

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-471/2021

In

IB-2130(ND)/2019

IN THE MATTER OF IB-2130(ND)/2019:

M/s. DYNACON PROJECTS PRIVATE LIMITED

..... Operational Creditor

VERSUS

M/s. TODAY HOMES & INFRASTRUCTURE PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-471/2021:

IDBI Bank Limited

..... Applicant

VERSUS

Mr. Nilesh Sharma

Resolution Professional of the Corporate Debtor

..... Respondent

Order Delivered On: 15.12.2023

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Ankita Saikia, Mr. Ashim Vachher, Mr. Vaibhav
Dabas, Advs.

For the Respondent : Mr. Kanishk Khetan, Adv. a/w Mr. Nilesh Sharma,
RP, Mr. Shivam Jaiswal, Ms. Anushka Sharma, Ms.
Swashika Kumari, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

IA-471/2021 In IB-2130(ND)/2019

Date of Order: 15.12.2023

Page 1 of 5

1. This application has been filed by the IDBI Bank under Section 60(5) read with Rule 11 of the National Company Law Tribunal Rules, 2016 against the rejection of the claim of the Applicant Bank, by the Respondent/Resolution Professional of M/s. Today Homes & Infrastructure Pvt. Ltd. The Applicant filed its claim on the basis of granting of financial facilities amounting to Rs. 19,13,380/- (Sanctioned Loan Amount Rs.22,00,000/-) to its customers namely Mr. Saurabh Verma and Ms. Pooja Singh for the purchase of Unit No. E-1206, 12th Floor, kings park situated at Omega-1, Block-P/2, Greater Noida Uttar Pradesh.

2. Brief Background of the Case

- i.** An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e. M/s. Dynacon Projects Private Limited, against the Corporate Debtor i.e. M/s. Today Homes & Infrastructure Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 31.10.2019 and a moratorium was declared including the appointment of Mr. Deepak Bansal as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Nilesh Sharma was confirmed as Resolution Professional.
- ii.** The Resolution Plan was submitted by the Successful Resolution Applicant namely Consortium of Canary Greens Buyers Welfare Association, Callidora Flat Owners Welfare Association and Royal Elegencia Apartment Buyers Association which was approved by the CoC in its 12th meeting dated 10.08.2021 (voting concluded on 16.08.2021) by 96.93% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Nilesh Sharma, the Resolution Professional of the Corporate Debtor submitted an IA-4766/2021 for seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of

IBC, 2016 on 20.08.2021, which is pending adjudication before this Adjudicating Authority.

3. It is submitted that a Tripartite Agreement dated 25.08.2013 was executed between M/s. Today Homes & Infrastructure Private Limited, Mr. Saurabh Verma and IDBI Bank Limited with respect to the aforesaid flat in question.
4. In terms of the said Tripartite Agreement, the Applicant Bank disbursed the loan amount directly in favour of M/s. Today Homes & Infrastructure Private Limited as per the instructions of the borrowers. Since the borrowers defaulted in paying the loan amount, the loan account was classified as NPA on 08.09.2017 and consequently, the Applicant Bank sent a recall notice dated 28.11.2017 to the borrowers calling upon them to repay the total outstanding amount to the Bank within seven days.
5. Subsequently, the Applicant sent a notice on 02.09.2019 to the Builder (Corporate Debtor) and also issued a notice on 16.09.2019 under Section 13(2) of the SARFAESI Act, 2002. Thereafter, CIRP in respect of the Corporate Debtor was initiated vide order dated 31.10.2019 passed by this Adjudicating Authority and the Applicant filed its claim of Rs. 23,40,941/- in Form-C dated 14.11.2019 with the IRP which was not admitted.
6. The Resolution Professional has filed a reply affidavit denying the contentions and allegations made in this application filed by the Applicant and stated that the obligation of the Corporate Debtor qua the Applicant is limited to the extent that it shall not convey/ transfer or give possession of the Subject Unit without the written consent of the Applicant. The Applicant Bank may also call upon the Corporate Debtor to cancel the Agreement to Sell executed in favour of Mr. Saurabh Verma and enter into a fresh sale with any person as nominated by the Applicant Bank.

7. Pursuant to the CIRP of the Corporate Debtor, the IRP made the public announcement in Form-A in various newspapers on 01.11.2019. The Last date for the submissions of claims was 14.11.2019.
8. Thereafter, the RP collated the claims and constituted the CoC and the first CoC meeting was convened on 01.12.2019. The 90th day from the commencement of CIRP, up to which, belated claims could be filed in terms of Regulation 12(2) of the CIRP Regulations was 29.01.2020.
9. The Respondent thereafter issued Form-G on 29.02.2020, inviting Expression of Interest ("EOIs") from the Prospective Resolution Applicants ("PRAs"), as advised by the CoC in terms of the provisions of Section 25(2)(h) of the Code. The last date for submission of EOIs was 15.03.2020. Due to the nationwide lockdown in the wake of the Covid-19 pandemic, the CoC decided to re-issue Form-G to invite EOI. Thereafter, the RP re-issued Form-G on 16.10.2020. As a satisfactory response was not received, the RP re-issued Form-G for the third time on 06.11.2020. The last date for submission of EOIs was 13.11.2020.
10. The Ld. Counsel appearing for the Resolution Professional relied upon a judgment passed by the Hon'ble NCLAT, Principal Bench, New Delhi in IA-1502/2020 & IA-1503/2020 in the matter of **Axis Bank Limited Vs. Value Infracon India Private Limited**, wherein the Hon'ble NCLAT held that the presence of a mere Tripartite Agreement does not change the character of the amount borrowed by the Homebuyer vis-a-vis the Bank and vis-a-vis the "Corporate Debtor" and the Bank cannot be included as a secured Financial Creditor and submitted that the present case is squarely covered by the said NCLAT judgment.
We agree with the submissions of the Ld. Counsel for the Resolution Professional and hold that the Bank cannot be treated as a secured Financial Creditor merely on the basis of the Tripartite Agreement.
11. Coming to the factual matrix of the present Application, it is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nitty-gritty involved in the CIRP of the Corporate Debtor. Therefore, this

Adjudicating Authority cannot entertain the present Application which is not sustainable and devoid of merits. The Applicant is attempting to derail or delay the present CIRP proceedings of the Corporate Debtor.

12. We are of the considered view that if such claims are allowed, then this Adjudicating Authority will continue to receive further such applications and the case will never reach resolution. Further, it will also cause a hurdle to the Successful Resolution Applicant in executing the Resolution Plan.

13. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-471/2021** filed by the Applicant is **dismissed.**
 - ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)