

IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III

Item No. 01

IA-2194/2022 IA-5764/2021 IA-4171/2021 IA-3593/2021

In

(IB)-2130(ND)2019

IN THE MATTER OF:

M/s. Dynacon Projects Pvt. Ltd

.....OPERATIONAL CREDITOR

Vs.

M/s. Today Homes & Infrastructure Pvt. Ltd.

.....CORPORATE DEBTOR

SECTION

U/s 9 of IBC, 2016

Order Pronounced on 01.08.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA-2194/2022 IA-5764/2021 IA-4171/2021 IA-3593/2021 are **dismissed**.

-SD-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

IA-3593/2021

In

Company Petition No. (IB)-2130(ND) 2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:-

M/s. Dynacon Projects Pvt. Ltd

..... **Applicant/Operational Creditor**

Versus

M/s. Today Homes & Infrastructure Pvt. Ltd

..... **Respondent/Corporate Debtor**

AND

IN THE MATTER OF:-

RKG Asset Management LLP

.....**Applicant**

Pronounced on 01.08.2023

CORAM:-

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant : Adv. Malak Bhatt in IA-3593/2021.

For the Respondent :

ORDER

Per Shri Bachu Venkat Balaram Das, Member (J)

- 1.** The present application has been filed by RKG Asset Management LLP, who is an Investment Manager of RKG Trust, a category II Alternative Investment Fund registered with SEBI, seeking directions to the Resolution Professional who has issued Request For Resolution Plan (RFRP) Document dated 29.12.2020. The Applicant's contention is that the said RFRP document contains onerous and discriminatory clauses that have skewed the resolution process of the Corporate Debtor in favour of some Resolution Applicants and thereby vitiated the Resolution Process.
- 2.** It is submitted that the Request For Resolution Plan document provided for extremely onerous and discriminatory terms and conditions in respect of deposit for Earnest Money Deposit and Performance Security Guarantee

amounts. The relevant clauses pertaining to deposit of Earnest Money Deposit and Performance Security in the Request For Resolution Plan dated 29.12.2020 are reproduced below.

“3.13.1 Submission of Earnest Money Deposit

A. For Registered Association/Society or consortium of registered association/societies of unit-holders/allottees of one or more of the Projects of the Corporate Debtor: Rs.10,00,000.

B. For consortium of registered association/society of unit holders/allottees of one or more projects of the CD with any third-party entities, EMD to be deposited by the consortium shall be as per clause C below as multiplied the ratio of share of such third-party entity. The EMD shall be in the form and manner as prescribed in the clause C below.

C. For all other Resolution Applicants: All other Resolution Applicants shall deposit Rs.5,00,00,000/- as an Earnest Money Deposit (EMD), either in the form of Bank Guarantee (BG) with any Scheduled Commercial Bank (the validity period of Bank Guarantee for earnest money should not be less than one year.”

“3.13.3 Submission of Performance Security

The Successful Resolution Applicant shall furnish Performance Security within seven days of issuance of letter of intent (LoI) by the Resolution Professional. The amount of such Security shall be:

A. For registered Association/Society or consortium of registered association/societies of unit-holders/allottees of one or more of the projects of the Corporate Debtor: Rs.10,00,000/-.

B. For consortium of Registered Association/society of unit-holders/allottees of one or more of the projects of the Corporate Debtor with third party entities. Performance Security shall be as per clause C below as multiplied by the ratio of shareholding of such third-party entity in the consortium.

C. For all others: 15,00,00,000/- or 10% of the bid amount, whichever is higher.

- 3.** The Applicant is aggrieved with the Clause 3.13.1. to 3.13.3, in the Request For Resolution Plan document which provides for hugely discriminatory amounts for Registered Associations/Societies and other class of Resolution Applicants. While the Earnest Money Deposit was set at Rs.10,00,000/- for the Registered Associations, the same was set at

Rs.5,00,00,000/- for all other Resolution Applicants. Similarly, while the Performance Security was set at Rs.10,00,000/- for Registered Associations, the same was set at Rs.15,00,00,000/- for all other Resolution Applicants. It is also submitted that artificial distinction created by the Resolution Professional between homebuyers/Registered Associations and other Resolution Applicants distorts the level playing field between the Resolution Applicants.

4. The Applicant submitted an initial Compulsory Deposit of INR 10,00,000/- on 09.01.2021. However, it was communicated to the Applicant that it will have to deposit an EMD of Rs. 5 crores to be eligible for being considered as a Resolution Professional in line with the RFRP document. The Applicant duly requested the Resolution Professional of the Corporate Debtor to reduce the EMD and PBG to the limit set for Registered Associations but to no avail.
5. The Applicant submitted that the provisions contained in Section 25(2)(h) of the IBC, 2016 read with Regulation 36A of the CIRP Regulations, 2016 permits different categories based on the type of Resolution Plans, but there cannot be any distinction based on the nature of the Resolution Applicants. Therefore, the distinction created by Clauses 3.13.1 to 3.13.3 of the Request For Resolution Plan (RFRP) Document dated 29.12.2020 is liable to be set aside.
6. The Resolution Professional at the outset raised a preliminary and technical objection that the Applicant has not impleaded either the Resolution Professional or the Committee of Creditor as parties to the present application even though the Applicant has sought directions to be issued to the Resolution Professional or the Committee of Creditors. The present reply is being filed in compliance with the directions of this Tribunal dated 30.11.2021. The said order is extracted below: -

“IA-3593/2021: -

None appears for the Applicant. Therefore, the IA is dismissed as withdrawn.

