

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 3913 OF 2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules 2016

Reliance Capital Limited
Through its Administrator
Mr. Nageswara Rao Y.

...Applicant

Vs.

The Imperial Condominium

...Respondents

In the matter of

C.P.(IB) No. 1231/MB/2021

Reserve Bank of India

Financial Creditor

Vs.

Reliance Capital Limited

Corporate Debtor

Order delivered on: 02.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : Mr. Gaurav Joshi, Learned Senior
Counsel a/w Mr. Rohan Kadam,
Mr.Sagar Vichare, Advocates i/b Mr.
Abhishek Adke Advocate, Advocate

For the Respondent : Mr. Vikram Nankani, Learned Senior
Counsel a/w Mr. Aman Kacheria, Mr.
Jahan Ajay Chokshi, Advocates i/b
KJAC & Associates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application IA no. 3913/2023 is filed by M/S Reliance Capital Limited ("Corporate Debtor" or "Applicant") through its Administrator Sh. Nageshwara Rao Y under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of the NCLT Rules, 2016. The present Application is being preferred in relation to an immovable property belonging to the Corporate Debtor i.e. Flat no. 4407, 44th floor, Imperial Towers, B.B. Nakashe Road, Tardeo, Mumbai- 400 034 ("Flat") and 1 (one) share bearing No.132 of the condominium formed by the apartment owners of the building known as "The Imperial Condominium" ("Shares"). The building is managed under the administration of an association of apartment owners, known as "Imperial Condominium" ("Respondent") formed under the

provisions of the Maharashtra Apartment Ownership Act, 1970 ("MAO"). The Applicant has prayed following reliefs :

- a. an order and injunction against the Respondent directing it to take steps and to do all such other acts, deed, matters and/or things as may be necessary for effectively effectuating the transfer of the Shares, being, 1 (one) share of The Imperial Condominium bearing Share Certificate No. 132, to the name of the Corporate Debtor and recording the Corporate Debtor as the owner of the Flat i.e. Flat no. 4407, 44th floor, Imperial Towers, B.B. Nakashe Road, Tardeo, Mumbai- 400 034;
- b. a perpetual order and injunction restraining the Respondent, its agents, servants, employees, officers and/or any persons claiming through and/or under it from impeding, hindering and/or interfering with the Applicant/ Corporate Debtor's exclusive and peaceful possession of Flat no. 4407, 44th floor, Imperial Towers, B.B. Nakashe Road, Tardeo, Mumbai-400 034 including its right of access and/or right of ingress/egress to and/or from the premises and/or in any manner whatsoever;
- c. pending the hearing and final disposal of the present Application, a temporary order and injunction restraining the Respondent, its agents, servants, employees, officers and/or any persons claiming through and/or under it from impeding, hindering and/or interfering with the Applicant/ Corporate Debtor's exclusive and peaceful possession of Flat no. 4407, 44th floor, Imperial Towers, B.B. Nakashe Road, Tardeo, Mumbai- 400 034 including its right of access

and/or right of ingress/egress to and/or from the premises
and/or in any manner whatsoever.

2. It is case of the Applicant that, since October 2015, the Corporate Debtor is the owner of the Subject Flat and Subject Shares pursuant to the registered Sale Deed. In terms of the Sale Deed, the Applicant is fully entitled to acquire and possess the Subject Premises.

2.1. Pertinently, the Respondent has not disputed the Corporate Debtor's ownership of the Subject Flat. Yet, and despite the passage of nearly 8 years since the Corporate Debtor's purchase of the Subject Flat, the Respondent has deliberately, and without any explanation and/or justification, and unilaterally been hindering and/or impeding and/or interfering with the Applicant's Corporate Debtor's access to and/or right to ingress into and egress from and/or peaceful possession of the Subject Premises; And has failed and / or neglected to transfer the Subject Shares to the name of the Corporate Debtor.

2.2. By way of an Order of December 6, 2021 in the captioned Petition, this Tribunal admitted the Petition and initiated the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor declaring a moratorium in terms of Section 14(1) of the Code and appointed Nageshwara Rao Y as the Administrator of the Corporate Debtor. It is submitted that the Administrator is statutorily obligated under the IBC to take custody of the assets of the Corporate Debtor including the Subject Premises, accordingly, it is imperative that the Applicant is able to take custody and control of the Subject Flat (which are valued at Rs. 34,12,80,000/- as on date and forms a

substantial part of the assets of the Corporate Debtor) and the Subject Shares.

