

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. 784/2023

In

C.P. No. (IB) 27/MB/C-III/2019

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

Filed by

Galaxy Apartment F Wing Welfare Association

(Regn. No. Maharashtra/Mumbai/2019/GBBSD/1930/2019)

C/o. Satish Adsul, Shop No. 3, Building No. 28,

Vishwadarshan CHS,

Nehru Nagar, Mumbai, MH- 400024

...Applicant

Vs.

Abhay Manudhane

(IP Regn. No. IBBI/IPA-001/IP-P00054/2017-18/10128)

1204/1221, Makers Chamber V,

Jamnalal Bajaj Road,

Nariman Point, Mumbai, MH- 400001

...Respondent/RP

IN THE MATTER OF

Bank of India.

...Petitioner/Financial Creditor

Vs

Housing Development and Infrastructure Ltd.

...Respondent/Corporate Debtor

Order Reserved on: **06.10.2023**

Order delivered on: **20.11.2023**

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Applicant: Manoj Mishra

For the Respondent: Shadab S. Jan a/w. Adv. P. Wagh, Adv.
Prangana Barva, Adv. Mufaddal Paperwala
i/b M/s. Crawford Bayley & Co.,

Per: Shri Charanjeet Singh Gulati, Member (T)

ORDER

1. The above I.A. is filed by the Applicant, Galaxy Apartment F Wing Welfare Association under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("the Code"), seeking following reliefs;
 - a. *Allow the instant Interlocutory Application;*
 - b. *To carve out "F" wing from Galaxy Apartment as a separate vertical project of the Corporate Debtor from Vertical IV;*
 - c. *Allow the rerun of the Corporate Insolvency Resolution Process with respect to the sought to be carved out "F" Wing from Galaxy Apartment;*

- d. *Not to permit Liquidation of Galaxy Apartment;*
- e. *Direct the Resolution Professional to take all the necessary steps to rerun Corporate Insolvency Resolution Process for the sought to be carved out "F" Wing of Galaxy Apartment including extension of time;*
- f. *Allow the Applicant to come forward as a Prospective Resolution Applicant solely for sought to be carved out "F" wing from Galaxy Apartment and submit its Resolution Plan solely for the carved out vertical namely "F" wing from Galaxy Apartment;*
- g. *Direct the Resolution Professional to consider the Resolution Plan to be submitted by the Applicant for sought to be carved out "F" wing of Galaxy Apartment;*
- h. *Taking into consideration the extraordinary facts and circumstances of the matter, direct the Resolution Professional not to impose any restrictive terms and conditions upon the Applicant including Net Worth, Minimum Asset Under Management (AUM), Evaluation Matrix (EM), Committed Funds, Turnover, EMD, Bank Guarantee (BG), CIRP Costs, Application fees and any other restrictive conditions;*
- i. *During pendency of the instant Application, stay the Liquidation Application as filed by the Resolution*

Professional/ any other proceedings with respect to the Galaxy Apartment;

j. For interim and ad-Interim relief in terms of prayer clause (i);

k. For the costs of this Application;

l. For such other and further reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.

2. **Submissions of the Applicant, in briefs, are extracted hereinunder;**

- i. The Galaxy Apartment F Wing Welfare Association ("the Applicant"), is a trust having registration No. Maharashtra/Mumbai/2019/GBBSD/1930/2019 of 110 aggrieved homebuyers of Galaxy Apartment "F" Wing, Kurla (E), Mumbai (for brevity, "the Project"). Its registered office address is Galaxy Apartment F Wing Welfare Association C/o Satish Adsul, Shop No. 3, Building No. 28, Vishwadarshan CHS, Nehru Nagar, Mumbai, Maharashtra - 400 024.
- ii. The Applicant submits that the Bank of India (the "original Petitioner" herein), which is a Financial Creditor of the Corporate Debtor had preferred the captioned C.P. (IB) 27/I&BP/MB/2019 u/s 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the "Code") r/w Rule 4 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking the Corporate Insolvency Resolution Process ("CIRP") of the original Respondent i.e., the Corporate Debtor on the ground, that the Corporate Debtor has committed default on 04.12.2018 in repayment of facilities granted to the Corporate Debtor to the tune of Rs. 522,29,06,768/-.

