

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

MA/1203/2019 IN CP/709/IB/CB/2018 &
CP/710/IB/CB/2018 filed under Section
60(5) of the Insolvency and Bankruptcy
Code, 2016

**In the matter of M/s. Green Gardens Private Limited
And
In the matter of M/s. Gemini Arts Private Limited**

M/s. Salem Stainless Steel Suppliers Private Limited
(Formerly known as Salam Stainless Steel Suppliers)
#33, Lawer Chinnathabi Street,
Kondithope, Chennai-600079

---Applicant

Vs.

Mr. T.V. Balasubramaniam
RP of M/s. Gemini Arts Private Limited
7th Floor, KRD Gee Gee Crystal,
No. 91-92, Dr. Radhakrishnan Salai
Mylapore, Chennai-600004

---Respondents

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHNICAL)

For the Applicant : *Shri. Jayanthi K. Shah, Advocate*
For the Respondent : *Shri. Thriyambak J. Kannan, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on 05.05.2021



The above application has been preferred by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking direction to the Respondent to perform his duty under Section 17 and Section 18 of IBC and not to act arbitrarily; set aside the order passed by the Respondent on 30.09.2019 and to admit the claims of the Applicant dated 26.09.2019.

2. On perusal of this Application, the averments made in the application which are as follows:-

- (i) The Applicant had entered into an Agreement of Sale dated 20.08.1995 (page.1 of typed set) with M/s. Gemini Arts Private Limited and M/s. Green Gardens Private Limited (Corporate Debtor(s) represented by a common Director in both Companies for sale of 5076 sq.ft. of super built up area together with 710.75 sq.ft. of undivided share of land in their project namely "Gemini Towers" Building, Old No.601, Anna Salai, Chennai-600006 for which the Applicant had paid a sum of Rs.2,50,00,000/- towards consideration for purchase of the above property and the

Corporate Debtor had acknowledged the receipt of the consideration in the agreement. Under the said agreement, the Applicant was allotted build up areas as detailed below:

Unit No.	Area (in sq.ft.)	Floor
813	1417.00	8 th
814	2307.26	8 th
816	1352.54	8 th
Total Area	5076.80	

(ii) However, the Corporate Debtor abruptly abandoned the said project and failed to complete the construction and handover the possession as assured in the Agreement for Sale dated 20.08.1995 on account of which Corporate Debtor became liable to pay a sum of Rs.9,43,04,110/- together with interest calculated upto 25.09.2019 to the Applicant.

(iii) the Applicant states that in the interregnum period, CIRP had been initiated by this Tribunal vide its order dated 22.06.2018 against the Corporate Debtor viz., M/s. Green Gardens Private Limited (in CP/709/(IB)/CB/2018) and

Gemini Arts Private Limited (in CP/710/(IB)/CB/2018 under Section 7 Rule 4 of the IBC, 2016. On 22.06.2018, the Respondent made public announcement vide paper publication calling upon the stakeholders of M/s. Green Gardens Private Limited to submit their proof of claim. The Applicant herein accordingly submitted a claim dated 26.09.2019 (page.18 & 22) under Form-C (under Regulation 8 of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations, 2016) with the Respondent and on 09.10.2019 with the RP for M/s. Green Gardens Private Limited. The Respondent had rejected the claim of the Applicant vide email dated 30.09.2019 (page 26). The grounds for the rejection of the claim by the Respondent are as follows:

- (a) *The dues as claimed by you are very old and there is no evidence of any legal action having been initiated by you;*



- (b) *There are absolutely no records of allotment or amount received in the books of Gemini Arts Private Limited in the name of Salem Stainless Steels;*
- (c) *There is also no evidence of UDS having been registered in your name by the company'*
- (d) *The claim has also been submitted well after the time frame provided by the IBC now (90 days of advertisement)*

(iv) As per the Sale Agreement dated 20.08.1995, the Respondent ought to handover the said units and registration of the UDS along with superstructure but in the present case, the construction itself is incomplete and therefore there is continuous cause of action and the Applicant is under hope that once the construction is complete, the Applicant would get the possession and the Corporate Debtor would register the UDS and superstructure subsequently. If the Corporate Debtor refused to handover the possession or refused to register the UDS and superstructure, there arises the question of initiating any legal action by the Applicant. Therefore, the

claim of the Applicant is not old as claimed by the Respondent. In the list of Allottees item No.61 clearly reflects Applicant's name along with details of UDS to be registered. The Applicant came to know from co-owners that the CIRP proceedings were initiated against the Corporate Debtor. Further, the Applicant is unaware of the paper publication.

