

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CA No. 1415/2019
And CA No. 1417/2019
In (IB)-496(ND)/2018

In the matter of

M/s. Bindals Merchandise

....Operational Creditor

Versus

Maple Realcon Private Limited
Through its Resolution Professional
Mr. Dinesh Chandra Agarwal
Having office at:

11/6B, 2nd Floor, Shanti Chambers,
Pusa Road, New Delhi - 110005

...Respondent/Corporate Debtor

And

In the Matter of:

Soho Infrastructure Private Limited
Through its Interim Resolution Professional
Mr. Pankaj Jain
Office at: D - 105, (G.F.), Defence Colony
New Delhi - 110024

...Applicant

Versus

Maple Realcon Private Limited
Through its Resolution Professional
Mr. Dinesh Chandra Agarwal
Having office at:

11/6B, 2nd Floor, Shanti Chambers,
Pusa Road, New Delhi - 110005

.....Corporate Debtor

SECTION: 9 of IBC, 2016

(IB)-496(ND)2018- M/s. Bindals Merchandise V/s. M/s. Maple Realcon Pvt. Ltd.

CORAM

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
MR. L. N. GUPTA, HON'BLE MEMBER (T)

Present:

For the Petitioner: **Mr. Punkaj Jain, Ms. Srishti Badhwar, Advocates**
 Mr. Mrinal Harsh Vardhan, Mr. Kartik Sarin,
 Advocate for the Ex-Directors of the Corporate
 Debtor Mr. Hitesh Sachar, Advocate
 Mr. Shobhan Mahanti, Mr. S.S. Bhati and Mr.
 Rakesh Kumar, PCS, Mr. Apoorv Rastogi,
 Advocate

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

IA 1415/2019 & 1417/2019

Vide this common order this Bench proposes to dispose off 2 IAs filed by an Objector M/s. Soho Infrastructure Pvt. Ltd., resisting the resolution plan submitted by the RP for the consideration of this Bench. The applicant M/s. Soho Infrastructure Private Limited is also under Insolvency Resolution Process and has approached this Bench for grant of relief through its RP. Though the resolution plan is listed before this Bench, it would be expedient to deal and dispose of the two applications before proceeding further.

2. As per averments made in IA 1417/2019, it is submitted that a construction contract dated 07.09.2015 had been entered into between the applicant company and the Corporate Debtor for carrying out the construction work at their project "Misty Heights", at Greater Noida. The applicant had filed a claim of Rs. 45,70,80,961/- for the construction work carried out at the Corporate Debtor's project "Misty Heights", against which the RP has only admitted their claim to the extent of Rs.

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17,01,182/- . Aggrieved by the same, they have prayed for direction to the Resolution Professional of the Corporate Debtor (Maple Realcon Private Limited) to accept and admit their entire claim of Rs. 45,70,80,961/- .

3. Upon notice being issued to the RP, the matter has been taken up for consideration and has been argued out. It is submitted that the present application has been filed highly belatedly with the mischievous and mala fide intention of stalling the resolution plan.

4. The RP has argued that the claim is based on fabricated facts and is not sustainable. It appears that Soho Infrastructure also held a sizeable equity in the Corporate Debtor. The alleged agreement for construction on which reliance has been placed and alleged to be executed between the Corporate Debtor through its Director, Mr. Virender Kumar Kaushik with the applicant company is patently a fabricated document. The agreement is stated to have been executed on 07.09.2015, while the stamp paper issued is dated 21.03.2016. Further, Mr. Virender Kumar Kaushik appeared in court and has categorically denied the execution of this agreement and has stated that his signatures have been forged. Keeping in view that the document relied upon appears, prima-facie, to be a fabricated document, no reliance on the same can be made. It is also pointed out that as per the UPRERA, the contractor for the project is R. K. Contractors and not the applicant. The RP of the Corporate Debtor has submitted that the aforesaid claim of the applicant has been admitted for Rs. 17,10,182/-, based on the books of accounts maintained by the Corporate Debtor, and the documents made available to him for verification.

4. Accordingly, we find no grounds to interfere with the decision of the Ld. RP in rejecting the claim of the applicant and/or admitting it to the extent of Rs. 17,10,182/-only. Quantifying the extent of the liability

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or verifying its correctness is beyond the scope and jurisdiction of this adjudicating authority to consider.