3. The Respondent has filed the reply stating that the Applicant has filed this Application to thwart payment of admitted outstanding dues to the Respondent, under the guise of seeking directions under section 18 and 20 of the Code, while it is fully aware that its name can only be entered as owner, as also added to the Subject Share Certificate, upon payment of the Respondent's dues.

3.1. It is case of the Respondent that this flat was owned and occupied by one Mr. Ramesh Vangal ("Ramesh"), who is Corporate Debtor's predecessor in title, who is stated to have sold the Flat by way of a Registered Sale Deed dated 8th October, 2015 in favor of the Corporate Debtor. It is stated that at the time of execution of said Sale Deed, neither Ramesh nor the Corporate Debtor took any efforts/steps to ascertain the outstanding dues payable to the Respondent inter alia towards maintenance, car parking charges, property tax, corpus fund and transfer charges.

3.2. Between November 2017 and January, 2018, the Corporate Debtor (through its then representatives, prior to CIRP initiation) intimated the factum of the Flat being transferred to the Corporate Debtor, and by their letter dated 16th January, 2018, the Corporate Debtor formally applied for their name to be added to the Subject Share Certificate. Vide letter dated 19th December, 2017, the Corporate Debtor categorically stated that they were willing to pay maintenance and other charges/dues, which remain to be paid even as on date.

3.3. In the meanwhile, One lawyer firm for its client, Barclays Bank PLC ("Barclays) inter-alia intimated that Barclays were in

- possession of the Premises as a licensee in terms of the Leave and License Agreement dated 13th June, 2014. It is admitted position that in March 2018, the Corporate Debtor's representatives were given inspection of the Premises. Upon such inspection, the Corporate Debtor requested details of outstanding dues and also requested for an invoice to be raised.
- 3.4. At the time of sale to the Corporate Debtor, the flat was in possession of the Barclays under leave and license agreement between the Corporate Debtor and Ramesh, and remained so till the possession got restored to the Corporate Debtor through Court intervention pursuant to consent terms dated 13.12.2022. Hence, the question of unfettered possession or access to be given by Respondent does not arise.
- 3.5. Vide email dated 25.7.2022, the Applicant requested for waiver of the interest on all outstanding maintenance dues, corpus, property tax payments, which was re-iterated vide email dated 26.8.2022 and requested that the transfer fees be invoiced as of current date instead of earlier dates.
- 3.6. In terms of Section 19 of the Maharashtra Apartment Ownership Act, 1970, the Respondent has a valid and subsisting charge on the Premises, till such time that their outstanding dues are repaid. In addition to this, in terms of the Respondent's Bye Laws, the Respondent is entitled to reject/not act on an application to transfer share certificate of the Respondent subject to payment of its outstanding dues on any such premises, including the premises forming the subject matter of the captioned Application.
- 3.7. The Applicant, being expressly aware of the outstanding dues payable to the Respondent, ought to have factored the

Respondent's claim into the Corporate Debtor's CIRP, or expressly intimated to the Respondent that their claim stands rejected. Contrary thereto, the Applicant has sought for these concessions first from the Respondent, and when denied, filed the captioned Application purportedly seeking directions under Section(s) 18 and 20 of the Code, considering specific and detailed submissions have been made qua these sections in the Application.

4. We have heard the learned Counsel and perused the material available on record.

4.1. It is an admitted fact that the Corporate Debtor has purchased the flat from Mr. Ramesh Vangal, whose name is entered into the records of the Respondent as Owner of the flat. It is also admitted fact that the possession of the flat is now with the Corporate Debtor. The dispute is in relation to transfer of Applicant's name in the records of the Respondent and access to the flat through common area to the Applicant, which is being denied in view of pendency of dues payable to the Respondent by the Applicant. It is also admitted fact that dues, as claimed by the Respondent, are payable by the Applicant. The question for consideration in the present application is whether the outstanding dues have to be paid to the Respondent in full or in accordance with the provisions of the Code pertaining to CIRP of a Corporate Debtor, as the claim in terms of provisions of Code entail reduction into the outstanding dues.

