



THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT III

IA – 3962/2020
In
IB – 1771(ND)/2018

Under Section – 60 (5) of the IBC, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

PRIYANSHI ARORA

.....Financial Creditor

Versus

M/s. DREAM PROCON PRIVATE LIMITED

.....Respondent

ON BEHALF OF:

M/S. STAR MAX PROEPRTIES

.....Applicant

Order Pronounced On: 05.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Divyanshu Agarwal, Advocate

For the Financial Creditor : Mr. Aditya Singh, Advocate

For the Resolution Professional : Ms. Varsha Banerjee, Advocate



O R D E R

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application is filed by the Applicant under Section – 60(5) seeking following prayers: -

a. Allow the instant Application;

b. Direct the RP to reclassify the status of the Applicant as a Secured Financial Creditor or in the alternate classify the Applicant as a Financial Creditor – Homebuyer.

c. Pass any such order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the instant case.

2. It is submitted by the Ld. Counsel appearing for the Applicant that, Applicant and Corporate Debtor entered into a series of 6 (six) Agreements in year 2015. The Applicant paid an aggregate amount of Rs. 2,77,00,000/- to the Corporate Debtor for the purpose of allotment of residential units at the project sought to be developed by the Corporate Debtor. The said agreement was again renewed in the year 2017.

3. It is further submitted that, the Corporate Debtor also issued fresh post dated cheques against the interest amount and the principal amount in favour of the Applicant. However, the same cheques were returned as dishonoured and due amount was not settled. Further, the above mentioned residential units were never handed over by the Corporate Debtor nor any money was repaid to it. The Applicant initiated arbitration proceedings, wherein an Arbitration Award dated 28.08.2020 was passed in the favour of Applicant by Ld. Sole Arbitrator directing the Corporate Debtor to deposit an amount of Rs. 2,77,00,000/- as principal, Rs. 2,51,95,200/-, penal interest Rs. 2,51,606/- to the Applicant.



4. It is further averred that, on 06.09.2019 CIR process was initiated against the Corporate Debtor by this Adjudicating Authority and Resolution Professional was appointed. Further, Applicant filed the claim with all requisite formalities along with proof and apprised the fact to the Resolution Professional that an Arbitral Award dated 28.08.2019 has been passed in the favour of Applicant and name of Applicant was rightfully mentioned in the category of Secured Financial Creditor.

5. It is further submitted that, after issuance of new list of creditor the Applicant realised that secured unit of claimant were missing and in CoC which was held on 02.07.2020 the Applicant has been classified in the category of Financial Creditor with no security. Further, Respondent/RP without any specific reason changed the status of claim.

6. In response, the Ld. Counsel appearing for the Respondent submitted that, on passing of the Arbitral Award the dispute and issues between the parties stands crystallized and the Applicant has secured its right from the Arbitral Award passed in the favour of the Applicant and the Applicant is a decree holder. Further, submitted that, as per Section – 35 of the Arbitration and Conciliation Act, 1996, the Arbitration Award is final and binding on the parties.

7. It is further submitted that, Applicant has failed to provide any document which proves that there is a creation of security interest in the favour of Applicant over the said Units or any asset. The Applicant in terms of the provisions of IBC is required to prove the existence of a security interest on the basis of record of any information utility, certificate of registration of charge with the RoC or any other proof with Central Registry of Securitisation Asset Reconstruction and Security Interest of India 'CRSARSI'.



8. We have heard the arguments advanced by the Ld. counsel appearing for the Applicant as well as for the Resolution Professional.

9. The main issue in the present case revolves around the Arbitral Award so, it is pertinent at this stage to refer the main contents of the said award same is reproduced below for reference: -

The directions passed by the Ld. Sole Arbitrator in the said Arbitral Award are: -

"(I) I direct the Respondent to pay the Principle amount of Rs.2,77,00,000/- (Rupees Five Crore Seventy Seven Lac only)

(II) The Respondent is also directed to pay the accrued interest till the date of filing the Claim Statement, amounting to Rs.2,51,95,200/- plus penal interest of Rs.51,606/-, totalling Rs.2,52,95,200/- (Rupees Two Crore Fifty Two Lac Forty Six Thousand and Eight Hundred & Six only).

(III) The Respondent is further directed to pay a sum of Rs.9,48,416/- (Rupees Nine Lac Forty-Eight Thousand and Four Hundred & Sixteen only) as expenses of Arbitration including the Arbitrator's fees.

(IV) The Respondent is directed to pay the awarded amount as directed above I to III within 45 days from the receipt of copy of award.

Thus, from the perusal of the Arbitral Award it is clear that dispute and issues between the parties were settled and the Applicant has secured its right from the Arbitral Award. We find force in the argument submitted by the Resolution Professional that the Applicant has secured its right from the Arbitral Award passed in the favour of the Applicant. We have no hesitation to hold that, Applicant has failed to prove the existence of a security interest as terms of the provisions of IBC. It is a settled law that in the case of securing a security interest full details along with proof should be furnished and the same is



missing in the present case so, the Applicant cannot be treated as a Secured Financial Creditor.

10. It is also noted that, the Committee of Creditors (CoC) has approved the Resolution Plan by 90.66% and Application under 30(6) of IBC is pending before this Adjudicating Authority.

*“Hon’ble Supreme Court in recent Judgment in **M/s. R.P.S. Infrastructure Limited Vs. Mukul Kumar and Anr. (Civil Appeal No. 5590 of 2021)** has already taken the view that after approval of the plan by the CoC, the claims cannot be entertained. There is no dispute with the facts that the claim was filed by the Appellant after approval of the plan by the CoC. The Appellant has also not been able to show that claim of the Appellant was reflected in the records of the Corporate Debtor”.*

11. In the light of the above findings, IA – 3962/2020 stands **dismissed**.

SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

SD/-

BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)