5. This application is therefore dismissed.

CA 1415/2019

6. The 2nd Application IA 1415/2019 filed by M/s. Soho is for seeking possession of their equipment lying at the Corporate Debtor's project site. They have claimed ownership of certain machinery/equipment worth Rs. 6,64,00,000/-, used at the Corporate Debtor's site for the construction of the project "Misty Heights". The applicant, claims this machinery belongs to them and prays for its return. Details of the equipment have been filed along with the application in support of their prayer. It is stated that a Term Loan had been availed from a bank and as per the invoices raised on them by the supplier, these were delivered directly to the Corporate Debtor's site "Misty Height". As the applicant M/s. Soho Infrastructure is also under a resolution process, proposals for a resolution plan can only be invited by disclosing the Information Memorandum and making the same available to interested Resolution Applicants. While Ld. Counsel for the applicant has supported her claim with bills, Ld. Counsel for the RP for the Corporate Debtor has resisted this prayer. It is submitted that M/s. Soho was stake holder in the project and held an equity of 55%. A settlement was made between the Directors agreeing the machinery and equipment lying at the site of the Corporate Debtor would fall to the Corporate Debtor's share. It is submitted that it is for this reason that the applicant company had not shown any outstanding recoverables from the corporate debtor herein in its income tax returns.

7. Be that as it may, we find that the dissensions between the two companies are also on account of the fall out between the Directors. The Director of the applicant company also held a stake in the Corporate Debtor herein. Each one is out to grab whatever assets they can lay their hands on. As per the Directors of the Corporate Debtor present in Court, the machinery and equipment installed at their site "Misty Heights" was settled in their favour. They seek to corroborate this fact from the income tax returns of the applicant company which does not show any outstanding from the Corporate Debtor after their settlement.

8. This Bench cannot go into the settlement arrived at. However, this claim was never agitated earlier and now when the resolution plan has been submitted before this Bench, such like applications which have the effect of stalling a resolution plan cannot be entertained. Whatever be the business relationship between the two corporate entities, being raised at this stage of the resolution plan, where one party claims an ownership while the other submits that the same has fallen to their share upon a settlement, cannot be gone into by the Adjudicating Authority.

9. There is no explanation to the inordinate delay in claiming the plant/equipment till acceptance of the resolution plan by the COC, even though the CIR process of the Maple Infrastructure Pvt. Ltd. was admitted on 18/07/2019. It is surprising that M/s. Soho Infrastructure which had an equity of 55% in the Corporate Debtor, would not have asked for removal of their equipment at an early stage. It would not be out of place to mention that the Directors of the Corporate Debtor are also at loggerheads, with one of them allegedly colluding with the Director of the applicant company by issuing a letter of confirmation that the applicant's equipment and machinery were still lying at their




construction site. The applicant has used this correspondence to its advantage and is trying to stall the resolution plan.


10. We therefore do not find any merit in the prayer made by the applicant for release of the plant and machinery which is vital in considering the resolution plan for completion of the real estate project of the Corporate Debtor.

11. The prayer of the applicant, at this stage is unacceptable and prima facie appears to have been filed to stall the resolution plan.

12. IA 1415/2019 stands dismissed.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CA-1596/ND/2019 in
(IB)-496 (ND)/2018

In the matter of

Bindals Merchandise

.....Operational Creditor

V/s

M/s. Maple Realcon Pvt. Ltd.
Through its Resolution Professional
Mr. Dinesh Chandra Agarwal

.....Corporate Debtor

AND IN THE MATTER OF

THE RESOLUTION PLAN submitted by Apex Heights Pvt. Ltd.

SECTION: 9 of IBC, 2016

Order delivered on 20.02.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SH. L.N. GUPTA, HON'BLE MEMBER (T)

Present for the Petitioner: Ms. Srishti Badhwar, Advocate for the RP
Present for the Respondent: Mr. Mrinal Harswardhan,
Mr. Kartik Sarin, Advocate for the ex-
Directors of the Corporate Debtor
Mr. Hitesh Sachar, Advocate for
Syndicate Bank

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

A Resolution Plan, duly approved by the CoC, has been submitted before this Bench for being sanctioned. The brief background of this case is that the CIR process of the Corporate Debtor was admitted at the instance of an Operational Creditor vide order dated 24.07.2018. Mr. Dinesh Chandra Agarwal was appointed as the IRP, who after collating all claims and constituting the CoC, took all such steps as were required under the statute. He was later confirmed as the RP. Valuation of the assets of the Corporate Debtor, being the Fair Value as well as the Liquidation value, was conducted.