Later on, subsequently, Ld. Counsel for the Applicant appears and submits that he was disconnected for which he could not present at the time of hearing of the application. He further submits that let the application be treated as objections to the Resolution Plan. Ld. Counsel for the RP appears and accept

the notice of this application. He is directed to file reply within two weeks. Rejoinder, if any, within a week thereafter. List on 20.01.2022.”

- 7.** It is also submitted that the present application has become infructuous in view of the fact that the Resolution Plan submitted by a Consortium of Canary Greens Buyers Welfare Association, Callidora Flat Owners Welfare Association and Royal Elegancia Apartment Buyers Association (in short “Consortium RA”) has been approved by the CoC through e-voting concluded on 16.08.2021 with 96.93% votes and the application seeking approval of the Resolution Plan is pending before this Tribunal.
- 8.** It is submitted that the eligibility criteria and RFRP have been duly approved by the CoC in terms of Section 25(2)(h) of the Code read with Regulation 36A & 36B of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 wherein the CoC has fixed certain criteria having regard to the complexity and scale of operations of the business of the Corporate Debtor. The CoC has further considered the categories of Prospective Resolution Applicants (hereinafter “PRAs”) who may express their interest in the Corporate Debtor and has fixed such criteria. Only after due approval of the CoC on the above aspects, eligible PRAs were invited for submitting Expression of Interest for Resolution Plans of the Corporate Debtor. The said eligibility criteria was placed in third meeting of CoC held on 15.02.2020 and was duly approved by the CoC.
- 9.** Thereafter, the RP published Form G pursuant to which 17 EoIs from PRAs were received. The RFRP including the amount of EMD and Performance Security was placed in the 7th meeting of the CoC held on 21.12.2020 and was approved by the CoC through e-voting by majority of 86.35% votes.
- 10.** The RP received Resolution Plans from the following Resolution Applicants, namely:-
 - a. ATS Infrastructure LTD – RA 1
 - b. Consortium of 3 Associations – RA 2
 - c. Krish Infrastructure Pvt Ltd – RA 3
 - d. I & E Advertising Pvt Ltd – RA 4
- 11.** It is further submitted that out of the four PRAs, only RA2 and RA4 submitted the mandatory EMD amount along with their Resolution Plans and the RA1 and RA3 did not submit their EMD. The Plan submitted by all the PRAs was placed before the CoC in the 10th meeting held on 27.03.2021 for

considering the agenda and relaxation of submission of EMD. However, the CoC rejected the said proposal.

- 12.** We have heard the submissions made by the Learned Counsel for both the parties and perused the application.
- 13.** We have perused Clause 3.13.1 of RFRP document which deals with submission of Earnest Money Deposit and Clause 3.13.3 of RFRP document which deals with submission of Performance Security. The RFRP document dealing with the said Clauses was placed in the 7th meeting of CoC held on 21.12.2020 and was duly approved by the CoC through e-voting by majority of 86.35% and the same was shared with the Applicant on 29.12.2020. The Applicant was required to deposit the amount towards the Earnest Money and Performance Security as per the said Clauses.
- 14.** It is noted that the Applicant never raised any objections either with CoC or Resolution Professional regarding the issues raised in the present application at the time of issue of RFRP. The Applicant also never submitted any Resolution Plan in the CIRP of the Corporate Debtor. It is further seen that the Applicant raised objections with regard to the clauses of the RFRP for the first time on 11.08.2021, after 7 months of the receipt of the RFRP document by RP and after the Resolution Plans received by other Resolution Applicants were already put to vote by the RP in the 12th CoC meeting held on 10.08.2021. It is therefore submitted that such belated action on the part of Applicant cannot be considered at this stage. The Resolution Plan has already been approved by the CoC through e-voting concluded on 16.08.2021 with 96.63% votes and an application seeking approval of the Resolution Plan is pending adjudication before the Adjudicating Authority. The RP has also submitted that the Applicant never participated in the Resolution Plan process and therefore is not only a rank outsider but also not qualified to be a Resolution Applicant.
- 15.** It is well-settled proposition of law that the Adjudicating Authority cannot question the commercial wisdom of the CoC. It is up to the Committee of Creditors to decide certain aspects of the CIR Process, subject to the IB Code and Regulations. This includes the eligibility of Resolution Applicants. The IBC does not mandate specific uniform criteria for the invitation of Resolution Plans, and the Committee of Creditors is allowed to set its criteria on a case-by-case basis.

16. Having considered the facts and circumstances of the case and keeping in view of the fact that the RFRP document was placed before the CoC and the CoC in its 7th meeting held on 21.12.2020 has approved the RFRP & Evaluation Matrix by majority of 86.35%. Further, The Applicant never raised any objection to the same and deposited a sum of Rs. 10 Lakhs but did not submit the Resolution Plans. We are of the view that the instant application bereft of any merits and the same is **dismissed**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

I.A-4171/2021

In

Company Petition No. (IB)-2130(ND) 2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:-

M/s. Dynacon Projects Pvt. Ltd

..... **Applicant/Operational Creditor**

Versus

M/s. Today Homes & Infrastructure Pvt. Ltd

..... **Respondent/Corporate Debtor**

AND

IN THE MATTER OF:-

Mr. Ankur Narang & Others

.....**Applicant**

Versus

Mr. Nilesh Sharma

Resolution Professional of Today Homes

and Infrastructure Private Limited

.....**Respondent No. 1**

&

M/s Today Home and Infrastructure Private Limited

Through Resolution Professional Mr. Nilesh Sharma

.....**Respondent No. 2**

&

Mr. Rajiv Goel (President)

Consortium of Canary Greens Buyers Welfare Association,

Callidora Flat Owners Welfare Association and Royal.

