

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB)-609(ND)/2017

CORAM:

**PRESENT: MR. L.N. GUPTA
HON'BLE MEMBER(T)**

**MS. INA MALHOTRA
HON'BLE MEMBER (J)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW DELHI
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 19.08.2019.**

NAME OF THE COMPANY: SE Investments Ltd. Vs. Soni Realtors Pvt. Ltd.

SECTION OF THE COMPANIES ACT: U/s 7 of IBC Code, 2016

S.NO. NAME DESIGNATION REPRESENTATION SIGNATURE

Present:

Mr. Rahul Kumar, Mr. P. Nagesh, Mr. harshal Kumar,
Mr. Shivam Wadhwa, Mr. Saurabh Jain, Mr. Siddharth
Jain, Mr. Anuj Kumar, Mr. Vikram Gulliya, Mr. Ashish
Rana, Mr. Anurag K. Singh, Advocates for the Petitioner
Mr. Rajeev Kumar, Mr. Abhindra Maheshwari, Mr.
Manoj K., Advocates for the Respondent

ORDER

CA 634/2019 has been filed by Bank of India. The grievance of the applicant is that the RP has neither considered their claim, nor considered them as Financial Creditors to be included as member of the COC. The RP confirms this submission and justifies it on the ground that the bank guarantee had neither been invoked nor have given rise to any financial implication. Ld. counsel for the applicant submits that the liability under the bank guarantee subsists but is only curtailed on account of the moratorium.

[Dilshad]

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Given the fact of this case where either a resolution plan or liquidation may follow, the question of being made liable under the bank guarantee to be invoked at any subsequent stage does not arise. The bank guarantee lapses ipso facto, and the bank would be within its right not to honour its commitment at a future date i.e. after CIR process has commenced. It is submitted that even the beneficiary under Bank Guarantee viz. Department of Town and Country Planning has neither raised nor filed a claim for any default of the Corporate Debtor. Given the circumstances, since no financial liability has accrued in favour of the bank, their claim under the Bank guarantee or as a financial creditor has been rightly rejected by the RP.

CA stands disposed off.

It is further being brought to the notice of this Bench that the bank guarantee had been issued against certain fixed deposits. Since the bank guarantee shall not be invoked henceforth, the Bank's lien over these fixed deposits are not justified. It is therefore directed that a bank account be opened by the Resolution Professional in which the matured proceeds of the FDR(s) shall be deposited. However, this amount shall only be disbursed or withdrawn with prior approval of this Bench.

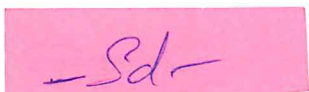
CA 688/2018 has been filed by the RP praying for setting aside a transaction termed as under-valued. Notice to the non-applicant, returnable on 4th September, 2019. Dasti. There are other applications filed by aggrieved allottees,

[Dilshad]

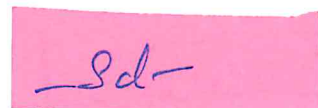


who have been classified as financial creditors and not allottees. This situation has arisen as the ex-management had sold a plot to several persons.

^{CA}
Arguments heard. Reserved for orders.



(L.N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)