2. The Corporate Debtor, Maple Realcon Pvt. Ltd. (MRPL) is in the business of development of Real Estate Projects and the present project under consideration is a residential housing project being developed under the name & style of "Misty Heights" on land allotted by Greater Noida Authority. There have been acrimonious dissensions between the Directors of the Corporate Debtor, which needless to say, has resulted in an unfortunate situation of non-completion of the project. Upon expressions of interest being invited through publication, it is submitted that only one plan was received which appeared to be viable and was therefore put forth for consideration of the CoC. The CoC after deliberation has approved the same. The project of the Corporate Debtor



“Misty Heights” involves construction of 5 towers comprising of 550 units, out of which 386 units have been booked and partially paid for. The inventory of the unsold flats consists of 164 units which are available for sale. Being a Real Estate project, as required under the rules and regulation, the class of home buyers was represented by an Authorized Representative elected by a majority of the flat buyers. Apart from Home buyers, Syndicate Bank is a secured Financial Creditor.

3. On receipts of the claims the following claims were collated and admitted as under:

a. The claims of Financial Creditors received and admitted are as under:

Sr. No.	Bank/Financial Institutions	Amount claimed (in Rs.)	Claim admitted (in Rs.)	Voting Share % to be calculated as per admitted claim
1.	Syndicate Bank (Secured Loan)	10,35,18,741	10,35,18,741	10.93
2	Home Buyers/Allottees	1,15,64,31,203	84,33,50,117	89.07%

b. There are 12 workmen/employees whose claims have been received and collated.

Sr. No.	Operational Creditor	Amount claimed (in Rs.)	Claim admitted (in Rs.)
1	Mr. Arvind Kumar	1,21,800/-	3,000/-
2	Mr. Chander Mohan	4,41,415/-	3,14,70/-1
3	Nr. Eshant Choudhary	44,000/-	5,000/-



4	Ms. Geetanjali	90,000/-	87,100/-
5	MR. Kuldeep Pal	3,54,104/-	1,98,000/-
6	Ms. Manisha Chauhan	1,50,000/-	60,200/-
7	Mr. Mukesh	1,53,000/-	51,000/-
8	Mr. Shahnawaz Hameedi	6,77,000/-	54,600/-
9	Mr. Sudhir Kumar Dixit	7,02,000/-	15,800/-
10	Mr. Varun Jindal	12,20,000/-	26,600/-
11	Mr. Subhash Chandra Thakur	4,27,375/-	2,97,375/-
12	Mr. Upender Singh	3,90,000/-	1,39,300/-
Total		47,70,694/-	12,52,676/-

c. Similarly claims of Operational Creditors were also considered as under:

Sr. No.	Operational Creditors	Amount claimed (In Rs.)	Claim admitted (in Rs.)
1	Mr. Ashish Jain, Proprietor of M/s. Shantinath Plywood	2,94,272/-	2,94,272/-
2	Colleagues Buildcon Private Limited	3,42,32,130/-	8,60,000/-
3	Giri Sons Power Private Limited	3,01,120/-	3,01,120/-
4	Krishna Builders	23,65,719/-	19,65,719/-
5	VMS Equipments Private Limited	51,53,660/-	10,85,336/-
6	Krishna Enterprises	14,14,105/-	14,14,105/-

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7	Chankravorty Enterprises	3,46,979/-	2,51,414/-
8	S B Traders	33,20,260/-	24,41,368/-
9	Soho Infrastructure Private Limited	45,70,80,961/-	17,01,182/-
10	Fox Gloves Manpower Services Private Limited	15,75,443/-	15,75,182/-
11	JMS Steel Power Corporation	1,19,89,200/-	1,08,82,825/-
	Total	51,80,73,849/-	2,27,72,784/-

4. Though the Fair Value and the Liquidation Value of the company's assets pertaining to the project have been assessed, this Bench is of the opinion that liquidation is not an answer or a solution in respect of Real Estate Projects, in which many allottees have sunk in their hard earned money in the hope of getting a roof over their head. Keeping in view that the home buyers constituted 89.07 % of the financial claimants, being the major constituents of CoC, the Resolution Plan was approved by them, though dissented by the other member viz. Syndicate Bank, having a stake of 10.93%.

