

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-2236/2022 IN

CP/IB/4469/(MB)/2019

Under Section 7 of the IBC, 2016

In the matter of

Grand Vacations Private Limited

...Applicant

V/s.

Mr. Jayesh Sangrajaka

Resolution Professional/
...Respondent

In the matter of

Idbi Trusteeship Services Limited

...Operational Creditor

Versus

Ornate Spaces Private Limited

...Corporate Debtor

Order delivered on: **02.05.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant:

Ms. Smita Durve, Adv.

For the Respondent(s)/RP:

Mr. Nausher Kohli a/w Mr. Devesh Juvekar, Mr. Ashish Parwani, Mr. Dikshat Mehra, Mr. Chintan Gandhi and Ms. Anjali Dhoot i.b Rajani Associates for the applicant.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application filed by Applicant i.e. Grand Vacations Private Limited seeking direction to Respondent No.1, Resolution Professional, to provide to the Respondent No.2, being the successful Resolution Applicant, within a fixed time all the information available in its records pertaining to the Applicant's claim; direction to the Respondent No.2 being the successful Resolution Applicant to prepare an addendum to the Resolution Plan incorporating the Applicant's claim on the basis of the information submitted by the Respondent No.1 and place the same before the Committee of Creditors within a fixed time; direction to the Committee of Creditors to consider the addendum at a meeting to be held for the purpose within a fixed time and to consider the addendum and the decision of the Committee of Creditors thereon at the time of considering the approval of the Resolution Plan; and praying to this bench to consider the approval of the Resolution Plan only after the above directions have been complied with.
2. The present Application is filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

3. The Applicant states that it had purchased a total of 28 flats in the Project for a total consideration of Rs. 57,44,43,211/- (Rupees Fifty-Seven Crores Forty-Four Lakhs Forty-Three Thousand Two Hundred and Eleven only). The Allotment letters dated 4th April, 2019 and 21st May, 2019 in this regard were issued by the Respondent No.1 in favour of the Applicant. However, neither Agreements for Sale nor the possession of the flats was handed over to the Applicant.
- 3.1. In the meantime, by an order dated 29 June, 2020 passed by this Hon'ble NCLT, the Corporate Debtor came to be admitted into CIRP process. A public announcement dated 3 July, 2020 was thereafter made by the Respondent inter alia inviting claims from the creditors of the Corporate Debtor on or before 15th July 2020. It is submitted that the Applicant was not aware of this public announcement at the relevant time and hence could not file its claim with the Respondent No.1 within the time stipulated in the public announcement.
- 3.2. On account of the Covid-19 pandemic and other factors, the Applicant faced financial difficulties. In these circumstances, a petition bearing no. C.P. (IB)/754(MB)/2021 also came to be filed against the Applicant by Shapoorji Pallonji Development Managers Pvt. Ltd. ("SPDMPL") under Section 7 of the IBC and the same was admitted by an order dated 12th April 2022 passed by this Hon'ble Tribunal. Mr. Mayur Popat was appointed as the Applicant's Interim Resolution Professional and subsequently was confirmed as Resolution Professional (RP) of the Applicant by the Committee of Creditor ("CoC").
- 3.3. After his appointment, the RP while perusing the records of the Applicant came across the Allotment Letters issued by the Corporate Debtor. The

RP also learned that the Applicant had not filed its claim with the Respondent No.1.

3.4. In the circumstances, the RP by an email dated 22 May, 2022 submitted the Applicant's claim to the Respondent. However, the Respondent No.1 by its email dated 22nd May, 2022 inter alia refused to accept the Applicant's claim on the ground that a resolution plan ("Resolution Plan") in respect of the Corporate Debtor had been approved by its COC and was submitted for this Hon'ble Tribunal's approval.

3.5. Thereafter, the RP by his email dated 28th May, 2022 inter-alia placed the correct facts on record and also requested the Respondent No.1 to accept the Applicant's claim since the Resolution Plan was pending for approval before this Hon'ble Tribunal.

