

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**IA-2074/2022 IN**

**CP/IB/4469/(MB)/2019**

Under Section 7 of the IBC, 2016

*In the matter of*

**UTI Employees Sai Samruddhi**

**Co-operative Housing Society**

...Applicant

V/s.

**Jayesh Sangharajka & Ors.**

...Respondent(s)

*In the matter of*

**Idbi Trusteeship Services Limited**

...Financial Creditor

Versus

**Ornate Spaces Private Limited**

...Corporate Debtor

Order delivered on: **02.05.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant:

Mr. Partho Sarkar i/b Vidhi legal,  
Adv.

For the Respondent(s) : Mr. Vikram Nankani, Ld. Senior Counsel a/w Mr. Nausher Kohli, Mr. Devesh Juvekar, Mr. Ashish Parwani, Mr. Dikshat Mehra, Mr. Chintan Gandhi and Ms. Anjali Dhoot i.b Rajani Associates for the RP. Mr. Jayesh Sangharajka RP present in person.

For the SRA: Mr. Mustafa Doctor a/w Mr. Akshay Doctor, Mr. Parag Sawant and Ms. Priyank Kulkarni i.b P.S. Chambers, Ld. Counsel for the Successful Resolution Applicant.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This application is filed by M/s UTI Employees Sai Samruddhi Cooperating Housing Society, is the allottee of the land by MHADA interalia for the construction of tenements for the benefit of its members to seek initiation of contempt proceedings against the Resolution Professional (R1) and directions to R3 i.e. IBBI to inquire into the conduct of resolution professional and CoC (R2) in terms of section 235A of the Code.
2. It is the case of the applicant that the contemptuous averment made by Respondent 1 in his reply to IA 651/2022 interfered with the course of proceedings where the R-1 stated “*the court would be failing in its duty.....*”.

The Ld. Counsel has further stated that Respondent 1 in collusion with Respondent 2 is attempting to extinguish the rights of the instant applicant by proposing a Resolution Plan conflicting with IBC provisions and in violation of the position of law settled by Hon'ble NCLAT. He further states that Respondent 1 is attempting to profiteer out of the CIRP by claiming an exorbitant amount as "Success Fees", though an NCLT ruling was operating against him qua his claim, the Resolution Plan is in benefit of the Corporate Debtor, who caused the default.

2.1. The applicant has also filed another written submission dated 24.04.2023 drawing attention of this Bench to e-mail dated 12.04.2023 sent by its counsel to the Registry of this Bench; and opposing the levy of success fee by the Respondent No. 1 as illegal.

3. The Respondent No. 1 i.e. Resolution Professional has filed an affidavit in reply dated 15.12.2022 stating that no authority in favour of the person signing the present petition on behalf of the applicant is enclosed; the Resolution plan is in strict compliance of law and does not contravene any of provision of IBC, Transfer of Property Act, RERA and Indian Contract Act; the applicant has so far filed 6 Interlocutory applications challenging the Resolution Plan to derail the entire CIRP, out of which 2 were withdrawn subsequent to filing; and the Present petition is not maintainable on ground of delay and latches. He further submits that the present application has been filed to seek proceedings u/s 425 of the Companies Act, 2013 without any concurrent proof or support to the averments; the claims of the members of the applicant society have been duly admitted and dealt with in the Plan; the Plan is approved by 80.86% vote of CoC members; the applicant is bound by provisions of section 31(1) of the Code; and the applicant is guilty of suppression of facts pertaining to

order dated 18.02.2021 passed by Hon'ble High Court of Bombay retraining it from termination of development agreement dated 18.05.2010 in view of its statement before Hon'ble High Court it does not intend to terminate the development agreement entered into amongst Applicant, Corporate Debtor and Respondent No. 5; any action for recovery of possession of plot of land is hit by the provisions of Section 14(1)(d) of the Code; deemed termination of agreement pleaded by applicant and consequent encashment of bank guarantee of Rs. 27.00 crores is without any substance and illegal; the allegation of stupendous charging of fees and grant of success fees being in contravention of law is wholly unsustainable.

