elaboration of the person to whom the financial debt is owed. In the facts of the present case, there can be no denying that the financial debt, which was owed by Akme to the allottees is now the debt owed by Grandstar Reality Pvt. Ltd.
3. A financial debt can be owed in more than one manner. The NCLAT drew an analogy to the transfer/vesting of liabilities pursuant to a merger or an amalgamation and held that in the present case, the Appellant, by virtue of having taken over the project from the original developer in the SARFAESI auction proceedings was a financial debtor *vis-à-vis* the allottees/home buyers under the IBC. The Appellant could not seek to escape the rigors of the IBC and defeat the rights of the allottees/home buyers.
4. The NCLAT rejected the Appellant's submission that the allottees already filing claims against Akme would preclude them from instituting a fresh petition for initiation of CIRP against the Appellant.

## Conclusion

1. This judgement helps us understand that the original disbursement of debt is only one of the many (factors) that constitute "financial debt" and emphasis lies on whom the "debt is owed".
2. This decision is significant for its finding that an auction purchaser under the SARFAESI Act (and other akin assignees) has an ongoing and continuing obligation to satisfy the debts of the erstwhile debtor's creditors. This finding assures the creditors (particularly homebuyers/allottees) of their rights and remedies as a creditor (under the IBC) notwithstanding how many hands the debt changes.

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