

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 28.02.2019
Complaint No.	1095/2018 case titled as Mohan Lal Vs Earth Infrastructures Limited
Complainant	Mohan Lal
Represented through	Prerna Gupta, Advocate
Respondent	Earth Infrastructures Limited
Respondent Represented through	None appeared for the respondent
Last date of hearing	First hearing
Proceeding Recorded by	H.R.Mehta and S.L.Chanana

**Proceedings****Project is not registered with the authority.**

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

Complaint was filed on 09.10.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 11.10.2018, 29.10.2018 and 29.11.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on 29.10.2018 and on 29.11.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent neither filed the reply nor come present before the authority. From the above stated conduct of the respondent, it appears that respondent

does not want to pursue the matter before the authority by way of making personal appearance by adducing and producing any material particulars in the matter. As such, the authority has no option but to proceed ex-parte against the respondent and to decide the matter on merits by taking into account legal/factual propositions, as raised, by the complainant in his complaint.

A final notice dated 18.2.2019 by way of email was sent to both the parties to appear before the authority on 28.2.2019.

Counsel for the complainant has apprised the authority that respondent has already approached the National Company Law Tribunal. In complaint No.101/2018 decided on 10.01.2019, Counsel for respondent has produced a copy of order CP.No.IB-401/(ND)/2017 in the matter of **Deepak Khanna versus Earth Infrastructures Limited** vide which Hon'ble Dr. V.K. Subburaj, Member (Technical) and Mr. R.Varadharajan, Member (Judicial) have passed order dated 6.6.2018, the operative part of para nos.8 is reproduced as under:-

*"The Financial Creditor has proposed Shri Surinder Kumar, registered with ICSI-IPA having registration number IBBI/IPA-001/IP-P00043/2017-18/10117, (email: [skjunejaa65@gmail.com](mailto:skjunejaa65@gmail.com)) as the interim resolution professional and a written communication in the format prescribed under Forum 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) rules, 2016 has been filed by the proposed interim resolution professional. As a consequence of the application being admitted in terms of Section 7 of the Code of Moratorium as envisaged under the provisions of Section 14(1) and as extracted*

*(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution*



***of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;***

- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;***
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;***
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.***

***However during the pendency of the moratorium period in terms of Section 14 (2) and 14 (3) as extracted hereunder:***

***(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.***

***(3) The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.***

***The duration of the period of moratorium shall be as provided in Section 14 (4) of the Code and is reproduced below for ready reference:***

***(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:***


***Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an***


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***order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.***

In view of the decision taken by the National Company Law Tribunal Special Bench, New Delhi whereby the NCLT has imposed moratorium on further proceedings. As such, complainant may pursue the case before the NCLT. Accordingly, complaint stands disposed.

File be consigned to the registry.

  
Samir Kumar  
(Member)  
28.02.2019

  
Subhash Chander Kush  
(Member)