

**BEFORE MAHARASHTRA REAL ESTATE  
APPELLATE TRIBUNAL MUMBAI**

**M. A. No.825/22 (I. R.)**

**With**

**M. A. No.262/23 (Setting aside Exparte Order by R-3)**

**In**

**APPEAL NO. AT006000000053295/2021**

HDFC Ltd.

... Appellant

V/s.

Samir T. Hosangandy & Anr.

... Respondents

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*Adv. Ms. Nisha Mehra for Appellant*

*Adv. Mr. Rakesh Misar for Respondent Nos. 1 and 2*

*Adv. Ms. Protyusha alongwith Adv. Mr. Abir Patel for Respondent No.3/*

*Radius Estates and Developers Pvt. Ltd. (Applicant)*

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**CORAM : SHRI SHRIRAM. R. JAGTAP, MEMBER (J), &**

**DR. K. SHIVAJI, MEMBER (A)**

**DATE : 20<sup>th</sup> February, 2024**

**(THROUGH VIDEO CONFERENCE)**

Advocate Ms. Nisha Mehra for Appellant. Advocate Mr. Rakesh Misar for Respondent Nos. 1 and 2, Advocate Ms. Protyusha for Respondent No.3.

2] Matter is kept back.

**Later on at 1.00 pm**

3] Advocate Ms. Nisha Mehra for Appellant. Advocate Mr. Rakesh Misar for Respondent Nos.1 and 2, Advocate Ms. Protyusha alongwith Advocate Mr. Abir Patel for Respondent No.3.

 1

**M. A. No.262/23 (Setting aside Exparte Order by R-3)**

We have heard Advocate Ms. Nisha Mehra for Appellant and Advocate Ms. Prottyusha for Respondent No.3/ Applicant.

2] By this Application Respondent No.3 has prayed to set aside the Order dated 17.01.2023 by which Appeal has been proceeded ex-parte against the Respondent No.3 on the grounds enumerated in the Application. Appellant has filed reply to this Application and has stiff opposition to the Application. The material produced on record by Applicant clearly indicate that Corporate Insolvency Resolution Process Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed against the Applicant/ Respondent No.3 before the NCLT. The public notice was published in newspaper which clearly indicates that in 2021 Resolution Professional was appointed. Despite this, the Appellant did not take pains to serve Notice on the Resolution Professional of Respondent No.3. Record reveals that the Appellant had successfully served the Notice on the Respondent No.3 in 2022. We are of the view that this is not a good service.

3] It is not in dispute that in January, 2023 one Adani took charge of the Respondent No.3 and for the first time came to know about the Order dated 17.01.2023 which records that the Appeal is to proceed ex-parte against the Respondent No.3. Thereafter the Respondent No.3 has moved this Application on the ground that until the NCLT Order was passed, the Applicant has participated in all proceedings from which this Appeal emanates and remained to be represented when it was not even in charge of its affairs, and therefore for no fault of its own. It is well settled that lis is to be decided on merit.

 2

Considering the grounds put forth by Applicant, we are of the view that there is no impediment in setting aside the Order dated 17.01.2023. Accordingly, Order dated 17.01.2023 that Appeal is to proceed ex-parte against the Respondent No.3 is set aside.

4] No Order as to cost.

### **In Appeal**

Respondent No.3 is directed to file reply to Appeal on or before the next date and shall serve the copy of the same to other side well in advance.

2] Stand over to 5<sup>th</sup> March, 2024 for filing reply by Respondent No.3 in Appeal.

  
(DR. K. SHIVAJI)

MBT/13

  
(SHRIRAM. R. JAGTAP)