

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

MA/432/2019 in CP/193/IB/2018
filed under Section 60 read with
Section 31(2) of the I&B Code,
2016

In the matter of **M/s. P Dot G Constructions Private Limited**

Mr. Mittalal Bhawarlal

... Applicant

Vs.

Mr. Sundaresan Nagarjan & Anr.

.....Respondent/Resolution Professional

CORAM:

**R.VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant : Mr. M.K. Bhansali, PCS
For R1 : Mr. Ravi Rajagopalan, Counsel*

ORDER

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 31st of December, 2019

1. This Application has been filed by the Applicant aggrieved by the rejection of the claim of a sum of Rs.44 Lakhs lodged by the Applicant in Form CA under Regulation 8A of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, dated 06.10.2018 in the capacity of Home Buyer. The details of

quantification of the sum of Rs.44 Lakhs is given by way of tabulation by the Applicant in the Application itself at paragraph 1.1 of the Application, which is extracted below for ready reference:

Details of Registered document no. for registration of UDS of land	Corresponding Memorandum of Agreement specifying project and flat no.	Details of payments made as per registered agreement	Details of payment as per memorandum of Agreement
Regd. Doc No.1006/2014 dated 03.02.2014 Registered with Sub Registrar Office Thirvallur	Sunshine Bloom Block Flat No. 401,402,409	Rs.2,00,000 by cheque no. 092357 dated 03.02.2014 drawn on Axis Bank	Rs.2,00,000/- confirmed in agreement and Rs.5,00,000/- paid 25.03.2014
Regd. Doc. No.1005/2014 dated 03.02.2014 Registered with Sub Registrar Office Thiruvallur	Sunshine Rainbow Block Flat No.202,302,304, 310	Rs.3,00,000 by cheque no.92358 dated 03.02.2014 drawn on Axis Bank	Rs.2,00,000/- confirmed in agreement and Rs.5,00,000/- paid 25.03.2014
Regd. Doc No.573/2011 dated 15.03.2011 Registered with Sub Registrar Office Thiyagaraya Nagar	T-Nagar Flat No. AF-2	Rs.2,00,000/- confirmed in agreement and Rs.5,00,000/- paid on 15.03.2011 Receipt attached herewith as Annexure 1A	Rs.18,00,000/- mentioned and confirmed in memorandum of Agreement

2. It is further brought to the notice of this Tribunal that by way of an Application filed by the Operational Creditor viz., M/s. IJM Concrete Products Private Limited under Section 9 of the I&B Code, 2016, CIR Process against M/s. P Dot G Constructions Private Limited was initiated on 13.07.2018 and

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that the claim was lodged in Form CA as already brought forth on 23.10.2018 and the Resolution Professional acknowledged the said lodging of the claim by an email dated 13.11.2018. From the averments, it is seen that the claim has been made in respect of three properties, one situated at T. Nagar and the others situated in the project titled 'Sunshine Bloom Block' and 'Sunshine Rainbow Block' respectively.

3. It is also seen from the averments made in the Application that through the email communications, the Resolution Professional has sought for additional documents which according to the Applicant were duly produced to the Resolution Professional. However, the Resolution Professional has chosen to reject the claim vide communication dated 28.12.2018 on account of no receipts having been attached in respect of the claim of Rs.44 Lakhs which according to the Applicant is not correct in view of adequate documents being filed before the Resolution Professional for establishing the claim of Rs.44 Lakhs, and in the said circumstance, the Resolution Professional, it is stated, should not have rejected the claim as lodged by the Applicant.

4. It is seen that pursuant to the notice issued to the Respondent namely the Resolution Professional, a reply has

been filed by the Respondent wherein the claim is sought to be denied on several grounds including primarily on the ground that the Applicant cannot be construed as a Home Buyer and the lodging of the claim in Form CA by the Applicant as Home Buyer, is *prima facie* not correct. It is further contended that the claim before the Resolution Professional was lodged beyond the period of 90 days without having the delay being condoned before this Adjudicating Authority, and in the said circumstance, the delay in filing the claim is also a ground for not accepting the claim on the part of the Resolution Professional. It is also contended in the Reply that the claim is *ex facie* not supported by any proof of proper consideration having been paid by the Applicant as Home Buyer as there is a inconsistency between the records furnished namely, Cash Receipt as produced by Applicant and the registered documents namely the Sale Agreement dated 03.02.2014 as well as the Memorandum of Agreement dated 15.03.2011 in relation to three properties which according to the Applicant is for booking and allotment of which the payment have been made by the Applicant to the Corporate Debtor.