5. Upon invitation of the Expression of Interest, a resolution plan was received from a consortium formed by a Real Estate Company namely M/s. Apex Heights Pvt. Ltd. and one of its Directors viz. Mr. Satnam Singh Sachdeva in his personal capacity having a stake of 75% and 25% respectively in the Joint Venture. The collective financial worth of the consortium has been duly appraised and was found satisfactory. It is also submitted that Apex Heights Pvt. Ltd. has a clean record and has been

constructing and delivering residential projects on time. It is further submitted that they do not suffer from any disqualification under Section 29 A of the Code. Relevant affidavit has been filed along with other required declarations. The Resolution Applicant has stated that they have credibility in the market, as well as with the banks, and are not tainted with any outstanding dues or liabilities in their past projects.

6. With respect to the actual Resolution Plan, the Resolution Applicant proposes to raise funds from their own resources, unsold inventory, arrears/further payment from allottees. They would be making an input of Rs. 6 crores initially. Other than this input, the amount to complete the project is proposed to be raised as under:

Sr. No.	Means of finance	Amount(in Rs.)
1	Sale of unsold/unclaimed unit in Towers A,B,C,D and E assumed to be 4,24,000 Sq. Ft.	1,28,32,50,000
2	Recovery of uncalled and unpaid amount from existing home buyers	54,00,00,000

7. The final claims admitted by the RP are as under:

Nature of Creditor	Amount claimed by Creditors	Amount admitted
Financial Creditors		
Secured financial creditors	10,35,18,741/-	10,35,18,741/-
Unsecured financial creditors	1,15,64,31,203/-	84,33,50,117/-
Sub-Total(A)	1,25,99,49,944/-	94,68,68,858/-



Operational Creditors (other than workmen and employees)	51,80,73,849/-	2,27,72,784/-
Operational Creditors (workmen & employees)	47,70,694/-	12,52,676/-
Statutory dues		0
SUB-TOTAL(B)	52,28,44,543/-	2,40,25,460/-
TOTAL (A) AND (B)	1,78,27,94,487/-	97,08,94,318/-
CIRP COST (ASSUMED) (C)		1,00,00,000/-
TOTAL		98,08,94,318/-

8. The Resolution Applicant proposes to infuse Rs. 6 crores which shall be disbursed towards CIRP cost and 10% of the admitted claims of the Operational Creditors including workmen & employees in terms of the provisions of the Code and keeping the liquidation value in mind. The remaining amount shall be used as fresh infusion for stabilizing and improving operations.

9. As per the provisions in terms of the plan, after allocating Rs. 1 crore towards the CIR costs, the balance shall be utilized for liquidating the liability of the Operational Creditors and for restarting the operation of the project. Disbursement towards the admitted claims of the workmen would be Rs. 1,25,267/60 as per law. This amount shall be given in full discharge of their claims made. Further a provision for payment of Rs. 22,77,278/40 towards final settlement of claims of the Operational Creditors has been made, keeping in view the liquidation value. Though

the Resolution Applicant has submitted that the same would be paid within 90 days of the approval of the NCLT, we find the said period is unjustifiably long. We accordingly direct that this amount of Rs. 6 crores be disbursed within a period of 45 days from the date of receipt/uploading of this order.

10. It is further submitted, that as far as possible, all employees and workman whose claims have been admitted will also continue to be employed by the Resolution Applicant and therefore the plan provides job security as well.

11. With respect to the claims of the home buyers, the Resolution Applicant undertakes to complete the project within 36 months in a phased completion manner. They propose to do so from their personal resources, sale of unsold units and other amounts due from allottees. They shall ensure all compliance are made and necessary clearances are obtained to enable flat buyers, not only get the possession of their unit, but also Conveyance Deeds executed in their favour.