- iii. In the captioned C.P. (IB) 27/1&BP/MB/2019, this Adjudication Authority vide an Order dated 20.08.2019 (for brevity, "the Admission Order") initiated CIRP against the Corporate Debtor. By virtue of the Admission Order, one Mr. Abhay Narayan Manudhane having IP Registration No. IBBI/IPA-001/IP-P00054/2017- 18/10128, was appointed as Interim Resolution Professional ("IRP") to carry the functions as envisaged under the Code and thereafter, has been regularized as the Resolution Professional ("RP").
- iv. The Corporate Debtor, prior to its commencement of CIRP, in its project Galaxy Apartment in Kurla (E), Mumbai (classified as Vertical IV by RP) situated on the plot bearing no. CTS No. 13/1 to 13/4, 13/14B, 13/16, 20 and 21, lying and being at village Mouje Kula - III, Kurla (E), Mumbai - 400024, had proposed the construction of 6 wings i.e., A, B, C, D, E and F. The Applicant are the home buyers of the 110 units in Galaxy Apartment "F" Wing and thus, one of the Financial Creditors of the Corporate Debtor. Out of the 6 proposed wings, Wings A to E have been completed and possession has already been given to the home buyers of Wings A to E. However, the work of the 110 units of F wing

(1BHK, 2BHK and Shops) was constructed only upto the plinth level and has remained pending since 2009. The project came to a complete standstill in the year 2012. It is stated to note that Wing "A" to "F" of the project Galaxy Apartment in Kurla (E), Mumbai is the part of the Slum Rehabilitation Scheme sanctioned under LOI bearing No. SRA/DDTP/0049/L/PL/LOI dated 10.07.2008, which is amended thereafter from time to time.

- v. The Committee of Creditors ("CoC") of the Corporate Debtor in its 18th meeting convened on 08.09.2021 decided to go for the project wise Resolution, since the Corporate Debtor did not find any compliant Resolution Applicant for the entire Corporate Debtor. Finally, in the 19th CoC Meeting held on 16.09.2021, the RP divided the Corporate Debtor into 10 Verticals for inviting project-wise Resolution Plans which have been enlisted as follows:

- I. Majestic Towers
- II. Whispering Towers
- III. Premier Exotica
- IV. Galaxy Apartment
- V. BKC Inspire
- VI. Paradise City
- VII. HDIL Towers (Building)
- VIII. Land parcels at Vasai and Virar
- IX. Land parcels at Kalyan Shahad
- X. Rest of the Company and assets not included above

- vi. This Adjudicating Authority vide its Order dated 29.09.2021 rejected IA 2118/ 2021 filed by the RP seeking extension of the CIRP Process for the invitation of project - wise resolutions. However, the said project wise resolution was subsequently, upheld by the Hon'ble NCLAT in their order dated 04.01.2022, wherein the Hon'ble Appellate Tribunal was also pleased to grant extension of the CIRP Process, on the ground that objective of the Code is to resolve the insolvency resolution process and liquidation is the last resort.
- vii. The Consortium of M/s. Khyati Realtors Pvt. Ltd. and M/s. Dosti Realty Limited have emerged as the Successful Resolution Applicant for Vertical I, II and III, M/s. Adani Properties Private Limited as the Successful Resolution Applicant for Vertical V and IX and M/s. Dev Land and Housing Private Limited as the Successful Resolution Applicant for Vertical VIII. The RP has also preferred filing an Application u/s 33 for the Liquidation of the Verticals for which no compliant Resolution Plan was received i.e., Vertical IV (Galaxy Apartment), Vertical VI, VII and X, which has left the Applicant, being the home buyers of F Wing in Vertical IV (Galaxy Apartment), high and dry.
- viii. On a perusal of the minutes of the 25th meeting of the CoC of the Corporate Debtor held on 19.09.2022, it has been inferred that during the process of commercial negotiations "No plans" have been received as far as the Applicant's

Vertical IV i.e. Galaxy Apartment is concerned in Project Wise Resolution.

- ix. The Applicant submitted its representation vide a Letter dated 29.09.2022 addressed to the RP and one Mr. Manoj Agrawal, who is the Authorized Representative of the Home Buyers of the Corporate Debtor requested for the consideration of the Resolution of the 110 units of Galaxy Apartment F Wing.
- x. Taking into consideration the enormous cost of construction of the remaining "F" Wing of the Galaxy Apartment project, the cost of Liability/ obligation/ commitment owed towards SRA (Slum Rehabilitation Authority) by the Corporate Debtor and no saleable units/ inventory being available in the "F" Wing of the Galaxy Apartment Project, the "F" Wing of the Galaxy Apartment is not a financially viable project for any Prospective Resolution Applicant to bid for. Hence, no Prospective Resolution Applicant has come forward for the "F" Wing of the Galaxy Apartment in the past and there appears a dim and dismal prospect of any Prospective Resolution Applicant approaching in the future, which has placed the fate of Applicant hanging and uncertain. The liquidation of the project shall seal the fate of the home buyers, which will put a full stop on the chance of getting home for the home buyers.
- xi. Hence, the Applicant submits that they are themselves willing to come forward as the Prospective Resolution Applicant and put forward a resolution plan for the Wing "F"

of Galaxy Apartment, subject to the carving out of Wing "F" wing from Galaxy Apartment as a separate Vertical Project from Vertical IV i.e. Galaxy Apartment.