5. It is also brought to the notice of this Tribunal in the Reply filed by the Resolution Professional that the payment



which is alleged to have been made by way of cash is not reflected in the respective documents as filed by the Applicant even though both the receipt as well as the documents bear the same date, and in this connection, some instances have also been brought in the Reply. As to the claim made by the Applicant, it is stated by the Resolution Professional though the Applicant has lodged the claims in Form CA as a Home Buyer, even though the Applicant cannot be construed as Financial Creditor coming under the category of Home Buyer. Any motives as sought to be attributed by the Applicant against the Resolution Professional is also denied by the Resolution Professional and the allegations that the Resolution Professional is acting *malafide*, biased and against the interest of the Home Buyer are made without any basis or a shred of evidence against the Resolution Professional. In the said circumstances, the Resolution Professional has prayed that the Application deserves to be dismissed and also seeks to bring the transactions as alleged in the Application within the fold of Section 66 of I&B Code, 2016 as fraudulent trading.

6. To the above Reply as elucidated, a Rejoinder from the Applicant has been filed wherein the Applicant has sought to file the email correspondences as exchanged between the Applicant and the Resolution Professional in view of the Claim



as covered under the Application. It is also pointed out from the list as published along with Form-G bearing the list of Financial Creditors along with voting percentage has been specified by the Applicant, wherein the Applicant does not figure as Financial Creditor-Home Buyer. The act of the Resolution Professional in communicating with the Applicant of the proceedings of the CIR Process when the claim of the Applicant has been rejected is also sought to be questioned.

7. In reply to the Rejoinder filed by the Applicant, a sur-rejoinder has been filed by the Resolution Professional, wherein it has been brought to the notice of this Tribunal that even though a Claim has been made that the payment in a sum of Rs.2 Lakhs by way of cheque No.092357 dated 03.02.2014 as well as a sum of Rs.3 Lakhs by way of Cheque No.92358 dated 03.02.2014 both the above said Cheques have been drawn on Axis Bank. However, the Bank statement which has been furnished to the Resolution Professional or to this Adjudicating Authority, does not bear the name of the said Bank which has issued the said Bank Statement, and in this connection, it is also pointed out in the Sur-rejoinder filed by the Resolution Professional that the Rejoinder filed by the Applicant is silent on this particular aspect. The Resolution Professional also alleges in the Sur-rejoinder that the

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Applicant in the instant Application is acting in concert with two other Applicants in MA/433/2019 and MA/434/2019 in relation to the same Corporate Debtor in lodging their Claims before the Resolution Professional and seeking for their respective claim to be admitted without any genuineness, and in addition, as not being Home Buyer of the Corporate Debtor thereby disentitling them to make a Claim in Form CA specifically meant for the category of Home Buyers as prescribed in Regulations as the transactions seem to be not *bona fide*.

8. Besides above, a Memo has been filed by the Resolution Professional in relation to the Claim, on 16.12.2019 wherein additionally it is brought to the notice of this Tribunal that the Cheques which had been issued as detailed above for Rs.2 Lakhs and Rs.5 Lakhs had been transferred from the account held in the name of one M/s. M. M. Jewellery and not from the Applicant's Bank Account, which it is contended by the Resolution Professional in the Memo filed on 16.12.2019 to the effect that the Applicant is not entitled to approach this Authority to enforce the claim as the sums have not been disbursed by the Applicant.



9. The parties were heard in detail. From the records as filed with the Application, it is seen that the documents bearing No.1006/2014, 1005/2014 and 573/2011 in relation to the properties are registered with concerned Sub-registrar which is sought to be relied upon for the purpose of conveyance of undivided share of land as prescribed in the Schedule of property in the said registered documents. In addition, the three Memorandum of Agreements as entered into between the parties dated 15.03.2011, 03.02.2014 and 03.02.2014 are also sought to be relied on by the Applicants to establish that the monies which are figuring in the respective Sale Agreements or Memorandum of Agreements have been duly paid to the Corporate Debtor, and in the said circumstance, the Claim cannot be rejected and that all the payments which are also extracted hereinabove by way of tabulation in Para *supra* are in relation to the purchase of properties, and hence, it is appropriate that the Applicant should be categorised as 'Home Buyer' and that the Resolution Professional was wrong in not entertaining the Claim as filed under Form CA meant for the Home Buyers.

