



**THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT VI, NEW DELHI**

**I.A. 5980/ND/2022**

**IN**

**Company Petition No. (IB) – 2115/(ND)/2019**

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

**IN THE MATTER OF:**

DMI FINANCE PVT. LTD.

.... FINANCIAL CREDITOR

**VERSUS**

M/S ABLOOM INFOTECH PVT. LTD.

..... CORPORATE DEBTOR

**AND IN THE MATTER OF:**

M/S DAUPHIN CABLES PRIVATE LIMITED

.... APPLICANT

**VERSUS**

RP MR. PARVEEN BANSAL

...RESPONDENT



**CORAM:**

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

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER  
(TECHNICAL)**

For the Applicant: Mr. Manish Paliwal, Adv for applicant

**ORDER**

**PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Order Pronounced on: 14.02.2023**

1. This Application has been filed by M/s Dauphin Cables Private Limited, one of the shareholders of the Corporate Debtor i.e., Abloom Infotech Private Limited under section 60(5) praying for the following reliefs: -

- a) *Direct the Resolution Professional to reject the claim of the Chandgi Ram Real Estate Consultant Pvt. Ltd. (CRC) which has been wrongly admitted as a creditor.*
- b) *That to pass any other order as this Hon'ble Tribunal may see fit in lieu of justice.*

2. We have heard the Ld. Counsels for both the parties at length. Before going into the merits of the case it has to be



determined whether the present application is maintainable or not. The present application has been filed by one of the shareholders of the Corporate Debtor Abloom Infotech Private Limited. In the matter of Sintex Plastic Technology Ltd. vs. Zielem Industries Pvt. Ltd. and Ors. (29.06.2021 - NCLT - Ahmedabad) it was held that locus of party has to be seen with regard to its interests in the subject matter. A person who is aggrieved or whose interests are going to be prejudiced would prima facie have a locus to file an application. The Tribunal allowed the application filed by joint shareholders and also observed that various stakeholders are involved in the CIRP and having regard to preamble of IBC, 2016, an interested stakeholder can approach this Authority with the request to exercise its inherent jurisdiction under Rule 11 of NCLT Rules, 2016 in respect of proceedings of this nature subject to compliance with other legal requirements.

In the present case, this application has been filed by one of the shareholders of the CD and it is not the case that such shareholders do not have any interest in the matter concerned. Depending on whether the claim of CRC is



accepted or rejected will have a bearing on the claims of the shareholders. In other words, if the claim of the CRC is rejected there would remain surplus funds out of which the shareholders may get a share. Therefore, the prima facie locus of the applicant gets established. Hence, we are of the view that the present application is maintainable.

3. The applicant i.e. Dauphin Cables Private Limited has prayed to reject the claim of CRC which has been wrongly admitted as creditor as claimed by the applicant. It is stated by the applicant that as per the definition of the RERA, CRC is a promoter and his rights in the company are equivalent to that of the equity shareholders because there is a subsisting agreement between the CRC and the Corporate Debtor which entails Co-Development of land of the Corporate Debtor and therefore, they cannot get preference in payments in accordance with section 53 of the IBC. We have gone through the Term sheet, MoU and Addendum to MoU. It is clearly stated in all the agreements that there is an embargo upon Abloom to enter into any agreement without the consent of DMI Finance and parties will come into a definite agreement



in order to give effect to the objectives of the aforesaid Term Sheet only once embargo is lifted. However, the detailed definitive agreement/ joint development agreement with detailed terms and conditions was never executed/signed between the Corporate Debtor and CRC to give definitive effect to the arrangement. Hence, it cannot be said that the CRC was promotor of the Corporate Debtor. Hence, prayer (a) of the applicant to reject the claim of CRC cannot be granted. However, since CRC has provided an amount of Rs. 5,66,00,000 as a Refundable Non Interest Bearing Security Deposit and the said amount has been received in the CD's account, which till date has not been returned. We hold that CRC is a creditor of the Corporate Debtor. Whether CRC is a Financial Creditor or otherwise has been adjudicated upon in IA-2435/2021 by this Bench.

4. This bench, after taking into consideration the facts and circumstances of the present case, dismisses the present application.

5. I.A. 5980/2022 stands disposed of in terms of the above order.



Let a copy of order be served to parties.

**SD/-**

**(RAHUL BHATNAGAR)  
MEMBER (TECHNICAL)**

**SD/-**

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