- (v) On the issue of whether the Resolution Professional has adjudicatory powers or not, the Applicant relies on the judgement dated 25th January 2019 of the *Hon'ble Supreme Court in "Swiss Ribbons Pvt. Ltd & Anr. Vs. Union of India & Ors. – Writ Petition (Civil) No.99 of 2018 (2019 SCC Online SC 73)*.
- (vi) In respect of **rejection of claim** by the Applicant **on the ground of delay**, the Applicant cites the order passed by *the Hon'ble Principal Bench, NCLT, New Delhi in the matter of Edelweiss Asset Reconstruction Co. Pvt. Ltd. vs. Adel Landmarks Ltd.*



(vii) In view of the above, the Applicant prays that the delay in submitting the claim before the Respondent may be condoned; set aside the order dated 30.09.2019 passed by the Respondent refusing to admit the claim of the Applicant; and treat the Applicant as a 'Financial Creditor' and claims of the Applicant as 'Financial Debt'

3. In the *reply* filed on 14.11.2019, the Respondent contended that the claim by the Applicant allegedly arises from an unregistered Agreement of Sale dated 20.08.1995 executed between the Corporate Debtor and the Applicant. The said agreement was entered into by the Applicant for purchase of part of an undivided share of land on which "Gemini Towers" was to be constructed by the Corporate Debtor and Green Garden Private Limited as well as for the construction of a shop in the said towers at its cost. The Applicant was to receive the constructed shop within 24 months from the date on which the said Agreement was signed. It is inconceivable as to how the Applicant waited for a period of over 25 years and yet failed to initiate legal action against the Corporate

Debtor. As per Article 54 of the Limitation Act, 1963 if the date is fixed by which time an agreement is to have been performed, then non-compliance with the said date would give rise to a cause of action to file a suit for specific performance within three years from the date so fixed. Therefore, the alleged claim is now time barred and cannot be a valid claim which can be revived by law.

4. According to the Respondent, there are no records of any amount having been received by the Corporate Debtor from the Applicant in any books of accounts or in any other records of the Corporate Debtor made available to the Resolution Professional. Mere listing of the Applicant as an allottees in the list of allotment is no valid proof to show that the claim made by the Applicant is genuine. Therefore, the Applicant cannot expect the Respondent to verify the claim and admit the same when there is no valid reference made available to the Resolution Professional. Further, there is no proof to show that the Applicant did in fact transferred a sum of Rs.2,50,00,000/- to the Corporate Debtor as consideration for the purchase of property and no proof of registration of undivided

share of land in favour of the Applicant. Hence, there is no documentary proof to show that the Applicant did indeed pay a sale consideration amount of Rs.2,50,00,000/- to the Corporate Debtor .The Applicant had waived their right to claim the amount since no legal action has been initiated against the Corporate Debtor or Green Garden Private Limited for over 25 years. The provisions of the Limitation Act are now applicable to matters under Section 238A of the IBC. Even assuming that the delay in filing the claim by over a year after 90-day period ended is condoned, the Applicant has filed no substantial proof or document before this Tribunal or to show the claim is genuine and valid as on date.

5. Heard the arguments by both sides and perused the records placed on file. In the present case, it is seen that payment for sale consideration, in nutshell, is not supported by valid documentary proof for payment of sale consideration. The Applicant having paid more than 98% of the total consideration in the year 1995, waited till 2016 for enactment of IBC, thereafter in the OA admission and



belatedly submits the Claim Form to RP/Respondent herein. Other than the photo copy of list of allottees and unregistered agreement for sale, there is no other proof. We fail to understand as to why the Applicant for more than 25 years has not taken any action for safeguarding its interest under the said agreement? Further, how a business firm, having shelled out huge amount has not taken any action for recovery of the same? There is no answer to the question as to why sale deed was not registered? Nor any proof filed to satisfy that the said amount was paid as part of sale consideration.

6. The other part of question, whether the claim is time-barred. Our conclusion is, the claim is hopelessly time-barred. Unregistered Agreement for Sale dated 20.08.1995 was entered between Applicant and Corporate Debtor. As per the Agreement, the construction ought to be completed within 24 months i.e. on or before 19.08.1997. The unregistered Sale Agreement states that total sale consideration is sum of Rs.2,53,84,000/- out of total sale consideration, as per the sale agreement, a sum of Rs.2,50,00,000/- was paid. In other words, major portion of sale consideration has

been paid before execution of unregistered Agreement for Sale. However, the mode of payment has not been mentioned in the said agreement. Further, the Applicant has not furnished details and documentary evidence regarding payment. Having paid more than 98% of the sale consideration, the Applicant has not obtained registration of Sale Deed for Undivided Share of Land. The construction ought to have been completed within 24 months as per the said agreement. As facts stand that the construction is till date incomplete. The Applicant claims to have paid huge sum of Rs.2,50,00,000/-(Two Crore Fifty Lakh) but there is no sale deed registered, no legal action or bare minimum a legal notice also not issued, no e-mail exchanges or any other proof.

7. Hence, we conclude that the Agreement for Sale is not valid since it is time-barred, no proof of payment of sale consideration, the Agreement for Sale itself is hopelessly time-barred and delay in submission of claims is not substantiated by valid reason. Hence, the Respondent has rightly rejected the claim. We conclude that the claim of the Applicant is *rejected* on the ground of time-barred

Agreement of Sale, devoid of documentary proof and delayed claim submission.

8. Accordingly, this MA/1203/2019 stands **dismissed**.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

knp