

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

COURT – II

Item No. 205
(IB)-17(ND)2019

**IA/2987/2020, IA/3450/2020, IA/3451/2020, IA/3452/2020,
IA/3377/2020, IA/3349/2020**

IN THE MATTER OF:

M/s. Ample Infrastructure Pvt. Ltd.

...Applicant/Petitioner

Versus

M/s. Intellicity Business Park Pvt. Ltd.)

...Respondent

SECTION

U/s 7 of IBC, 2016

Order Delivered on 02.09.2020

CORAM:

**SHRI. CH. MOHD. SHARIEF TARIQ
HON'BLE MEMBER (J)**

**SHRI L.N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

For the Applicant	: Mr. Arvind Nayar, Ms. Upasana Chandrashekar Adv. in I.A 3450 to 3452, Mr. Atul Sharma, Mr. Sargam Seth, Ms. Renuka Iyer, Adv. for Resolution Applicant.
For the R.P	: Mr. Sameer Rastogi
For the Respondent	: Mr. Pawan Bhushan, Adv.

ORDER

IA-3349/2020: Counsel for the Resolution Professional is present. Status report is taken on record subject to just exceptions.

The I.A stands closed.

IA-3377/2020: Counsel for Resolution Professional is directed to file short notes of submission along with clarifications as to the effect as how the Resolution Applicant has complied to the conditions notified in the EoI



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and clarify the issue raised regarding performance guarantee given. He will also clarify as to why and how the CoC modified the conditions of EoI retrospectively as alleged without granting an opportunity to other prospective Resolution Applicants.

List the matter on 14th October, 2020.

IA-3450/2020,3451/2020 & 3452/2020 : Counsel for the Resolution Applicant is present. During the course of hearing, the Counsel for the applicant one Mr. Manoj Kumar Choudhary has referred to an interim order dated 25th October, 2019 passed by the Hon'ble NCLAT in the Company Appeal No. 645/2019, wherein the Hon'ble NCLAT has directed as follows:

"The CIRP process may continue as per provisions of law. In the meanwhile, however, we permit the request made by the learned Counsel for the Appellant to let him propose a scheme supported by an Affidavit as to how the Appellant wants to say that the Appellant can complete the project and satisfy all the allottees. Let the Affidavit be filed by 8th November, 2019."

As it appears from the record, the Affidavit was filed before the Hon'ble NCLAT, which vide its order dated 13th November, 2019, has rejected the Appeal. The operative part of the Hon'ble NCLAT's Order dated 13.11.2019 is reproduced below:

"10..... There is no dispute that till today, possession has not been handed over and even the affidavit filed by the Corporate Debtor, referred to above, shows poor progress in the infrastructure which has been put up.

For the above reasons, we do not find any merit in the appeal. Appeal filed is rejected."

In short, the Hon'ble NCLAT heard the appeal on merits and rejected. Obviously, the interim order dated 25th October, 2019 got merged with the final order dated, 13th November, 2019.

The Counsel for the Suspended Board of Directors has all along pleaded with this Authority to act upon the interim order passed by Hon'ble NCLAT on the 25th October, 2019 and did not disclose about the final order passed on the 13th November, 2019.

In view of the observations made by the Hon'ble NCLAT in the final order dated 13th November, 2019, it does not appear that any liberty was given to the suspended Directors for filing any Scheme, as has been projected by the Counsel for the Suspended Directors.

In view of the above, I.As 3450/2020, 3451/2020 & 3452/202 filed on behalf of the suspended directors involving the same and similar issue are not maintainable being hit by the principal of *Res-judicata*, as the issue has already been decided by the Hon'ble NCLAT while rejecting the Company Appeal No. 645/2019.

Accordingly, all the abovementioned four I.As stand **dismissed** in *limine*.

—Sd—

(L. N. GUPTA)
MEMBER (T)

—Sd—

(CH. MOHD. SHARIEF TARIQ)
MEMBER (J)