Elegancia Apartment Buyers Association

(Resolution Applicant).

.....**Respondent No. 3**

Pronounced on 01.08.2023

CORAM:-

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant : Mr. Arun Saxena, Mr. Rahul Singh, Advocates in IA 4171/2021

For the Respondent :

ORDER

Per Shri Bachu Venkat Balaram Das, Member (J)

1. This application has been filed by 25 Applicants having similar cause of action. The claim of the Applicants herein is based on an order dated 31.01.2017 passed by the National Consumer Redressal Commission. The Applicants herein are allottees of residential flats in a project, namely Canary Greens, which is being developed in Sector 73 Gurgaon. Each of the Applicants was allotted one residential flat in the said project. Since, the possession of the flats were not offered to them within the stipulated time, the Applicants approached the Consumer Commission by way of filing individual complaints. The NCDRC vide order dated 31.01.2017 disposed of all the complaints with the following directions:-

i. *The opposite party shall refund the entire amount received from the complainants, including the payment, if any, made by the predecessor in interest, including service tax and VAT, along with compensation in the form of simple interest @10% per annum from the date of each payment till the date on which the entire amount, in terms of this order along with compensation in the form of interest is actually refunded to them, by way of demand draft/pay order:*

ii. *The opposite party shall pay Rs. 10000/- as the cost of litigation in each complaint.*

iii. *The payment, in terms of this order shall be made within three months from today.*

Subsequently, the Applicants filed the Execution Petition and received compensation in terms of order dated 31.01.2017 with simple interest @10% from 31.01.2017 till the Insolvency Commencement date of the Corporate Debtor i.e. 31.10.2019. However, it is submitted that the principal amount is yet to be recovered from the Corporate Debtor.

2. The Applicant No. 1, i.e. Mr. Ankur Nanag submitted that the claim in Form CA dated 11.11.2019 was filed for Rs. 63,81,534/- as a Financial Creditor in Class A in respect of CIRP of Respondent No. 2 and the claim was admitted by the RP. The claims of the remaining 24 Applicants were also admitted and details are mentioned in the table below:-

Sr. No.	Name of the Applicants	Claim Admitted by RP
1.	Mr. Achal Sangal	Rs. 49,91,326/-

2.	Mr. Rajesh Kumar Gutpa	Rs. 54,82,873/-
3.	Mr. Ankit Agarwal	Rs. 63,81,513/-
4.	Mr. Rajesh Kumar	Rs. 58,07,596/-
5.	Mr. Bibhuti Ranjan Pradhan	Rs. 43,82,041/-
6.	Mr. Ashish Raizda	Rs. 64,07,859/-
7.	Mr. Adhish Kapoor	Rs. 48,65,724/-
8.	Mr. Satish Kumar Verma	Rs. 64,70,456/-
9.	Mr. Amit Khanna	Rs. 52,80,049/-
10.	Mr. Rajat Mehta	Rs. 63,36,940/-
11.	Smt. Shashi Bala Mehrotra	Rs. 58,10,545.54/-
12.	Mr. Aseem Sachdeva	Rs. 61,99,457/-
13.	Mr. Anand Mohan Tewari	Rs. 52,68,184/-
14.	Ms. Manasi Gupta	Rs. 66,54,193/-
15.	Mr. Pradeep Agrawal	Rs. 49,91,326/-
16.	Ms. Sangeeta Lahoti	Rs. 57,84,809/-
17.	Mr. Vijay Pal Singh Rathore	Rs. 67,07,277/-
18.	Mr. Vipin Aggarwal	Rs. 63,92,453/-
19.	Mr. Sunil Puri	Rs. 60,87,393/-
20.	Ms. Rukmani Gupta	Rs. 63,20,105/-
21.	Mr. Ashish Sethi	Rs. 57,88,322/-
22.	Mr. Tribhawan Nath Bhan	Rs. 62,32,410/-
23.	Ms. Manju Gupta	Rs. 62,32,410-
24.	Mr. Bharat Madan	Rs. 50,42,808/-

3. The Applicant herein have filed the present application broadly seeking two reliefs:-

i. To direct the CoC/RP to consider the objections of Applicants herein and obtain revised/amended Resolution Plan from the Resolution Applicant in compliance with order dated 31.07.2017 passed by Hon'ble NCDRC.

ii. To direct the CoC/RP to notify the Resolution Applicant to amend the detrimental clauses i.e. Clause 9.2.2 B (iii) of the Resolution Plan to secure interest of the Applicants and in compliance with order dated 31.01.2017 passed by Hon'ble NCDRC.