3.6. The Respondent No.1 by an email dated 2nd June, 2022, however, refused to accept the Applicant's claim stating that *no new claims can be accepted at this stage since if new claims are filed and accepted at this stage, the CIRP would be jeopardized. Since the object of the Insolvency and bankruptcy Code, 2016 is to maximize value in the time bound manner, accepting any new claims would defeat the purpose of Insolvency and Bankruptcy Code, 2016. The above aspect was held in the NCLAT judgment of Harish Polymer Vs. Jay Overseas Private Limited & Others which was also upheld by the order of Supreme Court dated 03.01.2022.*

4. The Respondent No.1 has filed affidavit in reply dated 09.03.2023 stating that Mr. Vijay Machindar the suspended director of the had clarified that there was no business relation between the applicant and Corporate Debtor and the loan amount was routed into the Corporate Debtor to the Applicant due to certain limitations on the part of Shapoorji Pallonji Development Managers Private Limited ("SPDMPL"). SPDMPL has also filed a claim representing that applicant had availed a loan of Rs.28.5 Crores and this loan formed the basis for admission of the Applicant into CIRP. It is further stated that the applicant

had knowledge of commencement of CIRP in the Corporate Debtor's case vide his mail dated 28.07.2020. Accordingly, the RP has stated that *the purported transactions including Inter Alia the mortgage of 28 flats to Grand Vacations by the Corporate Debtor, facility agreement between the Applicant and SPDMPL and the corporate guarantee provided by the Corporate Debtor to the Applicant were all a part of a single transaction wherein the loan amount from SPDMPL was routed into the Corporate Debtor through the Applicant.*

4.1. The RP has quoted narrations recording two transactions in the books of Corporate Debtor as "*being the amount paid to grand vacations private limited (Loan returned via grand vacations private limited to Shapoorji Pallonji finance private limited)*" and "*processing fee of 28.50 crores ICD facility loan disbursement from grand vacations private limited (re-routed from Shapoorji Pallonji Finance Private Limited to grand vacations to OSPL)*".

4.2. The Resolution Plan was approved by COC on 18.09.2021 and an application is pending before this Bench for its approval. The applicant had filed its claim on 10.05.2022 and was informed on the same day that the plan has been approved and new claim cannot be accepted.

5. This bench has heard both counsel and perused the material on record.

5.1. The Hon'ble NCLAT in case of ***Puneet Kaur, through her Attorney Amrit Pal Singh v. K V Developers Private Limited & Ors. Company Appeal (AT) (Insolvency) No. 390 of 2022*** held at Para 15 that "*Non-submission of claim within the time prescribed is a common feature in almost all project of real estate. But as law exists today, they cannot be included in the List of Creditors and that too after approval of Plan by CoC. We, thus, do not find any ground to interfere with order of the Adjudicating Authority rejecting their Application for admission of their claim. However, their claims need to be dealt in a manner, which we shall deal in later part of this judgment*". It further held at Para 18 that "*extinguishment of claim of the Appellant(s) shall happen only after approval of the*

Plan by the Adjudicating Authority. The argument of the Respondents that since CoC has approved the Resolution Plan, the claim of the Appellant(s) have been extinguished, cannot be accepted as there is no extinguishment of claim of the Appellant(s) on approval of Plan by the CoC". Finally, the Hon'ble NCLAT held at Para 27 that "However, we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration".

5.2. Following the decision of the Hon'ble NCLAT in case of Puneet Kaur (Supra), this Bench is of considered view that the Resolution Professional has not committed any error in rejecting the claim of the appellant on the ground of the applicant's claim having been filed the claim after approval of the resolution plan by CoC. However, it is also held that in decision that the liabilities of the Corporate Debtor get extinguished upon approval of plan by the Adjudicating Authority u/s 31 of the Code, hence, the corporate debtor owed such sums to the Corporate Debtor on the date of approval of Resolution Plan. This Bench further notices that the Hon'ble NCLAT in the said decision has also held that the Resolution Professional is mandated to include all 'liabilities' of the Corporate Debtor in the

Information Memorandum and should have included these liabilities reflected in the financial statements and books of accounts of the Corporate Debtor. In the present case, this Bench finds that the Resolution Applicant as well as CoC is aware of claim of the applicant. This bench further finds that the project of the real estate project of the corporate Debtor was initially named after the name of Shapoorji Pallonji and the Resolution Professional has contended that the money received by the Corporate Debtor was actually paid by Shapoorji Pallonji and routed through the applicant. This bench feels that the Resolution Professional has not filed any explanation as to whether Shapoorji Pallonji was connected with the Corporate Debtor and receipt of this money from the applicant was in any manner connected to such relationship. Accordingly, this Bench directs the Resolution Professional to confirm this fact and thereafter include the claim of the applicant if it is otherwise permissible under the code; and obtain an addendum to the Resolution Plan, which may be placed before the CoC for consideration.

6. In view of this, the present application IA-2236/2022 is **partly allowed and disposed** of with the aforesaid directions. Accordingly, IA-2236/2022 is disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)

SVR/02.05.2023