

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 1987 of 2020

IN

Company Appeal (AT) (Ins.) No. 926 of 2019

In the matter of:

Flat Buyers Association Winter Hills-77

....Appellant

Vs.

Umang Realtech Pvt. Ltd.

Through IRP & Ors.

....Respondents

Presents

For Appellant:

Mr. Shantanu Malik, Ms. Mitansha Chopra, Mr. Manoj Kumar & Mr. Vijay Kumar Pasricha, Advocates.

For Respondents:

**Mr. Aditya Shukla, Advocate.
Mr. Arpit Singh Arora, Intervenor.**

With

Contempt Case (AT) No. 28 of 2020

IN

Company Appeal (AT) (Ins.) No. 926 of 2019

In the matter of:

Pooja Mining & Marbles Pvt. Ltd.

....Appellant

Vs.

Umang Realtech Pvt. Ltd.

Through IRP & Ors.

....Respondents

Presents

For Appellant:

Mr. Gautam Singh, Mr. Manoj Kumar & Mr. Vijay Kumar Pasricha, Advocates.

For Respondents:

Mr. Gaurav Verma, Mr. Vijay Nair & Mr. Aditya Shukla, Advocates.

Mr. Karan Rajpurohi & Mr. Abhijeet Sinha, for IRP

With
Contempt Case (AT) No. 02 of 2021
IN
Company Appeal (AT) (Ins.) No. 926 of 2019

In the matter of:

Brilltech Engineers Pvt. Ltd.Appellant

Vs.

Manish Kumar Gupta, IRPRespondent

Presents

For Appellant: Mr. Vijay Kumar Pasricha, Mr. Manoj Kumar & Mr. Harsh Vashisht, Advocates.

For Respondent: Mr. Karan Rajpurohi & Mr. Abhijeet Sinha, for IRP. Mr. Vijay Nair & Mr. Aditya Shukla, Advocates.

With
Contempt Case (AT) No. 24-25 of 2021
IN
Company Appeal (AT) (Ins.) No. 926 of 2019

In the matter of:

Flat Buyers Association Winter Hills-77Appellant

Vs.

Manish Kumar Gupta, IRP & Ors.Respondents

Presents

For Appellant: Mr. Manoj Kumar, Mr. Shantanu Malik, Ms. Mitansha Chopra & Mr. Vijay Kumar Pasricha, Advocates.

For Respondents: None.

ORDER
(Virtual Mode)

29.10.2021: Learned Counsel Mr. Arpit Singh Arora appears on behalf of Proposed Intervenor in the matter and he submits that he proposed to file

Intervention Application on behalf of the Colonel Rajesh Sharma Home Buyers and he has filed Soft Copy of the I.A through electronic mode. He is directed to file Hard Copy of the I.A latest by 12th November, 2021. Office of the Registry is directed to accept the same.

Heard Learned Counsel Mr. Abhijeet Sinha appears on behalf of the IRP.

In terms of the Order dated 28.09.2021 he has filed up to date Status Report of the Project which reveals that two meetings of stakeholders of the Project were held on **09.10.2021** & **21.10.2021** and the following matters were discussed regarding Water Connection, Construction of Internal Road & Electricity connection, which are hereby read as under :-

“1. WATER CONNECTION:

1.1. Umang Realtech Private Limited (“Corporate Debtor”) had already applied with the Gurugram Metropolitan Development Authority (“GMDA”) for water connection.

1.2. As per GMDA email dated 09.10.2019, the connection cannot be released as water supply is yet to be commissioned in Sector-77 Gurugram.

1.3. Pertinently, the IRP- even on 22.01 2021 had sent reminder letter to GMDA to provide water connection. Although, the Authority had perused the said letter, it had refused to accept the physical officer of the said letter. Moreover, the Authority had orally informed the Corporate Debtor that till date govt. authorities has not allotted land to them to lay down the pipelines.

1.4. It is stated that the Corporate Debtor has paid EDC and IDC charges but still the Authority has not taken any steps to provide and install water connection in the Project.

1.5. *It is pertinent to mention here that the recovery of the External Development charges and Infrastructure Development Charges was made by the Govt of Haryana at the time of grant of License i.e., in 2011 and escapement of the responsibility of the Govt. on provision of Water availability is beyond comprehension.*

1.6. *As on date, the Corporate Debtor has paid Rs. 25,54,07,876 towards EDC and Rs. 21,75,86,045/- interest thereon. Also, Rs. 4,32,33,215/- as IDC charges as on date.*

1.7. *In the interim, the Corporate Debtor is providing water to the Allottees through water and incurring cost of approximately Rs. 5 Lakhs each month.*

2. INTERNAL ROAD

2.1. *The connectivity to the Project site by way of a 24 mtr road is provided in terms of the Town Planning for Gurugram. The Corporate Debtor from the time the License for the Development of Project was applied for had been following for construction of said road. However, no steps have been taken by the Govt Agencies towards implementation of the same.*

2.2. *At the time of application for issue of Occupancy Certificate, the Corporate Debtor had submitted a letter dated 27.03.2019 once again requesting the GMDA and STP, Gurugram for completion of 24 Mtrs from NH- 8 to Project as per the Master Plan so that required connectivity could be made available to the residents of the Housing complex. However, the State Government had miserably failed to act upon such request despite various personal*

follow-ups with the authorities.

2.3. Despite the fact that the Internal Road connecting the Project from Highway is state responsibility, the Corporate Debtor is ready to complete and in fact has commenced work on the internal road of 24 mtrs. which passes through the Project and connects with the main road/sector road of 60 mtrs.

2.4. Though, HUDA has even failed to construct road of 60 Mtrs. Therefore, it is the failure of the government to construct road even when the license was granted to the Corporate Debtor in the year, 2011.

