

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 361 of 2021

In the matter of:

TDH Reality LLP

....Appellant

Vs.

DHFL Investment Ltd. & Ors.

....Respondents

Present

For Appellant: Mr. Monish Panda, Mr. Kshitiz Arya & Mr. Mrinal Bharat Ram, Advocates.

For Respondents: Ms. Ekta Bhasin, Ms. Priyanka Shetty, Mr. Ranjit Shetty & Avina Karnad, for R-1/ DHFL Investment.

Mr. Arun Kathpalia, Sr. Advocate alongwith Mr. Liz Mathew, Ms. Sonali Jain, for R-2, Dewan Housing through Administrator/ RP).

Mr. Ramji Srinivasan, Sr. Advocate alongwith Mr. Raunak Dhillon, Mr. Aditya Marwah, Mr. Shubhankar Jain, Mr. Animesh Bisht, Ms. Surbhi Pareek, for R-3 / CoC.

Mr. Sanjay Bajaj, Mr. Rajat Prakash, for R-6/ IDBI.

Mr. Rohit Gandhi, for R-7 & 8/ Westland Investment & Advent Buildwell.

Mr. Ashish Bhan, Mr. Aayush Mitruka, Ms. Chitra Rentala & Ms. Samriddhi Shukla, Intervenors for Piramal Capital & Housing Finance Ltd. (SRA).

ORDER
(Virtual Mode)

18.05.2021: Learned Counsel for the Appellant Shri Monish Panda submits that Learned Adjudicating Authority vide order dated 26.03.2021 erroneously dismissed the Appellant's application as not maintainable and without any ground and providing any opportunity of hearing in Para 150 of the Impugned Order passed observations against the Appellant. If the

observations be remained on record it will prejudice the rights of the Appellant in further proceedings. Therefore, such observations may be expunged. Learned Counsel for the Appellant further submits that the Adjudicating Authority in the Impugned Order directed the CoC that in case they decide to sale the compulsory convertible debentures held by the Appellant then before sale they will give the notice to the Appellant minimum for 48 Hrs. It is so short time that if any occasion arises then the Appellant could not approach the Appropriate Authority. Thus, by way of Interim Relief at least ten days' time may be given to approach the Appropriate Authority.

Issue notice.

Counsel Appearing on behalf of the Respondent Nos. 1,2,3,6,7 & 8 accepts notice.

Learned Senior Counsel Shri Ramji Srinivasan appearing on behalf of Respondent No. 3 submits that the CoC has not taken any decision to sale the CCDs held by the Appellant Company. The Appellant Company is not affected by the CIRP. Therefore, Learned Adjudicating Authority has rightly held that the Appellants Application is not maintainable. So far as the observations in Para 150 of the impugned order is concerned it is only an Obiter dictum. There is no merits in the Appeal, therefore, the Appeal is liable to be dismissed at motion stage.

Learned Senior Counsel Shri Arun Kathpalia and Ld. Counsel for the others Respondents adopts the arguments of Ld. Sr. Counsel Shri Ramji Srinivasan.

We have considered the submissions of the Learned Counsel for the Parties. Observations made by Learned Adjudicating Authority in Para- 150 of the Impugned Order is as follows:-

150. Further upon analysis of the balance sheet of the Applicant TDH Reality LLP it is observed the paid-up capital of the Applicant is only Rupees One Lakh and the Company was incorporated recently. Ld. Senior Counsel Mr. Joshi, submitted that the purported claim/the transaction of the Applicant having made an investment of approximately Rupees One Thousand Five Hundred Forty-Eight Crores and taking over the liability of approx. Rupees Seventeen Hundred Crores is without any financial backing of the Applicant. After perusal of the balance sheet of the Applicant the Adjudicating Authority also concurs with the submissions of the Ld. Senior Counsel and this transaction of having invested more than Rupees One Thousand Five Hundred Crores in the CCDS is not convincing, satisfying without any financial backup, capability and appears to be only book entry and not supported with any financials.

The above observations are not related to maintainability of the application. Therefore, the said observation shall not be treated as precedent for further proceedings.

In Para-148 of the Impugned Order Learned Adjudicating Authority directed that:

“Though the matter was heard at length on various occasions as stated above Ld. Senior Counsel Mr. Ravi Kadam submitted that the sale of shares held by DHFL Investments Ltd in DPLI i.e. Respondent No. 5 did not fructify. Therefore, at this juncture they are not selling the shares of DIL (R1) held in DPLI (R5). He further submitted that in case the Respondent No.1 intends to sell its shares in Respondent No. 5 company DHFL Pramerica Life Insurance Ltd, prior notice of minimum 48 hours to 72 hours would be given to the present applicant.”

we are of the view that 48 Hrs. notice period is too short, therefore, by way of Interim Relief we direct that in case the DHFL Investments Limited intends to sale its shares to DHFL Pramerica Life Insurance Ltd prior 10 days clear notice would be given to the Appellant.

Issue Notice to other Respondents by speed post. Requisites alongwith process fee, be filed, if not filed within two days, if the Appellant provides the email id of the Respondents. Let notice be also issued through email.

Let the matter be fixed 'For Admission (After Notice)' on **14th June, 2021**

Meanwhile, the Respondents may file Reply Affidavit within two weeks. Rejoinder, if any, may be filed within one week thereafter.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Mr. V.P. Singh]
Member (Technical)

Sim/Md