4. The Applicants have submitted that they have filed their claims only for the outstanding/principal amount. The Resolution Plan is not acceptable because the amount of compensation has been deducted from the principal amount and further interest also has been deducted from the principal amount which are the legitimate claims of the Applicant. (Para 21 & 22 of the application).

5. The Resolution Professional/Respondent has filed a reply affidavit to the present application raising various contentions, which are as follows:-

i. The Application is not maintainable because the CoC against whom prayers have been sought for has not been impleaded as a party and therefore, the application should be dismissed as not maintainable on the ground of non-joinder of parties.

ii. The Applicants who are a minority group of Home Buyers have no locus to challenge the Resolution Plan.

iii. The Application has become infructuous because of the reasons that the Resolution Professional has already admitted the claim of the Applicants and thus no cause of action survives.

iv. The Resolution Professional has taken into account the claims of the Applicants in the Resolution Plan and appropriate provision has been made in Clause 9.2.2(B)(iii) of the Resolution Plan.

v. The Resolution Plan once approved by the CoC is not subject to judicial intervention.

6. We have heard the submissions made by the Learned Counsel appearing for the Applicant as well as Learned Counsel appearing for the Resolution Professional and perused the records. As is evident from the pleadings and submissions made by the Learned Counsel appearing for the Applicant, the claim of the Applicants are based on the order dated 31.01.2017 passed by Hon'ble NCDRC. The Applicants have submitted that they have filed claims before the IRP in Form CA as Financial Creditors in Class A for the amount due as on the date of Insolvency Commencement date. The claims of the

Applicants were provisionally admitted by Mr. Deepak Bansal, IRP. However, Mr. Nilesh Sharma who was subsequently confirmed as the Resolution Professional and replaced Mr. Deepak Bansal was informed by the Applicants vide email dated 21.05.2020 that their claim amount needs to be recalculated and therefore the claims are being shifted provisionally from the admitted category. (Para 9 & 10 of the application).

7. The Resolution Professional informed the Applicants that the interest received by the Applicants on the amount received from the Corporate Debtor for the period from January, 2018 to 31.10.2019 will not be considered. The Resolution Professional sent another email dated 26.05.2020 and asked the Applicants to revise their claims. The Applicants replied stating that the claims have been calculated properly basing on the order passed by the NCDRC.
8. Learned Counsel for the Resolution Professional has raised a preliminary objection as to the maintainability of the application on the ground of non-joinder of parties inasmuch as the CoC has not been arrayed as a party even though reliefs have been claimed against it.
9. With regard to the merits of the matter, Learned Counsel submitted that the Applicants herein are 25 Home Buyers out of a total of approximately 1500 Home Buyers. The total claims of the Home Buyers against the Corporate Debtor amounts to Rs. 1110.20 crores as against the admitted claims of the Applicants which is Rs. 14 crores approximately. Relying upon the judgment passed by the Hon'ble Supreme Court of India in the case of *"Jaypee Kensington Boulevard Apartments Welfare Association and Others Versus NBCC (India) Limited and Others reported in 2021 SCC Online SC 253*, wherein it has been held that the *"divergence views within a class may exist but the vote being only of a class, disentitles any individual members of a class to seek interference of proceedings under the Code."* The Learned Counsel submitted that the Applicants who are merely 25 Home Buyers out of a total class approximately 1500 Home Buyers cannot raise objections to the Resolution Plan, particularly when the Home Buyers as a class have voted in the Resolution Plan submitted by the Respondent No. 3 through their Authorized Representative. The Learned Counsel further submitted that the Resolution Plan has already been approved by the CoC through e-voting which was concluded on 17.08.2021 and was approved with 96.93% majority. Therefore, the Commercial Wisdom of the CoC cannot be questioned and the decision of the majority of Home Buyers in class who were represented through

Authorized Representative in CoC in terms of Section 25A(3)(A) of the Code having voted in favour of the Resolution Plan. Thus, the present Applicants have no locus-standi to question the same. Learned Counsel further submitted that the claims of the Applicants have been duly taken into account in the Resolution Plan and adequate provisions have been made therein.

10. As far as prayer (b) of the application is concerned, it is pertinent to refer to clause 9.2.2 B (iii), which are reproduced as under: -

9.2.2 B

Claim of Financial Creditors in class for project at Sector 73 Gurgaon in the project namely Callidora, Canary and Royal and Project at Sector Omega I, Greater Noida namely Kings Park, for claims where refunds are ordered as per the order of NCRDC/ SCRDC/ RERA/Other Authorities.

(iii)The Hon'ble court/authorities have already ordered for refund and therefore they are not entitled for booked apartment/shops/units and their units will be treated as cancelled. The resolution applicant will settle the admitted claims of such financial creditors in class by refunding the total admitted principal amount paid by them (net of taxes) after deduction of all amounts already refunded/paid to them, Principal amount will not include amount paid towards taxes, late payment fees, interest of penalty. All refund made to such allottee till effective date will be treated as refund towards principal amount."

To compensate such allottees towards additional cost including legal cost incurred by them, Resolution applicant propose to pay 35% of the additional amount realized by the resolution applicant on sale of units booked by such allottee. The additional amount realized will be the difference between the value received by the RA on sale of such units and the value of the unit as per BBA Agreement.

