

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV

IA-2917/2023 IN CP.IB.68(MB)2021

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

Godrej Properties Limited

... Applicant

Vs.

Bhurgesh Amin & Ors.

... Respondents

In the matter of

Beacon Trusteeship Limited

... Financial Creditor

Vs.

Modella Textile Industries Limited

... Corporate Debtor

Order Pronounced on : **06.10.2023**

Coram:

Mr. Prabhat Kumar

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Applicant(s):

Mr. Nimay Dave, Mr. Yash Momaya, Mr.
Samit Shukla and Mr. Maulik Bhansali,
Adv.

For the Resolution Professional: Mr. Ravi Kadam, Ld. Sr. Counsel a/w Mr. Ayush J. Rajani (PCA) and Ms. Khushboo Shah, Adv.

For the Resolution Applicant: Mr. Gaurav Joshi, Ld. Sr. Counsel a/w Ms. Ekta Tripathi i/b Mr. Sahil Mahajan, Adv.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This IA No. IA-2917/2023 is filed by M/s Godrej Properties Ltd., whose claim was admitted in class of Homebuyers in the Corporate Insolvency Resolution process in the case of M/s Modella **Textile Industries Limited** (**‘Corporate Debtor’**) seeking:
 - a. Rejection of the Resolution Plan submitted on December 23, 2022 by Respondent No. 2, i.e., the Resolution Applicant; and
 - b. stay the hearing and disposal of Interim Application No. 2319 of 2023 for approval of the Resolution Plan pending the hearing and final disposal of this Application.
2. The Applicant states that the present Application has been preferred under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) challenging, inter alia, the Amended Resolution Plan dated May 10, 2023 (“Resolution Plan”) submitted by the Ashar Group (“Resolution Applicant”). The Resolution Plan is contrary to the provisions of the Code, does not balance the interests of all the stakeholders and, if approved, would cause great harm and prejudice to the Applicant in the present case.
 - 2.1. The Resolution Professional arbitrarily admitted only a partial amount i.e. Rs.13,32,33,641/- in respect of the total claim of Rs.14,01,45,085/-

submitted by the Applicant. The pending amount of INR 69, I 1,444/- was rejected by the RP vide email dated May 2, 2023.

2.2. As per the terms of the Resolution Plan, the Resolution Applicant has arbitrarily proposed to refund an amount of INR 5,32,93,456/- to the Applicant, under the category of “Unsecured Financial Creditors (Godrej Propel-ties Ltd. - 97 Home Buyers)” (“Proposed Payment”) to be distributed proportionately as follows :

<u>OFFER TO HOME BUYERS</u>	
Within 60 Days	30%
Between 365" Day to 719"	60%
Between 720" to 999" Day	80%
Between 1000" Day to 1250" Day	100 %

2.3. The Applicant has paid a total amount of Rs. 14,01,45,085/- inclusive of interest, under the Deeds of Assignment for the purchase of these flats from the allottees and therefore, has a secured charge on these flats. Neither, the Resolution Applicant nor the Resolution Professional has the power to determine the status of the Applicant as an “Unsecured Financial Creditor” by putting the Applicant in that category. Moreover, the Applicant having right, title and interest in the said Flats, enjoy unpaid vendor’s lien under section 55 of the Transfer of Property Act, 1882.

2.4. The Resolution Applicant has clearly lost sight of the interest of the Homebuyers despite sufficient protection being accorded to them in law. The Resolution Plan is not feasible at all and defeats all the rights of the Applicant as a Homebuyer as:

- a. It *simplicitor* provides a haphazard mechanism for the Proposed Payment to the Applicant;
- b. There is no logical justification for the Proposed Payment to be done in such a deferred manner;

- c. There is stoic silence on the status of the flats/units of which the Applicant is the rightful owner of under the Deeds of Assignment;
- d. The Resolution Plans claims to erode the valuable right of the Applicant to the Flats, without even refunding the monies of the Applicant

2.5. By virtue of the said Resolution Plan, the Applicant is not even entitled to the entire refund of the consideration which has been paid under the Deeds of Assignment. The Applicant apprehends that the rightful claim of the Applicant would be jeopardized and defeated without any fault on part of the Applicant. The Resolution Plan fails to maximize the value of the assets of the Corporate Debtor and thereby, defeats the entire purpose and object of the Code.