- xii. Under these extra-ordinary circumstances, the Applicant, being an association of the 110 Home Buyers of Wing "F" of Galaxy Apartment, seek to come forward as the Prospective Resolution Applicant of Wing "F" of Galaxy Apartment and completing the construction of the remaining part of the building so that 110 home buyers can be rendered their homes in the said proposed building. Therefore, the Applicant submits that RP may be directed not to impose any harsh/ restrictive measures upon the Applicant including Net Worth, Minimum Asset Under Management (AUM), Evaluation Matrix (EM), Committed Funds, Turnover, EMD, Bank Guarantee (BG), CIRP Costs, Application fees and any other restrictive conditions, so that they can complete remaining construction of "F" wing of Galaxy Apartment.
- xiii. In the 26th Meeting of the CoC held on 20.01.2023, the AR of the Applicant put forward the proposal of allowing the completion of Galaxy Apartment "F" Wing consisting of 110 units out of the balance amount payable to the Corporate Debtor. Further the Applicant along with Paradise Welfare Association and M/s. B Right Real Estate Ltd. also proposed the possibility of rerunning the process of invitation of resolution plans in the CIRP Process to maximise value, which was also put for E-voting.

- xiv. In the E-voting as held in the 26th Meeting of the CoC, the CoC passed the following Resolution with 58.612% majority:

"RESOLVED THAT subject to approval of Hon'ble NCLT and pursuant to Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Housing Development and Infrastructure Limited be and is hereby accorded to support and file required Application/Affidavits in support of the IA's filed by Paradise Welfare Association and Galaxy Apartment F Wing Welfare Association and any other association of Home Buyers for re running the process for invitation of resolution plans in respect of various Verticals covered under Liquidation Application filed before Hon'ble NCLT.

RESOLVED FURTHER THAT the Resolution Professional of Housing Development and Infrastructure Limited be and is hereby authorized to take such steps including appointing valuers to revalue the Projects, file application for rerun of CIR Process etc as may be necessary in relation to the above, if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose

of giving effect to the aforesaid resolution including filing necessary applications with the Hon'ble NCLT for the same."

- xv. The Applicant states that on the failure in rerunning the Corporate Insolvency Resolution Process with respect to "F" wing of Galaxy Apartment and the initiation of Liquidation of Galaxy Apartment Project, a grave and irreparable harm, loss and prejudice shall be caused to the Applicant, being home buyers who have put in their life long/ hard-earned money for purchasing the concerned units in "F" Wing of Galaxy Apartment and that the balance of convenience is clearly in its favour.
3. No affidavit in reply or written submission has been made on the part of RP/Respondent. However, a note as under has been submitted:
- i. The component of Galaxy Apartment consist of six wings i.e. "A" to "F". Out of which construction for wings A to E, were already completed and fit out possession was handed over to homebuyers, however construction for Galaxy Apartment "F" Wing was only completed till the plinth level and the construction came to a complete standstill in the year 2012.
 - ii. Thereafter, in the 18th CoC Meeting of the Housing Development & Infrastructure ("HDIL"), the Committee of Creditors ("CoC") approved the project wise resolution plan

of all projects of HDIL as there were no compliant resolution plans received for entire/all projects of HDIL. Therefore, the projects were divided into 10 Verticals and Galaxy Apartment constituted a part of Vertical IV.

- iii. As per 25th CoC Meeting of HDIL held on 19th September 2022, it was inferred that no resolution plan was received for Vertical IV and therefore the same has to be liquidated.
- iv. The applicant vide Letter dated 20th November 2022, proposed that they themselves are willing to put forward a resolution plan for Galaxy Apartment “F” Wing.
- v. Thereafter, the proposal for rerun of the CIRP for Galaxy Apartment “F” Wing and another project of Paradise City (Vertical VI) was put before the CoC in the 26th CoC Meeting of HDIL, held on 20th January 2023, for maximization of value of HDIL Projects.
- vi. The proposal for rerun of CIRP for Galaxy Apartment “F” Wing and another project of Paradise City (Vertical VI) was put to voting before the CoC. The CoC approved the proposal for re-run of CIRP for Galaxy Apartment “F” Wing and another project of Paradise City (Vertical VI) by a majority of 58.612%.
- vii. Hence, the applicant has preferred the present IA seeking to carve out Galaxy Apartment “F” Wing, as separate project and to allow re-run of the CIRP of Galaxy Apartment “F” Wing i.e. Vertical IV.