10. It is further pointed out by the Learned Counsel for the Applicant that from the fact of acknowledgement in the registered document of the payment wherein the Corporate



Debtor had clearly disclosed that the sums as reflected therein have been paid. Further, the payment made by way of cash as evidenced by Cash Receipt enclosed for a sum of Rs.5 Lakhs dated 15.03.2011 in relation to the T Nagar property had also been got remitted by the Applicant, and in the circumstance, the Learned Counsel for the Applicant submits that, the rejection of the Claim on the part of the Resolution Professional vide communication dated 28.12.2018, is not correct. The communication dated 28.12.2018 sent by the Resolution Professional to the Applicant is extracted herein below for ready reference:-

"Please refer to the claim lodged by you in connection with the insolvency proceedings of M/s. P dot G Constructions (P) Ltd.

I have verified your claim with reference to the documents submitted by you along with the claim form.

I regret to inform you that your claim has been rejected on account of No receipts attached.

I am open to have a relook at your claim based on the additional input that may be provided by you.

I will be happy to assist you and put my best efforts to resolve the rejection of your claim.

On behalf of my team, and myself I wish you all a Happy and Prosperous New Year 2019."

11. On the part of the Resolution Professional, the Claim was vehemently denied as being entitled to be admitted, and



in this connection, during course of arguments, it has been brought to the notice of this Tribunal by the Resolution Professional that there is inconsistency which are quite glaring on the face of it in relation to the documents filed and in relation to the same the Learned Counsel for the Resolution Professional points out to the Receipt as issued in relation to the T Nagar property as annexed at page 26 of the typed set filed by the Applicant namely the document which had been registered on 15.03.2011 of the same date as annexed at page 49 of the typed set filed with the Application being the Agreement for Sale registered with the concerned Sub-Registrar Office, and from the said document, it is pointed out that at page 6 of the document, the consideration is stated to be Rs.7 Lakhs as price agreed for the sale of property being 350 sq.ft. undivided share of vacant land covered under the said agreement as payable, of which Rs.2 Lakhs which is reflected to be paid and the balance amount of Rs.5 Lakhs was required to be paid within a period of one month from the date of the completion of the transactions in all respects.

12. The Resolution Professional questioned, by juxtaposition of the said two documents and its contents that even though the entire payment of Rs.7 Lakhs as agreed upon by the Applicant seems to have been paid on 15.03.2011 itself and in the circumstances as to why only Rs.2 Lakhs has been



reflected in the said registered document as having been paid and the balance amount of Rs.5 Lakhs had been left out of the said amount of Rs.7 Lakhs not acknowledged of having been received even though stated to have been received in cash on the same day itself.

13. In any case, it is pointed out by the Learned Counsel for the Resolution Professional that even during the forensic audit conducted by the Forensic Auditor, the payment as reflected in the Sale Agreement nor in the Receipt both dated 15.03.2011 do not correlate with each other and does not form part of the books of the accounts of the Corporate Debtor. With respect to the said contention put forth by the Learned Counsel for the Resolution Professional, the Learned Counsel for the Applicant stated that even though the payments have been made as reflected in the document, it is not in the control of the Applicant to reflect the same in the books of the account of the Corporate Debtor, and in the said circumstance, the Applicant cannot be blamed for the same. In relation to the payments made from the account of M/s. M. M. Jewellery which according to the Learned Counsel for the Resolution Professional cannot be construed as the payment made by the Applicant, the said contention is sought to be rebutted by the Learned Counsel for the Applicant on the ground that the Applicant is a sole proprietor of M/s. M. M. Jewellery from