2.6. On the one hand, the Resolution Applicant will benefit and gain from the obvious price escalation that the real estate market has seen in the past few years to the detriment of the several home buyers (including the Applicant). Whereas, the Home buyers will have to not only wait for a period of 1250 days to receive their refund. but will also have to cough up significantly higher amounts to purchase flats in a similar project at a similar location, as on date.

2.7. It is also contended that the Resolution Plan instead of maximizing the value of the assets of the Corporate Debtor, is in fact depriving a significant class of the creditors from their legitimate rights and dues. The Resolution Plan fails to consider and balance the interests of all the stakeholders of the Corporate Debtor and is therefore liable to be rejected.

2.8. The Resolution Plan in the present case is a classic example of resolution plan which favors a set of creditors over the other and deprives minority creditors of their legitimate rights as enshrined under various laws of India. Hence, the same does not pass the test of judicial propriety and is therefore liable to be rejected, at the threshold.

3. We heard the Counsel and perused the material on record.

3.1. On perusal of the prayers, we notice that the applicant has sought rejection of the Resolution Plan pending consideration before this Bench in IA-2319

of 2022. Though, the applicant has stated the facts relating to partial rejection of its claim, however, it has not sought any relief in this relation and has also not enclosed communication from the Resolution professional in this regard giving the basis of its rejection. Hence, we do not feel it necessary to go into that aspect in this order.

- 3.2. The Applicant has sought rejection of Resolution Plan pending for approval in IA-2319 of 2022, and stay of hearing therein till the disposal of this application. We find that the Home Buyer's through their Authorised Representative has voted against the proposed Resolution Plan, and the only other member of CoC i.e. R3 has voted in favor of the plan. The Plan was approved by CoC as R3 itself constituted 88.95% vote share, and remaining 11.05% are held by the Homebuyers class. Considering the fact that class of Homebuyers had voted against the plan, we consider it appropriate to deal with the objection of group of creditors under this class on merit, even though no objection has been filed by class of Home-buyers through their Authorized Representative, which would have been appropriate course of action under the Code.
- 3.3. The objection to the plan mainly arises from the proposed payment to the class of Home-buyers staggered over 3 years, and failure of CoC to maximise the value of assets of the Corporate Debtor.
- 3.4. We find that the Successful Resolution Applicant has stated that Applicant is a Related Party as defined under Section 5(24)(h) of the Insolvency and Bankruptcy Code, 2016, as it was engaged as Development Management Agency.
- 3.5. We find that the Successful Resolution Applicant has proposed to pay 100% of principal amount of claim, as against 40% of principal as originally proposed in the approved Resolution Plan. As regards interest on the principal payment, we find that as per Section 13(b) and 18(b) of the Insolvency and Bankruptcy Code, 2016 read with Regulations 13, 16(A)(7) of the IBBI (CIRP) Regulations, 2016, Applicants at the highest are entitled to **interest at the rate of 8%** per annum. Accordingly, we do

not find any inequitable treatment to the applicant or to the class of Home-buyers. It is noteworthy that the applicant is a Development Management Agency of the Project, which was to be developed by Corporate Debtor, and the applicant's claim pertains to the amounts refunded to the Home-buyers, which were collected by them towards sale of their share in the project of the Corporate Debtor, accordingly, the argument of related party does not merit consideration qua this issue.

3.6. As regards, the allegation of discrimination by the single financial creditor, holding requisite majority in CoC, we find that no evidence has been placed on record to substantiate any collusion amongst RP, CoC and Successful Resolution Applicant, except claims that the project could have fetched more value. We notice that the all the Prospective Resolution Applicants, except Successful Resolution Applicant had withdrawn from the Resolution Plan after taking notice of reservation of Thane Municipal Corporation on the project land, apprehending that this reservation may cause hurdle in utilisation of maximum available development rights without this restriction. We are conscious of the fact that such reservation is merely an apprehension, and it is still not in force, but it can not be refuted that such reservation may have impact on future sanction of development plan by the Town Planner. In this perspective, we do not find any merit in the argument that the CoC has failed to maximise the value of the assets of the Corporate Debtor.

4. In view of foregoing discussion, we are of considered view that IA 2917/2023 deserves to be **dismissed**.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

06.10.2023/-