

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

**IA No. 549/MB/C-I/2021**

**In**

**C.P (IB) No.1061/MB/C-I/2017**

An application under Section 42 of the Insolvency and  
Bankruptcy Code, 2016

Filed by

**Suraksha Asset Reconstruction Limited**

**...Applicant**

Versus

**Rajendra K. Bhuta**

Liquidator of

Guruashish Constructions Private Limited.

**...Respondent**

In the matter of

**Union Bank of India**

**...Financial Creditor**

Versus

**Guruashish Constructions Private Limited.**

**... Corporate Debtor**

**Order Delivered on: 11.08.2023**

***Coram:***

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao  
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

***Appearances:***

For the Applicant : Mr. Rohit Gupta a/w Mr. Ajit Singh  
Tawar i/b Ajit Singh Tawar & Co,  
Advocates, Advocates

For the Respondent/Liquidator : Mr. Darryl Pereira, Advocate.

**ORDER**

***Per: Anu Jagmohan Singh, Member (Technical)***

1. The present Application is filed by the Applicant seeking:
  - i. That the present Application be Allowed.
  - ii. That the decision of the Liquidator dated 23.10.2023 rejecting the claim Applicant be set aside.
  - iii. Direction to the Liquidator to accept the claim of the Applicant to the tune of Rs.220,80,68,977.
  - iv. Direction to the Liquidator to amend and publish an updated list of stakeholders including the Applicant's claim therein.
  - v. Pending the final disposal of this Application, this Tribunal direct the Liquidator to not distribute sale of assets of the Corporate Debtor to any creditors.
  - vi. Any other reliefs as this Tribunal may deem fit in the facts and circumstances of this case.

**Backdrop of facts**

2. The Corporate Debtor was admitted in CIRP vide Order dated 24.07.2017. Since, no Resolution Plan was passed, the Corporate Debtor was Liquidated vide Order dated 04.09.2020 and the Respondent herein

was appointed as the Liquidator.

3. The Applicant submits that in the year 2016, Sapphire Land Development Private Limited (“**SLDPL**”) availed a term loan of Rs. 150 Crores ("Loan") from YES Bank Limited and the Loan is inter-alia secured by way of extension of mortgage over the immovable property viz the development rights with minimum saleable area of 2 lac sq. ft. (BUA 15,999 sq. mt) of commercial space at "Project Meadows" at Sector R10, Siddharth Nagar, Goregaon with total built-up area of -6.31 lacs sq. ft., including hypothecation on all movable and current assets (both present & future) including sale proceeds and/or lease/rental receivables of minimum saleable area 2 lacs sq. ft. (BUA 15999 sq.mtr) vide deed of mortgage dated 26.09.2016 of Guruashish Construction Private Limited ("Corporate Debtor").
4. The Applicant submits that YES Bank Limited assigned the financial asset pertaining to SLDPL, together with the underlying security interest created therefor and all its right, title, interest therein in favor of the Applicant (acting in its capacity as Trustee of the Suraksha ARC 013 Trust) by and under an assignment agreement dated 06.07.2017.
5. Accordingly, by virtue of the covenants of the Assignment Agreement and the provision of SARFAESI Act, the Applicant is deemed to be the secured financial creditor to SLDPL and all rights of YES Bank Limited

in relation to the aforesaid financial assets of SLDPL stand vested in the Applicant.

6. SLDPL committed default in repayment of the principal amount as well as in payment of interest and other charges amounting to Rs. 220,80,68,977/- (Rupees Two Hundred Twenty Crore Eighty Lakhs Sixty Eight Thousand Nine Hundred and Seventy Seven only) as on 09.08.2017, in respect of loan which fell due from time to time. Hence, the Corporate Debtor is liable for the debt as mentioned hereinabove in its capacity as Mortgagor in the event of Liquidation.
7. The Applicant sent a notice of default dated 09.08.2017 to the Corporate Debtor intimating about the default committed by SLDPL.
8. The Applicant submits that it had filed two Miscellaneous Applications bearing No. 24/2018 and MA No. 28/2018 against the Respondent, for reinstating it as a member of CoC and reconstitution of the CoC. The Applicant submits that when the Corporate Debtor was undergoing CIRP, it had filed the claim which was admitted and the Applicant was made a CoC member. Subsequently, the Resolution Professional rejected the Applicant's claim, thereby deleting it as a member of the CoC. Therefore, the aforesaid two Miscellaneous Applications were preferred by the Applicant, which were allowed by this bench vide order dated 19.03.2018.