which the payment has been made. In the circumstance according to the Ld. Counsel for the Applicant, the payment made from the sole proprietary concern namely M/s. M. M. Jewellery is to be considered as payment made by the Applicant itself. However, from a perusal of the records as available before this Tribunal, it is seen that no shred of evidence has been produced to the effect that the Applicant is the Sole Proprietor of M/s. M. M. Jewellery, even assuming the said entity to be a sole proprietary concern, nor the financial statements or Income Tax Returns for the relevant years of the said entity have been produced to sustain the plea. Further, as rightly contended by the Learned Counsel for the Resolution Professional, the Bank statement as enclosed along with the typed set as furnished by the Resolution Professional also, does not bear the name of the Banker who issued the Bank statement even though it is represented by the Applicant that the Bank statement had been issued by the Axis Bank. Unless necessary proof evidencing the claim backed by documents particularly in relation to the transaction of which the Resolution Professional is required to deal with all being prior to the initiation of CIR Process and thereby to be established without any iota of doubt it becomes virtually impossible and acceptable for the claim to be established. The onus is on the Applicant being the one before this Tribunal in

clinching with irrefutable proof to establish the claim before the Resolution Professional or in case of rejection by the RP/IRP before this Adjudicating Authority. Even though the registered documents produced before this Tribunal based on which the claim is made is projected as being sufficient proof by the Learned Counsel for the Applicant to establish the payment of the monies, however, it is seen that without proper documents backing the said payments and as to whether it was paid by cash or through Bank, and in case of cash payment backed by stamp receipts and in case of payment through the Bank Cheques establishing with adequate proof by filing the relevant Bank statement standing in the name of the Applicant lodging the claim in an unambiguous manner as required of him, as the Resolution Professional it must be noted is confronted to verify the claims which are specifically in relation to the past transactions and not present one and required to segregate the bogus ones from genuine and hence, the Resolution Professional has rightly called for the payments to be backed by necessary proof, and in the circumstance, in the absence of the Receipts/Bank Statements and despite being produced in any case not correlating with the registered documents, particularly, the transactions relating to the year 2011-12, casts a cloud of suspicion and places the onus upon the

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Applicant, which the Applicant is required to discharge either to the satisfaction of the Resolution Professional and in case of rejection before this Adjudicating Authority. The Applicant has miserably failed in this aspect.

14. Further, the filing of the claims in the capacity of the Home Buyers in Form CA, the Applicant has chosen to rely on the booking of three properties which can only be treated in the nature of speculation or in the alternative as security for financial transactions by way of loan, if any, given by the Applicant to the Corporate Debtor, and in the circumstance, filing of the claim in Form CA by the Applicant as Home Buyer is also not appropriate as the rights of the home buyers seems to stand on a entirely different footing as compared to the other financial creditors and in the said circumstance, the claim is bound to be rejected as contended by the Resolution Professional which argument we find credence.

15. Hon'ble Supreme Court of India in the case of ***Pioneer Urban Land and Infrastructure Limited & Anr. -vs- Union of India & Ors.*** in Writ Petition No. 43/2019 has held that a speculative home buyer is not entitled to come as a Financial Creditor under the category as defined under Section 5 (8) (f) of the I&B Code, 2016 as a Home Buyer. The fact



that the three Sale Agreements along with the Memorandum of Agreements which are being touted by the Applicant clearly shows that the transactions, if at all are to be considered as being speculative and the transaction cannot be considered as genuine made from the stand point of a Home Buyer so as to come for the claim to be lodged in Form CA.

16. In any case, it is also pointed out by the Learned Counsel for the Resolution Professional that in relation to the T Nagar property of which one of the documents pertains, is not the asset of the Corporate Debtor presently as the same has been allotted and sold a long time back much prior to the initiation of CIRP. Hence, the claim also seems to suffer from delay and laches on the part of the Applicant in enforcing the claim. In the circumstance, on this count also, the delay on the part of the Applicant to exercise its remedy as against the Corporate Debtor also disentitles the Applicant to lodge the claim. From all the documents filed, it is seen that it is either of the year 2011 or 2014 and if at all any action based on the said documents is required to be taken, should have been taken within a period of three years from the date of the said agreement which the Applicant has miserably failed. In the said circumstances, the lodging of the claim with the Resolution Professional being a stale claim and thereby trying



to enforce before the Adjudicating Authority upon its rejection cannot also be countenanced. In these circumstances, the Application stand dismissed. However there will be no order as to costs.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

MRS. P. ATHISTAMANI