2.5. With regard to present access road to the Project, it is stated that the Corporate Debtor has already given contract for construction and has spent around Rs.76,66,289/- from its own pocket and as on date 70% work is completed. However, due to Objections being raised by local farmers, the same could not be completed at some patches.

3.ELECTRICITY

3.1. The Corporate Debtor had applied for connection of 4471 KW with CD 4968 KVA for the Project under 11 KV Feeder which was duly sanctioned by DHVBN on 11.07.2014.

3.2. In 2019, DHVBN informed the Corporate Debtor that due to change in DHVBN policy and guidelines, connection can be provided only through 33 KV Feeder.

3.3. Thereafter Corporate Debtor under instructions of Department has submitted fresh application for 33 KV

Electricity Connection vide Application No. G31-120-168 dated 23.01.2020 for sanction of 33 KV.

3.4. On 04.02.2021, DHVBN approved load of 4878 KW or 4520 KVA from 33 KV switching station and also sanctioned partial load of 1000 KW or 1111.12 KVA through 11 KV Feeder.

3.5. By virtue of letter dated 04.02.2021, DHVBN has requested for a bank guarantee of Rs, 11.10 Crores (approx.) for providing load of 4878 KW or 5420 KVA.

3.6. Out of Rs. 11.10 Crores, Rs. 2.59 Crores is towards internal electrical infrastructure, Rs. 5.63 Crores is towards cost of cable line and Rs. 2.88 Crores is towards bank guarantee of value of plot of land measuring 500 Sq. Yard for 33 KV Switching Station internal electrical infrastructure, being the responsibility of the Corporate Debtor, for which cost of Rs. 2.59 Cr is assigned has already been incurred by the Corporate Debtor. After excluding the estimated expenditure for internal Electrical Infrastructure, the requirement for the Bank Guarantee stands reduced to Rs. 8.51 Cr.

3.7. It is relevant to note that since DHVBN is the agency for distribution and dispensation of power, it is the responsibility of the DHVBN to provide relevant infrastructure so that the Power is available at the project site. In view of this fact the demand of the DHVBN for meeting the expenditure of power cable and land required for switch station and securing the same by way of a Bank Guarantee is totally unjustified.

3.8. It is worth noting that initially the Power Cable was required to be drawn from Power station to be built in

Sector 77 and the Corporate Debtor was required to pay for Power Cable cost for a distance of 1.4 KM (as apparent even in the present requisition where the length of cable in words is shown to be 1.4 Kms.) However, later the location of the Substation was shifted to Sector 69 and the corporate debtor is being raised the present demand and provision of Bank Guarantee with requirement of Power Cable for a length of about 10.5 Km. The change of location is also at the whims of the DHBVN.

3.9. Further, the Electricity Department is seeking Bank Guarantee from the Corporate Debtor towards 500 Sq. Yard land required for setting up 33 KV switching station. At present, the cost of per acre land is substantially lower than what has been charged by the Department towards 500 sq. yard land.

3.10. Moreover, since the Corporate Debtor has already paid the EDC and IDC charges, no additional money can be demanded by the Electricity Department.

3.11. It is understood that infrastructure creation/development for 33 KV Switching Station with the cost of about Rs. 8.51 cr. shall be for dispensation of Power connections of about 25 MW whereas the requirement of Corporate Debtor is limited only to about 5 MW. It is not understandable as to how the DHBVN can require the Corporate Debtor to bear the cost for creation of switch station of the capacity of 5 times its requirement. Best course, even if the cost of creation of infrastructure were to be borne by the Corporate Debtor, should have been for DHBVN to create infrastructure at its own cost and then charge the corporate debtor in the ratio of

requirement of the Corporate Debtor to the total installed capacity.

3.12. During the pendency of infrastructural development for 33 KV switching station, DHBVN has also approved interim/ partial load of 1000 HW from the proposed 11kV feeder for which infrastructural development has been initiated by the DHBWN and estimated expenditure for laying down 1000 KW power line has been finalized against which partial payment has been made by the Corporate Debtor. However, for release of said interim/ partial load, DHBVN is likely to make it a precondition for Corporate Debtor to provide the bank guarantee of approx. Rs. 11.10 Crores (which may be reduced to Rs. 8.51 Cr. Such requirement is also unjustified because at present no activity has been initiated by the DHBVN for creation of 33 KV substation.

3.13. In case the Cost of 33 KV switch station is to be borne by the Corporate Debtor, the same should be determined on the basis of Corporate Debtor's sanctioned power load vis-a-vis the total power load capacity created in the switch station.

3.14. It is pertinent to mention here that the Corporate Debtor is temporarily providing electricity through DG set and incurring cost of approximately Rs.30 lac per month towards diesel for running the DG sets.”

On the basis of the Status Report a request was made on behalf of the IRP that a composite application may be permitted to file before this Tribunal on behalf of the stakeholders, the IRP, the Promoters and the Home Buyers

Association (Appellant herein). Permission accorded. They are directed to file hard copy of the joint I.A indicating the name of the concerned authority/ departments and the name of the Officers of the Department/ Authority who are responsible for laying down the water connection pipeline, construction of roads and proper electricity connection.

The authorised I.A shall be filed before this Tribunal as a Hard Copy, within one week after Diwali Vacation. Office of the Registry is directed to accept the same.

In the meanwhile, the issue relating to the allotment of the Flats to the Members of the Home Buyers Association (Appellant herein) shall also be constituted on the next date.

List this matter '**For Orders**' on **18th November, 2021** at **2:00 PM**.

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

[Ms. Shreesha Merla]
Member (Technical)

Sim/Kam