In case the units are not resold and the same are still with corporate debtor as unsold inventory, on the request of such creditors made within 30 days from effective date, Resolution Applicant will have option to restore their booking, provided such financial creditors refunds all amount received by them towards cancellation of booking, pay total due installments till the date of resolution and comply with other terms including for timely payments of future demands, as applicable on financial creditors in same class (cases of-booking are not cancelled as stated in above clauses).

To further compensate allottee in this category, in case of allotment of units, the total amount already refunded to such allottee on effective date will be received back in 6 equal monthly installments without any interest. The allottee need to pay due installments if pending and further dues installments based on completion stage within 15 days of demand notice. "

The said clause was part of the plan, and the plan was duly approved by the members of CoC with a whopping majority of 96.93%. A resolution plan providing a lesser amount than admitted does not make it illegal. Hence, there is no reason for this Tribunal to direct the Resolution Applicant to amend Clause 9.2.2 B (iii) of the Resolution Plan.

- 11.** We agree with the submissions made by the Learned Counsel for the Resolution Professional and we are of the considered view that the commercial wisdom of the CoC as has been held by the Hon'ble Supreme Court in various judgments cannot be called in question. Moreover the Resolution Plan makes adequate provisions for consideration of the claims of the Applicants. Therefore, we are not inclined to entertain the present application.

Accordingly, IA-4171/2021 stands **dismissed**.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

I.A-5764/2021

In

Company Petition No. (IB)-2130(ND) 2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:-

M/s. Dynacon Projects Pvt. Ltd

..... **Applicant/Operational Creditor**

Versus

M/s. Today Homes & Infrastructure Pvt. Ltd

..... **Respondent/Corporate Debtor**

AND

IN THE MATTER OF:-

M /s Shree Resham Textile Mills Ltd

.....**Applicant**

Versus

Mr. Nilesh Sharma, RP & Others

Resolution Professional

.....**Respondent No. 1**

&

Consortium of Canary Greens Buyers Welfare Association

Callidora Flat Owners Welfare Association and

Royal Elegancia Apartment Buyers Association (RP)

.....**Respondent No. 2**

Pronounced on 01.08.2023

CORAM:-

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant : Mr. Ashok Rajagopalan, Advocate in IA-5764/2021

For the Respondent :

ORDER

Per Shri Bachu Venkat Balaram Das, Member (J)

1. This application has been filed by M/s. Shree Resham Textile Mills Limited, the Applicant herein, who is a dissenting Financial Creditor, under Section 60(5) read with Section 30 & 31 of the Code, raising objections to the Resolution Plan submitted by Consortium of Canary Greens Buyers Welfare

Association, Callidora Flat Owners Welfare Association and Royal Elegancia apartment Buyers Association.

- 2.** It is stated that M /s Shree Resham Textiles Mills Ltd. (“ the Objector”) is a Financial Creditor of the Corporate Debtor by virtue of an Arbitral Award dated 01.07.2017 in favour of the Objector for a sum of Rs. 55,22,91,777/- along with interest @18% p.a. on the said amount and costs of Rs. 33,33,000/-.
- 3.** The Applicant/Objector is an unsecured Financial Creditor having no charge over the fixed assets of the Corporate Debtor. The Applicant has filed this application raising objections to the Resolution Plan submitted by the Resolution Applicant on the ground that the Plan fails to comply with the mandatory provisions contained in Section 30(2)(b) of the Code and Regulation 38 of the CIRP Regulations of the Code.
- 4.** It is submitted that the Resolution Professional received two Resolution Plans which were placed before the CoC in its 12th Meeting and put to vote. The CoC approved the Resolution Plan with 96.93% voting. It is submitted that the Applicant having 2.84% voting right abstained from voting and is a dissenting Financial Creditor to the Resolution Plan and therefore entitled to be paid in priority over all other Financial Creditors who voted in favour of the Resolution Plan under the provisions of Section 30(2)(b) of the Code and Regulation 38 of the CIRP Regulations of the Code.
- 5.** The Applicant has submitted that the Resolution Plan neither provides for the payment of debts of Financial Creditors who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such Creditors in accordance with Section 53(1) of the Code in the event of liquidation of the Corporate Debtor nor provides the same in priority as is mandated by Regulation 38 of the CIRP Regulation.
- 6.** The Applicant/Objector has submitted that as per Clause 9.2.3(j) of the Resolution Plan pertaining to the payment of Liquidation value to the Dissenting Financial Creditors states that the construction cost will be paid in priority as the rights of the allottees are to be prioritized and for the expeditious completion of the project and thereafter, the liquidation value shall be given priority. The present Objector having abstained from voting is a dissenting financial creditor and should be paid in priority over the

construction cost to the Real Estate Allottees who voted in favour of the Approved Resolution Plan in terms of the Regulation 38(1) of the CIRP Regulations. Clause 9.2.3(j) of the Resolution Plan is reproduced herein below :-

“The Resolution Applicant will pay liquidation value to the dissenting financial creditor which is due in accordance with sub-section (1) of section 53 in the event of liquidation of the corporate debtor and amount will be paid to such financial creditors in priority to the other financial creditors as per applicable CIRP Regulations within the proposed amount under Financial creditors (other than financial creditors in class). (Compliance with Regulation 38(1). That it is added that construction cost will be paid in priority as the rights of the allottees are to be prioritized and expeditious completion of the project is required. After the construction cost, liquidation value shall be paid in priority, if due.”