- viii. The Respondent is a Resolution Professional of HDIL, and in order to conduct a re-run of the CIRP, the Respondent will have to seek extension of CIRP period, to conduct the entire process for which an appropriate Application will be filed on the basis of directions passed in the present IA.

FINDINGS/OBSERVATIONS

4. Heard the Ld. counsel appearing for the Applicant, Mr. Manoj Mishra as well as Ld. counsel appearing for the Resolution Professional, Mr. Shadab S. Jan and perused the record.
5. During the course of hearing, Ld. counsel appearing for the Respondent/Resolution Professional submits that he does not wish to file reply but ready to proceed with the matter.
6. An order dated 20.08.2019 was passed against the Corporate Debtor by this Adjudicating Authority admitting it into CIRP and Mr. Abhay Narayan Manudhane was initially appointed as IRP and thereafter confirmed and continued as RP and he is in effective control and administration of the Corporate Debtor since the date of his appointment.
7. It is important to mention here that the Galaxy Apartment in Kurla (E), Mumbai (classified as Vertical IV by RP) situated on the plot bearing no. CTS No. 13/1 to 13/4, 13/14B, 13/16, 20 and 21 had proposed the construction of 6 wings i.e., A, B, C, D, E and F prior to its commencement of CIRP dated 20.08.2019.

The Applicant are the home buyers of the 110 units in Galaxy Apartment "F" Wing and thus, one of the Financial Creditors of the Corporate Debtor. Out of the 6 proposed wings, Wings A to E have been completed and fit out possession was already given to the home buyers of Wings A to E. However, the work of the 110 units of F wing (1BHK, 2BHK and Shops) was constructed only upto the plinth level and has remained pending since 2009. Unfortunately, the project came to a complete standstill in the year 2012.

8. Since any compliant Resolution Applicant could not be found for the entire Corporate Debtor, the CoC in 18th CoC meeting convened on 08.09.2021 decided to go for the project wise Resolution. In the 19th CoC Meeting held on 16.09.2021, the RP divided the Corporate Debtor into 10 Verticals for inviting project wise Resolution Plans.
9. The Consortium of M/s. Khyati Realtors Pvt. Ltd. and M/s. Dosti Realty Limited have emerged as the Successful Resolution Applicant for Vertical I, II and III, M/s. Adani Properties Private Limited as the Successful Resolution Applicant for Vertical V and IX and M/s. Dev Land and Housing Private Limited as the Successful Resolution Applicant for Vertical VIII. The RP has also preferred filing an Application u/s 33 for the Liquidation of the Verticals for which no compliant Resolution Plan was received i.e., Vertical IV (Galaxy Apartment), Vertical VI, VII and X, which has left the Applicant, being the home buyers of F Wing in Vertical IV (Galaxy Apartment), high and dry.

10. It is pertinent to mention here the important paras of 26th meeting of Committee of Creditors held on 20th January 2023:

Item No. B-1

To consider and, if thought fit, to pass with or without modification the following resolution: To discuss on the proposal received from Paradise Welfare Association, M/s. B-Right Real Estate Ltd and Galaxy Apartment "F" Wing Welfare Association

"RESOLVED THAT subject to approval of Hon'ble NCLT and pursuant to Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Housing Development and Infrastructure Limited be and is hereby accorded to support and file required Application/Affidavits in support of the IA's filed by Paradise Welfare Association and Galaxy Apartment "F" Wing Welfare Association and any other association of Home Buyers for re running the process for invitation of resolution plans in respect of various Verticals covered under Liquidation Application filed before Hon'ble NCLT.

RESOLVED FURTHER THAT *the Resolution Professional of Housing Development and Infrastructure Limited be and is hereby authorized to take such steps including appointing valuers to revalue the Projects, file application for rerun of CIR Process etc. as may be necessary in*

relation to the above, if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution including filing necessary applications with the Hon'ble NCLT for the same."

11. The Hon'ble Supreme Court time and again have held and reminded that the object of IBC is to resolve the insolvency and liquidation is to be adopted as a last resort.
12. In view of the facts of the present case and in the interest of justice, this Bench allows to carve out "F" wing from Galaxy Apartment as a separate project vertical of the Corporate Debtor from Vertical IV and to rerun of the CIR Process for it and to take all necessary steps for the said purpose. The consequential reliefs to above prayers are also hereby allowed.
13. Accordingly, the instant I.A. is **allowed** in terms of observations and directions contained hereinabove and **stands disposed of**.

Sd/-

Charanjeet Singh Gulati
MEMBER (TECHNICAL)

---Rajeev---

Sd/-

Lakshmi Gurung
MEMBER (JUDICIAL)