9. Since, the CIRP of the Corporate Debtor failed, the Corporate Debtor was decided to be Liquidated vide Order of this bench dated 04.09.2020. The Respondent herein was appointed as the Liquidator. The Applicant immediately filed its Claim in Form-D' under Regulation 18 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 pursuant to the public announcement dated 09.09.2020, before the Liquidator, Mr. Rajendra Karanmal Bhuta (IBBI/IPA-001/IP-P00141/2017- 18/10305) on 3rd October, 2020.
10. The claim was filed by the Applicant for a total amount of Rs.220,80,68,977/- as on 09.08.2017.
11. Thereafter, the Liquidator by an email dated 23.10.2020 rejected the claim of the Applicant stating that the claim cannot be considered as financial debt. He relied on the Judgment of the Hon'ble Supreme Court in Anuj Jain vs Axis Bank, Civil Appeal No. 8512-8527 of 2019 dated 26.02.2020.
12. The Applicant argues that the Judgement of the Hon'ble Supreme Court in Anuj Jain is not applicable in the present case as the mortgage created there was preferential, undervalued and fraudulent in nature and per contra in the present case the transaction does not fall within the ambit of section 43, 45 and 66 of the Code.
13. The Applicant submits that the Liquidator has failed to consider the deed

of mortgage dated 26.09.2016 and record available with the MCA where a charge has been registered under section 77(1) of the Companies Act, 2013 in relation to the immovable property of the Corporate Debtor.

14. The Applicant submits that the Respondent has accepted the claim of the Applicant as a 'Financial Creditor' on commencement of CIRP and the Respondent has rejected the claim of the Applicant without assigning any cogent reasons on commencement of Liquidation.
15. The Applicant submits that the Liquidator has failed to consider the afore mentioned aspects and rejected the claim. Hence, the present Application is filed.

**Submissions advanced by the Respondent/Liquidator**

16. The Respondent/Liquidator submits that the rationale behind the rejection of the claim is that the Applicant cannot come within the purview of Financial Creditor as defined under section 5(8) of the Code. The Respondent submits that the Corporate Debtor has not been a direct beneficiary of the loan advanced. The present case is where a security was created by way of registered mortgage on the development rights including hypothecation on movable and current assets (both present and future) including sale proceeds and/or lease/ rental receivables (owned by the Corporate Debtor) in favour of Yes Bank to secure the loan granted to SLDPL.

17. The Respondent submits that at best the Applicant can be classified as Secured Creditor qua the Corporate Debtor and not a financial Creditor. The Respondent has placed reliance on the Judgment of the Hon'ble Supreme Court in Anuj Jain vs Axis Bank, Civil Appeal No. 8512-8527 of 2019 dated 26.02.2020.
18. The Respondent submits that for a debt to qualify as financial debt a basic element of disbursal against the time value of money must be there. The Respondent submits that since the claim of the Applicant was submitted in Form D which is for the Financial Creditors, the claim was verified keeping in mind the provisions of the Financial Creditors. The Applicant failed to satisfy the conditions of financial creditors and hence the claim of the Applicant was rejected.
19. The Respondent has filed its report dated 03.02.2023 wherein it has stated that the Applicant can make an Application to the liquidator in Form G 'proof of claim by any other stakeholder under Regulation 20 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation,2016.

**Findings and Directions:**

20. We have perused records and heard the submissions made by the parties.
21. It is observed that the Applicant was made part of the CoC as the Financial Creditor during CIRP period pursuant to the order of this

Tribunal dated 19.03.2018 wherein it was directed to the erstwhile RP present Liquidator to restore the Applicant as a CoC member.

22. Subsequently, at the Liquidation stage when proof of claim was submitted by the Applicant, the claim was erroneously rejected by the Liquidator by placing reliance of the Judgement of the Hon'ble Supreme Court in Anuj Jain vs Axis Bank. The Liquidator failed to appreciate the fact during Liquidation, a creditor is merely classified as secured and unsecured creditor and hence the question of rejecting the claim of the Applicant as a Financial Creditor does not arise.
23. The Liquidator has admitted that the Applicant can be classified as secured creditor and has based its decision for rejection of claim on the fact that since the Applicant has filed its claim in Form D which is for financial creditors and the Applicant herein does not qualify for the same, the claim is liable to be rejected.
24. The Liquidator failed to consider the fact that the Liquidation regulations provides for separate forms for submissions of claims by claimants under various heads only to facilitate ease in collation and verification of claims. The Liquidator has mechanically rejected the claim of the Applicant without giving due consideration to order of this Tribunal dated 19.03.2018 wherein it was categorically held that the claim made by Applicant falls within the definition of claim.

25. The Liquidator is directed to declare the Applicant as a secured creditor and verify his claim.
26. With the aforesaid observation, **IA No. 549 of 2021 in CP(IB) No. 1061 /MB/C-I/2017** stands disposed of.

**Sd/-**

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**

11.08.2023

Priyal

**Sd/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**