- 7.** It is further submitted that the Applicant/Objectors being a dissenting Financial Creditor had filed its claim before the Resolution Professional for an amount of Rs. 79,01,42,043/- inclusive of interest @ 18% p.a. calculated upto 31st October 2019. The Resolution Professional verified the same and admitted the claim of the Objector to the extent of Rs.78,93,52,526/-. The Resolution Professional reduced the admitted claim amount to Rs.31,57,41,010, being 40% of the admitted claim amount on the basis that there was an inter-se agreement between the Corporate Debtor and (i) Today Hotels Pvt. Ltd. (ii) New India City Developers Pvt. Ltd., and (iii) GPS Properties Pvt. Ltd., by virtue of which the Corporate Debtor was liable/entitled to only 40% of the awarded/claimed amount. On this basis, the Resolution Professional accepted the claim amount of Rs. 31,57,41,010 vide his email dated 24th December 2020. It is also stated to note that the Liquidation value of the Corporate Debtor is Rs. 773,46,91,673/- as per the Form H issued by the Resolution Professional.
- 8.** It is submitted that the Objector has a share of 2.84% on the Liquidation Value of Rs.7,73,46,91,673/-. The other costs mentioned in the Resolution Plan are as under.

 - a. Payment of CIRP Costs in full - Rs. 4 crores.
 - b. Payment to workmen and employees – Rs. 3.5 crores
 - c. There are no secure Creditors.

d. Hence, the minimum liquidation amount payment to the objector is 2.84 of the following:-

Rs. 7,73,46,91,673/-

Less Rs. 7,50,00,000/-

- 9.** In view of the above facts and circumstances, the Applicant/Objector seeks that the Resolution Plan be approved and suitably and following directions be passed:-

(a) this Hon'ble Adjudicating Authority be pleased to pass an Order directing the Successful Resolution Applicant to amend the Resolution Plan to provide for payment to the Objector in terms of Section 53 of the Code i.e. an amount of Rs.21,75,00,000/- and that such payment be made in priority i.e. even before any amount is paid towards the construction cost by the Successful Resolution Applicant into the Corporate Debtor

(b) this Hon'ble Adjudicating Authority be pleased to pass an Order directing that for any delay of making payment after receipt of approval received from NCLT, interest @ 18% per annum be paid to the Objector till date of payment;

(c) In the alternative to prayer clauses (a) and (b) above, this Hon'ble Adjudicating Authority be pleased to pass an Order directing the Successful Resolution Applicant to amend the Resolution Plan and specify that the Objector is covered under Clause 9.2.2(iv) of the Resolution Plan and in addition to the "total admitted claim amount", the Successful Resolution Applicant be directed to pay to the Objector, interest @ 18% p.a. on the "total admitted claim amount" from 1st November 2019 till the date of payment.

- 10.** The Resolution Professional/Respondent in its reply has submitted that the Resolution Plan submitted by the Respondent No. 2 has been approved by the Committee of Creditors with 96.93% votes and the application seeking approval of the Resolution Plan is pending before this Adjudicating Authority. The Respondent has submitted that since the Committee of Creditors have approved the Resolution Plan, in view of the law laid down by the Hon'ble Supreme Court of India in the case of Ebix Singapore Private Limited versus Committee of Creditors of Educomp Solutions Limited and Anrs. (2021 SCC online SC 707) wherein it has been held that the role of the Adjudicating Authority is very limited and once a Resolution Plan has been approved by the CoC, it is binding on the Resolution Applicant and the commercial wisdom of the CoC will prevail.

11. The Resolution Professional/Respondent has also submitted that as per “**Note to Clause 13: Term of Resolution Plan and Implementation Schedule (Regulation 38(2)(a))**” of the Resolution Plan, the Resolution Applicant has undertaken to provide for the payments to dissenting Financial Creditors in priority over Financial Creditors who voted in favour of the Plan. It is further submitted that in terms of the Implementation Schedule provided under Clause 13 of the Resolution Plan, the payments proposed to be made to the dissenting Financial Creditors will be made within 180 days from the date of approval of the Resolution Plan by this Tribunal. Further, the payments proposed to be made to the Financial Creditors and also to the Financial Creditors in Class whose bookings are cancelled and refund orders have been passed will be made within 730 days from the date of approval of the Resolution Plan by this Tribunal. Therefore, the Resolution Plan is compliant to Section 30(2)(b) of the Code read with Regulation 38(1)(b) of the CIRP Regulations.

12. We have heard the submissions made by the Learned Counsel appearing for the Applicant as well as Learned Counsel appearing for the Resolution Professional/Respondent and perused the records. After having considered the rival submissions, we are at the outset of the considered view that the decision of the CoC in approving the Plan cannot be interfered with by this Adjudicating Authority as has been held by the Hon’ble Supreme Court of India in catena of judgments.

13. We further note that “**Note to Clause 13: Term of Resolution Plan and Implementation Schedule (Regulation 38(2)(a))**” adequately takes care of the dissenting Financial Creditors and provides for payments in priority over the Financial Creditors who voted in favour of the Plan. The said relevant Clause is reproduced below: -

“Also, the Resolution Applicant undertakes to provide for the payment of debts of dissenting Financial Creditors which shall not be less than the amount to be paid to such Creditors in accordance with Section 53(1) of the IBC, 2016 in the event of Liquidation of the Corporate Debtor. Such amount will be paid in priority over Financial Creditors who voted in favour of the Resolution Plan.”