12. Coming to the only other Financial Creditor being a secured creditor i.e. Syndicate Bank which had cast a dissenting vote in respect of the Resolution Plan, the Plan provides that their claim of Rs. 10,35,000/- shall be extinguished in full by releasing the matured proceeds under an FDR for Rs. 3 crores held by them towards partial discharge of their admitted liability. The same can be appropriated

immediately on pronouncement of this order. The remaining amount shall be paid in 24 equal monthly instalments.

13. It is directed that the title documents of the project land shall be released by Syndicate Bank to the Resolution Applicant immediately on furnishing fresh personal guarantees & securities by the ex-Directors who have undertaken to do so. The Resolution Applicant shall ensure that the same is not mortgaged with any other financial institution for the purpose of raising a loan or encumbering the same in any manner. It is equally expedient to ensure that the Syndicate Bank holds sufficient security for the balance of their admitted claim. As the same is to be liquidated over a period of 24 months, equitable mortgage of properties belonging to the ex-Directors for the remaining admitted amount i.e. Rs. 7 crores approx. shall be created/renewed in their favour or retained by them. In our opinion the same shall be sufficient to secure the balance of the admitted claim of the secured creditor.

14. The Resolution Plan further provides for the existing equity shares of the Corporate Debtor to be cancelled and the entire share capital of the Corporate Debtor MRPL to be restructured in favour of the Resolution Applicant and its nominees. All interest of the existing directors and shareholders shall be extinguished for the purpose of issuance of equity shares to the new Board of Directors. The RA shall infuse a sum of Rs. 20 lakhs of the Rs. 6 crores to the Corporate Debtor for issuance of 2



lakhs equity shares of Rs. 10 each, which shall be utilized for the purpose of finishing its project.

15. The aforesaid restructuring shall take place in the following manner in the sequence set out below:

(a) On the date of Upfront Equity Infusion, MRPL shall undertake a capital reduction and cancellation of the entire existing equity share capital held by the existing promoters & promoter group of MRPL i.e. 10,000/- Equity shares and shall stand cancelled/extinguished without requirement of writing of the words "and reduced" in the corporate name and style of MRPL.

(b) The cancellation of equity shares and capital reduction:

- (i) Shall be applicable to the existing promoters/promoter group/affiliates and associates of MRPL;
- (ii) Shall be pursuant to the NCLT Approval Order and shall not require any other procedure as required under the Companies Act, including that under Section 66 of the Companies Act or regulations of the SEBI;
- (iii) Shall not require the consent of any of the creditors of MRPL or approval of the shareholders of MRPL as the Resolution Plan upon being approved by the NCLT shall be binding on MRPL and its stakeholders (including its creditors and shareholders)

16. We find the above just and proper and permit the same. The Reconstituted Board shall comprise of the following two Directors viz., Mr. Satnam Singh Sachdeva and Mr. Charanjeet Singh. The Resolution Plan has made provision for a Monitoring Committee. However, this Bench directs that other than the nominees of the Resolution Applicant, there shall be a nominee of Syndicate Bank on the Monitoring Committee, and two representatives of the flat Allottees Association (duly registered) to be Members of the Monitoring Committee so that the interest of allottees is duly taken care of and the construction of the



project is carried out in a strict time bound schedule. In the event of more than one association, the representatives of the Association which has a larger no. of allottees as its members shall be on the Monitoring Committee.


17. It is also noted that no claim has been received from Greater Noida Authority even though as per the IM an amount of Rs. 9,77,43,339/- is to be paid by the Corporate Debtor. The Resolution Applicant proposes to pay 10% of this Operational Debt in 24 equal installments.

18. The Resolution Applicant also seeks certain waivers. We make it abundantly clear that all claims from Statutory Authority received during the CIR process shall be duly taken into consideration. Those claims which have not been received and are not mentioned in the Resolution Plan cannot be provided for.

19. On the whole, we find the Resolution Plan submitted for consideration of the Adjudicating Authority adheres to the requirements of Section 30(2) of the Code. The moratorium imposed vide our order dated 18.07.2018 shall cease to have any effect henceforth.

20. The RP shall comply with the requirements of Section 31(3) (b) and forward all record relating to the conduct of the CIR process and the resolution plan to the Board to be recorded as its database.

Resolution Plan is Approved and sanctioned in terms of the above.


(L.N. Gupta)
Member (T)


(Ina Malhotra)
Member (J)