4.2. The Applicant has claimed that it was entitled to restrict the Administrator's access to the common areas of the building (passage required for accessing the premises) till such time its

purported dues (both maintenance charges and transfer fees) were cleared by the Corporate Debtor. Per contra, the Respondent has inter alia argued that the Applicant could not have claimed possession of the Subject Flat as one Barclays PLC continued to remain in possession of the Subject Flat and its byelaws (“Byelaws”) permit a formal recording of the Applicant’s name as a member only after its purported dues are cleared by it. The Respondent has also argued that allowing the application would result in the Respondent’s members suffering and bearing the burden of the non-payment of the dues.

4.3. During the course of hearing, the Respondent argued that the applicant would only become an apartment owner and have locus after a ‘declaration’ was made by Ramesh in favour of the Applicant in respect of the Subject Flat. It argued that a ‘declaration’ was required to make a person an ‘apartment owner’ under the MAO Act. Accordingly, the respondent does not recognize the Applicant as its debtor. The Applicant argued that these oral arguments must be rejected in limine since they are de hors and contradicts the pleaded case by the Respondent. Notwithstanding, these contentions are wholly misconceived and unsustainable in law. We find force in the contention. Nonetheless, we are of considered view that these arguments not have any merit as the Section 20 of Maharashtra Apartment Ownership Act, 1970 (“MAO”) makes the buyer liable to pay the charges due from a flat, in case it is not paid by the transferor of such flat and provisions of MOA can not whittle down the provisions of Transfer of Property Act, 1882

which vests substantive and legal rights in a property in the buyer.

4.4. We find that section 4 of the MAO Act declares that apartments are heritable and transferable in the same manner as other property and in terms of Section 5 thereof the apartment owners are entitled to exclusive ownership and possession of the apartment and an undivided right and interest in the common areas and facilities. Section 5 (2) enacts that each apartment must be transferred by a Deed of Apartment. The earlier requirement to make a 'declaration' each time an apartment was transferred was deleted by Parliament via Maharashtra Act No. 53 of 1974, accordingly condition of the declaration to be made by Ramesh does not hold good. .

4.5. MAO Act confers a right to each apartment owner to use the common areas and facilities without hindering or encroaching upon the lawful rights of other apartment owners and the Owners are obligated to pay the periodical charges as are decided by the Managing Committee of the Apartment Owners Association. However, the non-payment of these charges cannot result into forfeiture of right of ownership in a flat, though such charges remain a charge over the property in terms of section 19 of MAO Act. Thus, the Respondent cannot limit the rights of the Applicant as apartment owner to use the common areas without taking recourse to law. Accordingly, we have no hesitation to hold that the Respondent must allow the Applicant unfettered and unconditional right of passage and access to the Flat owned by it.

4.6. As regards claim of the Respondent, we find that these dues are admittedly payable by the Applicant and the Applicant had

only sought waiver of the interest levied on these charges on account of their non-payment. Thus, the Respondents are Creditors and since the Respondents have charge over the Flat in terms of Section 20 of the Act, they qualify to be secured creditors. The Code provides for the filing of claims by the Creditors of a Corporate Debtor, who is undergoing CIRP; admission of such claim; and its settlement in the CIRP process. We find that the Respondents had not recognised the Applicant as its debtor, accordingly, had not filed any claim in the CIRP. The Resolution Plan in case of the Corporate Debtor has already been approved and is pending for approval before this Tribunal. It is trite law that no new claims should be allowed to be entertained after approval of Resolution Plan by CoC, however, considering the peculiar circumstances of this case, whereby the Administrator was fully aware of dues of the Respondent since admission of Corporate Debtor into CIRP, we consider it in the interest of justice to allow the claim of the Respondent Debtor for consideration in the Resolution Plan. The respondents shall file claim before the Resolution Professional within one week of communication of this Order, a copy of which can be supplied by the Applicant immediately. The Administrator shall verify the claim and admit the same in accordance with the provisions of the Code and include in the list of creditors to be dealt with in the proposed Resolution Plan within one week. Such modification shall be placed before CoC within 7 days thereafter for its confirmation. In case, the liability of the Successful Resolution Applicant is effected by such claim, the modified list shall be communicated to him as well for their concurrence.

5. In view of the aforesaid, IA 3913/2023 is disposed of as allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)