14. The Resolution Professional has also submitted that as per the terms of the Implementation Schedule provided under Clause 13 of the Resolution

Plan, payments proposed to be made to the dissenting Financial Creditors will be made within 180 days from the date of approval of the Resolution Plan by this Tribunal. Thus, it is clear that no payments have been proposed to be made to the assenting Financial Creditors prior to the payments proposed to be made to the dissenting Financial Creditors and therefore the Resolution Plan is compliant to Section 30(2)(b) of the Code read with Regulation 38(1)(b) of the CIRP Regulations.

15. Further, Clause 9.2.3(j) of the Resolution Plan provides that: -

“The Resolution Applicant will pay Liquidation value to the dissenting Financial Creditor which is due in accordance with sub-section (1) of Section 53 in the event of liquidation of the Corporate Debtor and amount will be paid to such Financial Creditors in priority to the other Financial Creditors as per applicable CIRP Regulations within the proposed amount under Financial Creditors (other than Financial Creditors in Class). (Compliance with Regulation 38(1). That it is added that construction cost will be paid in priority as the rights of the allottees are to be prioritized and expeditious completion of the project is required. After the construction cost, Liquidation value shall be paid in priority, if due.”

16. The above Clause makes it very clear that the funds will be primarily used or utilized for the payment for construction costs and then towards payment of Liquidation Value due to dissenting Financial Creditors.

17. On an analysis of the various Clauses of the Resolution Plan as discussed in the abovementioned paragraphs, we are of the considered view that the Resolution Plan is compliant with the provisions of Section 30(2)(b) of the Code and Regulation 38 of the CIRP Regulations. We do not find any merit in the present application, therefore the same is **dismissed**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

I.A-2194/2022

In

Company Petition No. (IB)-2130(ND) 2019

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:-

M/s. Dynacon Projects Pvt. Ltd

.....Applicant/Operational Creditor

Versus

M/s. Today Homes & Infrastructure Pvt. Ltd

.....Respondent/Corporate Debtor

AND

IN THE MATTER OF:-

Majestic Builtwell Pvt. Ltd.

.....Objector/Applicant

Versus

Mr. Nilesh Sharma

Resolution Professional

Today Homes & Infrastructure Pvt. Ltd.

.....Corporate Debtor

Pronounced on 01.08.2023

CORAM:-

**SHRI ATULCHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant : Ms. Tripiti Kapoor, Advocates in IA-2194/2022.

For the Respondent :

ORDER

Per Shri Bachu Venkat Balaram Das, Member (J)

1. This application has been filed by M/s Majestic Builtwell Private Limited., (the dissenting Financial Creditor) to the Resolution Plan submitted by Consortium of Canary Greens Buyers Welfare Association, Callidor Flat Owners Welfare Association and Royal Elegencia Apartment Buyers Association under Section 60(5) of the IBC, 2016 wherein the following prayers have been made:

- (a) Pass an order directing the Successful Resolution Applicant to amend the Resolution Plan to provide for payment to the Objector in terms of Section 53 of the Code i.e. an amount of Rs. 1,62,42,853/- and that such payment be made in priority i.e. even before any amount is paid towards the construction cost;*
- (b) Pass an order directing that for any delay of making payment after receipt of approval received from this Hon 'ble Authority, interest @ 12% per annum be paid to the Objector till the date of actual payment;*
2. It is submitted by the Applicant that an amount of Rs. 2,00.00,000/- (Rupees Two Crores Only) was given as a loan to the Corporate Debtor on 16.05.2006 at an interest @12% per annum. As on the date of commencement of CIRP of the Corporate Debtor, the Corporate Debtor owes an amount of Rs.6,70,45,470/-.
 3. However, the Resolution Professional admitted the claim of the Applicant to the tune of Rs. 2,38,75,161/- . It is submitted that the Applicant inadvertently filed its claim as on Operational Creditor (Form B) vide e-mail dated 17.08.2020 which was rejected by the Resolution Professional. Subsequently, the Applicant re-filed its claim as a Financial Creditor (Form C) vide email dated 11.08.2021. The Applicant in a letter written to the Corporate Debtor on 16.12.2012 requested the Corporate Debtor to adjust the repayment of outstanding loan to its eight related parties (Individuals) who had requested and deposited their share of money in various projects of the Corporate Debtor, the Applicant apprised the Resolution Professional about the same. However, the Resolution Professional did not consider the same and admitted the claim of the Objector as a Financial Creditor to the tune of Rs. 2,38,75,161/- vide email dated 19.08.2021, which includes principal amount of Rs.2,00,00,000/- and interest amounting to Rs. 38,75,161/- and that the balance claim in respect of interest was disallowed by the Resolution Professional as being without any supporting document.
 4. It is submitted that the interest amounting to Rs. 38, 75,161/- was provided in the books of accounts of the Applicant in the Financial Year 2006-07 and 2007-08. However, the Resolution Professional did not accept the same.
 5. It is also submitted by the Applicant that it had filed its claims as a Financial Creditor on 11.08.2021, however, the Resolution Professional did not admit the

claim on the ground that the same was not reflected in the books of accounts of the Corporate Debtor. The claim of the Applicant was admitted only on 19.08.2021 after the resolution plan was approved by the CoC on 16.08.2021. Consequently, the Applicant could not exercise its voting rights on the resolution plan. It is submitted that the Resolution Plan submitted by the Resolution Applicant has failed to comply with the mandatory provisions contained in Section 30(2) (b) of the Code read with Regulation 38 of the CIRP Regulations.

