

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH: C-IV**

**IA-4068(MB)2023 IN C.P.(IB)/389(MB)2022**

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

**Mr. Sanjay Vora and Mrs. Sweta Vora**  
.... Applicant

Vs.

**Mr. Rajesh Jhunjunwala**  
.... Resolution Professional/  
Respondent

*In the matter of*

**Aurum Commercials LLP**

...Financial Creditor

Vs.

**Spenta Enclave Private Limited**

...Corporate Debtor

Ordered pronounced on: 22.02.2024

***Coram:***

Ms. Anu Jagmohan Singh

Shri Kishore Vemulappalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

***Appearances :***

For the Applicant

: Ld. Counsel Ms. Siddhima Kotak a/w Mr. Ankit  
Singh present.

For the Respondent

: Ld. Counsel Mr. Rahul P. Darji Present.

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**ORDER**

1. The instant Application has been filed by Mr. Sanjay Vora and Mrs. Sweta Vora as home buyers (“Financial Creditor / Applicant”) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking admission of claim amount by Resolution Professional for the Corporate Debtor (“Respondent”) for an amount of Rs.1,16,23,694/- (Rupees One Crore Sixteen Lakh twenty-Three Thousand Six hundred Ninety-Four only).
2. The Applicant being the claimant of the Corporate Debtor had sought the following reliefs:
  - (a) This Hon’ble Tribunal be pleased to direct the Respondent to accept the entire claim of the applicant in the Resolution Plan in the capacity of a Financial Creditor;
  - (b) This Hon’ble Tribunal direct the Respondent to allow the Applicants to claim interest at 10.7% p.a. on their entire claim till 31.03.2024 or till the date of actual repayment, whichever is earlier;
  - (c) In the alternative to prayer (b), this Hon’ble Tribunal direct the Respondent to allow the Applicants to claim interest at 10.7% p.a. till the date of cut off of collation of claims i.e. 23.06.2023.

**Submissions on behalf of the Applicant**

3. The Applicant submits that the Applicant is a homebuyer in the project ‘Altavista’, which was being developed by the Corporate Debtor, and

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therefore, fall under the definition of Financial Creditor under the provisions of Insolvency and Bankruptcy Code, 2016

4. The Applicant submits that the proposed building 'Altavista' ('the said project') was to be developed by Spenta Enclave Private Limited (hereinafter called as the "Corporate Debtor"). The Applicant submits that the Applicant booked 2BHK flat in Tower I, on 10<sup>th</sup> Floor, ("1<sup>st</sup> flat") comprising of 699 sq.ft of carpet area for total consideration of Rs. 1,65,00,284/- (Rupees One Crore Sixty-Five Lakhs Two Hundred Eighty-Four Only).
5. The Applicant submits that an initial down payment of INR 5,00,000/- (Indian Rupees Five Lakhs only) was made by them on 28.10.2020 wherein they were promised by Spenta that they will be given the Apartment by 30.06.2024 ("Possession Date"). Subsequently, they also gave another instalment of INR 9,56,908/- (Indian Rupees Nine Lakhs Fifty-Six Thousand Nine Hundred and Eight only). That Applicant has also availed a loan of INR 1,29,77,000/- at the rate of interest of 6.7 % p.a on 23.04.2021 for 10 years loan from HDFC and on 20.05.2021 HDFC had disbursed an amount of 14,56,910 (Indian Rupees Fourteen Lakhs Fifty-Six Thousand Nine Hundred and Ten only).
6. The Applicant submits that this Tribunal vide an order dated 24/03/2023, in Company Petition bearing CP(IB)/389 OF 2020 filed under Section 7 of the Code, by Aurum Commercials LLP (hereinafter referred to as the "Financial Creditor"), admitted the petition and Corporate Insolvency Resolution Process (CIRP) was initiated against Spenta Enclave Private Limited [CIN: U45209MH2013PTC249304].

