



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

Volume 06 | Number 04

(January 23, 2023)

**Wave Megacity Centre Private Limited Vs Rakesh Taneja & Ors.**  
**Company Appeal (AT) (Insolvency) No. 918 of 2022**  
**Date of NCLAT's Judgements: January 05, 2023**

### Facts of the Case: -

An appeal is filed by the Wave Megacity Centre Private Limited “Wave Megacity”, the Corporate Debtor (hereinafter “Appellant”) at NCLAT after aggrieved by order dated 06.06.2022 passed by National Company Law Tribunal, New Delhi. A Lease Deed dated 02.09.2011 was signed between Noida Authority and Wave Megacity Ltd. in respect of Plot No.CC001, admeasuring 618,952.75 sq. mtrs. situated at sector 25A and sector 32, NOIDA for a period of 90 years.

After the allotment, the Appellant launched multiple Residential and commercial Projects on the Project land in 2011-12 in the parent name “Wave Mega City Centre. The possession of the Units in the Residential Project was promised to be handed over to the Homebuyers by 2016, for which Appellant had taken 90% consideration from majority of Homebuyers before 2016 itself. The Appellant did not complete the construction nor handed over the possession and from 2017 onwards, the construction of the Project was stopped. Meanwhile State government announced the Project Settlement Policy (“PSP”) in the year 2016 allowing developers/ builders to return Project land if they were unable to construct upon.

Under the said project, the Appellant surrendered the area of 454,131.62 sq. mtrs. The Area of 56,400 sq. mtrs was allotted to the Wave Megacity in consideration of the various payments made until the year 2017 and the Area of 1,08,421.13 sq. mtrs was allotted to Wave Megacity at the prevailing rate of year 2017, i.e., Rs.1,60,000/- per sq. mtrs.. Noida authority issued various demand notices to appellant for clearing the dues, however appellant challenged those notices.

Meanwhile the CD filed an Application under Section 10 of the Code dated 25.03.2021 praying for initiation of “CIRP” on the ground of default on its part. However, several Intervention Applications were filed raising objection to the main Company Petition by the Homebuyers and the Noida Authority, pleading that Petition under Section 10 by the CD has been filed fraudulently and with malicious intent for the purpose other than for resolution of insolvency.



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)



## NCLAT Observations:

The Appellate Tribunal observed that the resignation of Directors (being directors from day 1 in the company) just few months before filing of Section 10 Application and claiming dues as Financial Creditor in Section 10 application fully proves the malicious intention of the Corporate Debtor. The Adjudicating Authority noted that there are total 285 cases pending against the Corporate Debtor, involving an amount of more than Rs.253 crores. Thus it indicates that dominant purpose and object of filing Section 10 Application was to save the Corporate Debtor from liabilities, responsibilities and prosecution.

The NCLAT referred to Hon'ble Supreme Court judgement in **Ramjas Foundation and Anr. vs. Union of India and Ors.** **“That a person is not entitled to any relief, if he has not come to the Court with clean hand.”**

The Court didn't do not find any error in rejection of Section 10 Application by AA.

**Order/Judgement:** The Appellate Tribunal was satisfied that Adjudicating Authority did not commit any error in allowing Section 65 Applications and rejecting the Section 10 Application because initiation of proceedings under Section 10 was done fraudulently and maliciously for purpose other than resolution.

**Case Review:** The Appeal is dismissed. No costs