

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 10.01.2019
Complaint No.	677/2018 Case Titled As Mrs. Mithilesh Gupta Vs M/s Earth Infrastructure Private Limited.
Complainant	Mrs. Mithilesh Gupta
Represented through	None for the complainant
Respondent	M/S Earth Infrastructure Private Limited.
Respondent Represented through	Shri Prateek Yadav Advocate for the respondent.
Last date of hearing	4.10.2018
Proceeding Recorded by	Naresh Kumari & 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.

Shri Prateek Yadav, Advocate has appeared on behalf of the respondent and filed a copy of order dated 6.6.2018 passed by NCLT, New Delhi in complaint bearing No.24 of 2018.

Complaint was filed on 3.8.2018. Notices w.r.t. reply to the complaint were issued to the respondent on 4.9.2018, 25.9.2018 and 16.10.2018. Besides this, a penalty of Rs.5,000/- and Rs.10,000/- was also imposed on

25.9.2018 and 16.10.2018 for non-filing of reply even after service of notices. However, despite due and proper service of notices, the respondent did not file the reply.

A final notice dated 31.12.2018 by way of email was sent to both the parties to appear before the authority on 10.1.2019.

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) 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

- (i) 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;*
- (j) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (k) 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;

- (1) 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 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)
10.1.2019

Subhash Chander Kush
(Member)