4. This Bench heard the Counsel(s) and perused the material on record.

4.1. Section 425 of the Companies Act, 2013 provides for Power to punish for contempt, and reads as under –

*“The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971 (70 of 1971), which shall have the effect subject to modifications that—*

*(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and*

*(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.*

4.2. It is the case of the applicant that the Respondent No. 1 has made an outright contemptuous averment tending to interfere in the course of justice in his reply in IA 651/2022. The R-1 had stated in that reply that *“the court has inherent power to proceed further with the examination of the case in merits and if the court does not reject the petition on that ground, the*

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*court would be failing in its duty.....”* The Applicant has pleaded that it tantamount to threaten the Court and has relied upon the decision of Hon’ble Supreme Court in **Pritam Pal vs. High Court of MP, 1993 Supp (1) SCC 529**. The applicant has further drawn inference from this statement of R-1 that it led to recusal of Ms. Anuradha Bhatia Member (T) and Ms. Suchitra Kanuparthi Member (J) from the Bench. It may be pertinent to note here that this Bench didn’t find anything in the record to confirm this inference. This Bench finds that the decision of Hon’ble Supreme court in the cited case found that the contemnor had moved a Contempt Petition u/s 16 of the Contempt of Courts Act, 1971 making some serious allegations against the two judges of the High Court, who dismissed his Writ Petition and also the Review Petition. The Hon’ble Supreme Court further held that “*The special feature of the procedure to be followed in a contempt proceeding being summary procedure to be followed in a contempt proceeding being summary procedure, which is recognised not only in India but also abroad, the caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself*”. This part of the decision “**that power should be used sparingly**” appears to have been consciously withheld by the applicant while pleading its case in this application. This Bench is of considered view that the applicant may not have been briefed the complete ratio of the decision, hence this bench does not take any offence in such suppression of important and vital ratio of this decision.

4.3.As regards R-1 submission in IA 651/2022, this Bench is of the considered view that such kind of statements are made by the litigating

parties to stress their point of view on a legal proposition of law. Even, this kind of statements have been made by applicant's counsel during the course of hearing. Since, this bench considers it to be mere submission by the parties to put weight on their case and not motivated by any attempt to scandalising "*the court by making libellous allegations which are scurrilous, highly offensive, vicious, intimidatory, malicious and beyond condonable limit*" as was found by Hon'ble Supreme Court in that case. Accordingly, this Bench is of view that no case is made out for initiating any proceedings u/s 425 of the Companies Act, 2013 and this ground is without any substance and basis.

- 4.4. The second issue raised in the present application pertains to allegation of collusion between R-1 and R-2 i.e. CoC to extinguish the rights of the applicant by way of proposing a Resolution Plan, which is against section 30(2)(e) of the Code in view of the applicant. The Ld. Counsel has relied upon the decision of Hon'ble NCLAT in case of Engineering Projects (India) Limited v. RamRatan Kanoongo (2022) ibclaw.in 344 NCLAT. This Bench is of the considered view that the issue whether the Resolution Plan pending for its approval is in compliance with provisions of Section 30(2) or not shall be examined while deciding on its approval by this bench.
- 4.5. The applicant has also raised the issue of provision for payment of success fee to the Resolution Professional and collusion amongst the Respondents. This Bench does not find any merit and is not inclined to allow the prayer for making a reference to IBBI i.e. R-3 in terms of section 235A of the Code as well as directions to R-3 to make available findings on complaint made by the applicant for this Bench's appreciation, as R-3 has mechanism in place to discipline the activities of Resolution professional. Further, a complaint has already been

made by the applicant to R-3 against the conduct of R-1 & R-2, which it is duty bound to look into in terms of provisions of the Code. Hence, this ground is also rejected.

4.6. In the matter of **Sanjay Sodhi Vs. M/s Cinema Ventures Pvt. Ltd. (2023) ibclaw.in 251**, the Hon'ble NCLAT held that for initiating proceeding u/s 425 of the Companies Act, 2013 the question which needs to be considered is as to whether the act of the Respondent can be treated to be act of wilful disobedience. Further, in the matter of **Sanjeev Mahajan Vs. Indian Bank (Erstwhile Allahabad Bank) & Anr (2022) ibclaw.in 942**, the Hon'ble NCLAT dismissed the contempt application holding that there were certain difference of opinion regarding the interpretation of the order and views expressed in the CoC meetings regarding the interpretation of the Order dated 04.07.2022 cannot amount to any contempt.

5. In view of foregoing, this application IA-2074/2022 is **dismissed**.

**Sd/-**  
**Prabhat Kumar**  
**Member (Technical)**

**Sd/-**  
**Kishore Vemulapalli**  
**Member (Judicial)**

SVR/02.05.2023