

DEBTS RECOVERY TRIBUNAL-III, DELHI

TSA/9/2023

Dev Rishabh Real Estate Pvt Ltd Vs Indian Overseas Bank

27.09.2024

Item no. 33


Present: Mr. Siddharth Yadav, Ld. Senior Advocate along with Ms. Nishtha Kaura, Ld. proxy counsel for Mr. Anniruddh Sharma, Ld. counsel for S. applicant.
Mr. Pramod Kumar, Ld. counsel for Respondent Bank.
Mr. Abhishek Batra, Ld. counsel for respondent no. 4.

1. This matter is taken up by this Tribunal through Hybrid mode.
2. **IA No. 1094/2024:** This application has been filed on behalf of the applicant under Section 22(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDB Act) read with Rule 18, seeking the summoning of the Resolution Professional (RP) for the purpose of clarification on certain questions (Q1 to Q10) regarding the approval of the resolution plan for the principal borrower, M/s Era Infra Engineering Ltd., by the Hon'ble National Company Law Tribunal (NCLT). The applicant has further submitted that an earlier application, IA No. 740/2024, was duly allowed by this Tribunal by its order dated 13.09.2024, allowing the resolution plan to be taken on record. The applicant now seeks the summoning of the RP for interrogation by this Tribunal on various points (I to XI).
3. Learned counsel for the respondent bank has vehemently opposed the application. It is submitted that several applications have been filed on behalf of the applicant, each aimed at delaying the proceedings. The principal borrower, M/s Era Infra Engineering Ltd., is a separate legal entity, and the approval of the resolution plan by the Hon'ble NCLT does not prevent the respondent banks from proceeding against the guarantor and mortgager. Learned counsel for the respondent has also drawn the Tribunal's attention to pages 77 and 78 of the order of Ld. counsel for the NCLT, specifically to paragraph 8, which reflects that similar objections were previously raised and disposed of negatively. The respondent contends that this application is yet another attempt to delay the proceedings and has prayed for the dismissal of the application.
4. Considering the submissions advance on behalf of the parties, it is abundantly clear that Section 22(2) of the RDB Act grants this Tribunal the authority to summon witnesses or parties for examination if necessary for adjudicating matters before it. The power is discretionary and should be exercised judiciously, especially where summoning may contribute materially to the resolution of the dispute. It is

pertinent to note that the resolution plan of the principal borrower, M/s Era Infra Engineering Ltd., was approved by the Hon'ble NCLT; and as submitted, this Tribunal has already allowed IA No. 704/2024 to take the resolution plan on record. The issue before this Tribunal pertains to the applicant, who is either a guarantor or mortgager, and the legal principle dictates that approval of a resolution plan for the principal borrower does not necessarily absolve the guarantor or mortgager of their liabilities unless explicitly stated within the plan. Therefore, summoning the RP for interrogation must be evaluated on whether it would provide substantial clarification affecting the liabilities of the applicant in this case. The respondent bank has submitted that the repeated filing of applications by the applicant appears to be aimed at delaying the proceedings. The court's attention has been drawn to earlier objections raised by the applicant, which were negatively disposed of. Further, no specific grounds have been made by the applicant that suggest the RP's testimony is indispensable for the fair resolution of this case. The summoning of the RP would require a demonstrable necessity showing that the questions raised by the applicant cannot be answered or clarified by any other means available within the existing evidentiary record.

5. In view of the above, this Tribunal is of the opinion that the application has not made out sufficient grounds to summon the Resolution Professional for interrogation. The approval of the resolution plan by the Hon'ble NCLT pertains to the principal borrower, and no substantial issue has been raised by the applicant affecting the merits of the respondent's case against the guarantor or mortgager. Accordingly, **IA No. 1094/2024 is dismissed.**
6. List the matter on 08.10.2024 for pending IAs/final arguments.

27.09.2024


(SHIV KUMAR - I)
PRESIDING OFFICER
DRT-III, DELHI