6. The Resolution Professional has filed a reply contending that the Resolution Plan as submitted by the Resolution Applicant was approved by the Committee of Creditors through e-voting concluded on 16.08.2021 with 96.93% and is now pending for approval before this Adjudicating Authority.
7. It is also submitted by the Resolution Professional that the Applicant's claim was admitted way back on 19.08.2021 for an amount of Rs. 2,38,75,161/- and the Applicant did not raise any objection to the same nor challenge the said decision of the Resolution Professional till date. Thus, the claim of the Applicant which has been admitted by the Resolution Professional has attained finality. The Resolution Professional therefore, submitted that the objection raised by the Applicant belatedly cannot be accepted.
8. The Resolution Professional/Respondent in its reply has submitted that the Resolution Plan submitted by the Respondent No. 2 has been approved by the Committee of Creditors with 96.93% votes and the application seeking approval of the Resolution Plan is pending before this Adjudicating Authority. The Respondent has submitted that since the Committee of Creditors have approved the Resolution Plan, in view of the law laid down by the Hon'ble Supreme Court of India in the case of Ebix Singapore Private Limited versus Committee of Creditors of Educomp Solutions Limited and Anrs. (2021 SCC online SC 707) wherein it has been held that the role of the Adjudicating Authority is very limited and once a Resolution Plan has been approved by the CoC, it is binding on the Resolution Applicant and the commercial wisdom of the CoC will prevail.
9. The Resolution Professional has further submitted that as per the **“Note to Clause 13: Term of Resolution Plan and Implementation Schedule (Regulation**

38(@)(a))” of the Resolution Plan, the Resolution Applicant has undertaken to provide for the payments to dissenting Financial Creditors in priority over Financial Creditors who voted in favour of the Plan. It is further submitted that in terms of the Implementation Schedule provided under Clause 13 of the Resolution Plan, the payments proposed to be made to the dissenting Financial Creditors will be made within 180 days from the date of approval of the Resolution Plan by this Tribunal. Further, the payments proposed to be made to the Financial Creditors and also to the Financial Creditors in Class whose bookings are cancelled and refund orders have been passed will be made within 730 days from the date of approval of the Resolution Plan by this Tribunal. Therefore, the Resolution Plan is compliant to Section 30(2)(b) of the Code read with Regulation 38(1)(b) of the CIRP Regulations.

10. We have heard the submissions made by the Learned Counsel appearing for the Applicant as well as Learned Counsel appearing for the Resolution Professional/Respondent and perused the records. After having considered the rival submissions, we are at the outset of the considered view that the decision of the CoC in approving the Plan cannot be interfered with by this Adjudicating Authority as has been held by the Hon’ble Supreme Court of India in Catena of judgments.

11. We further note that “**Note to Clause 13: Term of Resolution Plan and Implementation Schedule (Regulation 38(a))**” adequately takes care of the dissenting Financial Creditors and provides for payments in priority over the Financial Creditors who voted in favour of the Plan. The said relevant Clause is reproduced below: -

“Also, the Resolution Applicant undertakes to provide for the payment of debts of dissenting Financial Creditors which shall not be less than the amount to be paid to such Creditors in accordance with Section 53(1) of the IBC, 2016 in the event of Liquidation of the Corporate Debtor. Such amount will be paid in priority over Financial Creditors who voted in favour of the Resolution Plan.”

12. The Resolution Professional has also submitted that as per the terms of the Implementation Schedule provided under Clause 13 of the Resolution Plan, payments proposed to be made to the dissenting Financial Creditors will be made within 180 days from the date of approval of the Resolution Plan by this Tribunal. Thus, it is clear that no payments have been proposed to be made to the assenting Financial Creditors prior to the payments proposed to be made to the dissenting Financial Creditors and therefore the Resolution Plan is compliant to Section 30(2)(b) of the Code read with Regulation 38(1)(b) of the CIRP Regulations.

13. Further, Clause 9.2.3(j) of the Resolution Plan provides that: -

“The Resolution Applicant will pay Liquidation value to the dissenting Financial Creditor which is due in accordance with sub-section (1) of Section 53 in the event of liquidation of the Corporate Debtor and amount will be paid to such Financial Creditors in priority to the other Financial Creditors as per applicable CIRP Regulations within the proposed amount under Financial Creditors (other than Financial Creditors in Class). (Compliance with Regulation 38(1). That it is added that construction cost will be paid in priority as the rights of the allottees are to be prioritized and expeditious completion of the project is required. After the construction cost, Liquidation value shall be paid in priority, if due.”

14. The above Clause makes it very clear that the funds will be primarily used or utilized for the payment for construction costs and then towards payment of Liquidation Value due to dissenting Financial Creditors.

15. On an analysis of the various Clauses of the Resolution Plan as discussed in the abovementioned paragraphs, we are of the considered view that the Resolution Plan is compliant with the provisions of Section 30(2)(b) of the Code and Regulation 38 of the CIRP Regulations of the Code. We do not find any merit in the present application, therefore the same is **dismissed**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)