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7. The Applicant submits that as he has not received the allotment of the 1<sup>st</sup> flat thus he had to book a new 2 BHK flat in Guru Ashish building, Plot no 3, near Basant Park at Chembur ("2<sup>nd</sup> flat") for a total consideration 2,33,89,950/- on 10.05.2023. The Applicant again had to take a new loan from HDFC of INR 1,81,00,000/- (Indian Rupees One Crore Eighty One Lakhs Only) at 8.35% p.a for a tenure of 10 years. The loan was approved and amount was disbursed of Rs. 1,59,00,000/- on 15.06.2023. The Annual EMI incurred is Rs. 17,56,592/-.
8. It was further submitted that the Applicant has claimed a sum of Rs.1,56,96,028/- towards opportunity cost loss and interest outflow on Loan 2 due to homebuyers being compelled to buy apartment 2 at Guru Ashish Building due to non-receipt of Apartment from Spenta and it being under IBC-HDFC Loan 2 Agreement and Interest Certificate received from HDFC.
9. The Applicant submits that Resolution Professional cannot cap interest till 24.03.2023 (date of commencement of CIRP). The Applicant should be entitled to be paid interest till the date of repayment of their monies or when the CIRP terminates whichever is later.

**Submissions on behalf of the Respondent**

10. The Respondent submits that the applicant/Homebuyer has submitted the claim with the Respondent/Resolution Professional as given below:

CLAIM LODGED BY APPLICANT	
Details of Claim Received	Details of Claim Admitted Interest

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Principal Amount Claimed (a)	Interest Amount Claimed (b)	Amount Claimed (a+b)	Principal Amount Admitted (a)	Amount Admitted (b)	Amount of Claim Admitted (a+b)	Amount of Claim under verification/ not admitted.
33,11,813/-	1,23,84,215/-	1,56,96,028/-	33,11,813/-	7,60,521/-	40,72,334/-	1,16,23,694/-

11. The respondent submits that the total claim submitted by the applicant/Homebuyer is Rs. 1,56,96,028/- That the respondent has admitted claim of Rs.40,72,334/- comprising of Principal amount claimed of Rs.33,11,813/- paid towards flat purchase including GST, Stamp duty and registration charges and Rs. 7,60,521/- towards interest @ 10.70% p.a (SBI MCLR @ 8.70% for 3 years as on 24.03.2023) on the above amount till the CIRP initiation date i.e., 24.03.2023.
12. The Respondent submits that the Applicant have prayed for directing the Respondent to *“accept the entire claim of the Applicants in the Resolution Plan in the capacity of a Financial Creditor”*. It is pertinent to note that *“Financial Creditor”* as defined u/s 5(7) of the Code, means any person to whom a *“Financial Debt”* is owed, as defined u/s 5(8) of the Code, however the Applicants have failed to either establish the existence of the balance claim of Rs. 1,16,23,694/- or that the said claim is in the nature of a *“Financial Debt”* u/s 5(8) of the Code. The Applicants have also claimed Opportunity cost, EMI of another personal loan and Interest thereon, which are in fact the personal borrowing obligations of

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the Applicants and thus fall beyond the purview of the Resolution Professional since the balance claim is not in the nature of a “Financial Debt” u/s 5(8) of the Code.

**Findings**

13. Heard the Learned Counsel(s) for the Applicant(s) and the Respondent.
14. Upon perusal of the record files, we are of the considered view that the Resolution Professional has scrutinized the present claim-form(s) on merits.
15. The Bench observes that the Resolution Professional has rightly admitted the claims of Principal Amount and interest upto date of initiation of CIRP with respect to the apartment for which the Applicant and Corporate Debtor had entered into an agreement and that the applicant does not fall under the ambit of section 5(8) to be placed as a Financial Creditor.
16. This Bench also takes note that the Applicant has claimed an amount of Rs. 1,06,66,401/- as an opportunity cost damages on account of purchase of a new home (difference in cost of 2 loans) & EMI entered on a personal unconnected loan. There is no provision in the Insolvency & Bankruptcy Code,2016 to accept any claim on account of opportunity cost.

**ORDER**

17. This Adjudicating Authority in any view of the matter, is not inclined to entertain the present application for the claim amount of Rs. 1,16,23,694/- (Rupees One Crore Sixteen Lakh Twenty-Three Thousand Six Hundred Ninety-Four only).

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18. Resultantly, the present application viz. I.A. 4068/2023 in Company  
Petition (IB) No. 389/MB/2022 stands dismissed.

**Sd/-**  
**ANU JAGMOHAN SINGH**  
**Member (Technical)**

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