



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

I.A-2194/2022

In

Company Petition No. (IB)-2130(ND) 2019

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

IN THE MATTER OF:-

M/s. Dynacon Projects Pvt. Ltd

.....**Applicant/Operational Creditor**

Versus

M/s. Today Homes & Infrastructure Pvt. Ltd

.....**Respondent/Corporate Debtor**

AND

IN THE MATTER OF:-

Majestic Builtwell Pvt. Ltd.

.....**Objector/Applicant**

Versus

Mr. Nilesh Sharma

Resolution Professional

Today Homes & Infrastructure Pvt. Ltd.

.....**Corporate Debtor**

Pronounced on 01.08.2023

CORAM:-

**SHRI ATULCHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:-

For the Applicant : Ms. Tripiti Kapoor, Advocates in IA-2194/2022.

For the Respondent :

ORDER

Per Shri Bachu Venkat Balaram Das, Member (J)

1. This application has been filed by M/s Majestic Builtwell Private Limited., (the dissenting Financial Creditor) to the Resolution Plan submitted by Consortium of Canary Greens Buyers Welfare Association, Callidor Flat Owners Welfare Association and Royal Elegencia Apartment Buyers Association under Section 60(5) of the IBC, 2016 wherein the following prayers have been made:



- (a) ***Pass an order directing the Successful Resolution Applicant to amend the Resolution Plan to provide for payment to the Objector in terms of Section 53 of the Code i.e. an amount of Rs. 1,62,42,853/- and that such payment be made in priority i.e. even before any amount is paid towards the construction cost;***
- (b) ***Pass an order directing that for any delay of making payment after receipt of approval received from this Hon 'ble Authority, interest @ 12% per annum be paid to the Objector till the date of actual payment;***
2. It is submitted by the Applicant that an amount of Rs. 2,00.00,000/- (Rupees Two Crores Only) was given as a loan to the Corporate Debtor on 16.05.2006 at an interest @12% per annum. As on the date of commencement of CIRP of the Corporate Debtor, the Corporate Debtor owes an amount of Rs.6,70,45,470/-.
 3. However, the Resolution Professional admitted the claim of the Applicant to the tune of Rs. 2,38,75,161/- . It is submitted that the Applicant inadvertently filed its claim as on Operational Creditor (Form B) vide e-mail dated 17.08.2020 which was rejected by the Resolution Professional. Subsequently, the Applicant re-filed its claim as a Financial Creditor (Form C) vide email dated 11.08.2021. The Applicant in a letter written to the Corporate Debtor on 16.12.2012 requested the Corporate Debtor to adjust the repayment of outstanding loan to its eight related parties (Individuals) who had requested and deposited their share of money in various projects of the Corporate Debtor, the Applicant apprised the Resolution Professional about the same. However, the Resolution Professional did not consider the same and admitted the claim of the Objector as a Financial Creditor to the tune of Rs. 2,38,75,161/- vide email dated 19.08.2021, which includes principal amount of Rs.2,00,00,000/- and interest amounting to Rs. 38,75,161/- and that the balance claim in respect of interest was disallowed by the Resolution Professional as being without any supporting document.
 4. It is submitted that the interest amounting to Rs. 38, 75,161/- was provided in the books of accounts of the Applicant in the Financial Year 2006-07 and 2007-08. However, the Resolution Professional did not accept the same.
 5. It is also submitted by the Applicant that it had filed its claims as a Financial Creditor on 11.08.2021, however, the Resolution Professional did not admit the



claim on the ground that the same was not reflected in the books of accounts of the Corporate Debtor. The claim of the Applicant was admitted only on 19.08.2021 after the resolution plan was approved by the CoC on 16.08.2021. Consequently, the Applicant could not exercise its voting rights on the resolution plan. It is submitted that the Resolution Plan submitted by the Resolution Applicant has failed to comply with the mandatory provisions contained in Section 30(2) (b) of the Code read with Regulation 38 of the CIRP Regulations.

6. The Resolution Professional has filed a reply contending that the Resolution Plan as submitted by the Resolution Applicant was approved by the Committee of Creditors through e-voting concluded on 16.08.2021 with 96.93% and is now pending for approval before this Adjudicating Authority.
7. It is also submitted by the Resolution Professional that the Applicant's claim was admitted way back on 19.08.2021 for an amount of Rs. 2,38,75,161/- and the Applicant did not raise any objection to the same nor challenge the said decision of the Resolution Professional till date. Thus, the claim of the Applicant which has been admitted by the Resolution Professional has attained finality. The Resolution Professional therefore, submitted that the objection raised by the Applicant belatedly cannot be accepted.
8. The Resolution Professional/Respondent in its reply has submitted that the Resolution Plan submitted by the Respondent No. 2 has been approved by the Committee of Creditors with 96.93% votes and the application seeking approval of the Resolution Plan is pending before this Adjudicating Authority. The Respondent has submitted that since the Committee of Creditors have approved the Resolution Plan, in view of the law laid down by the Hon'ble Supreme Court of India in the case of Ebix Singapore Private Limited versus Committee of Creditors of Educomp Solutions Limited and Anrs. (2021 SCC online SC 707) wherein it has been held that the role of the Adjudicating Authority is very limited and once a Resolution Plan has been approved by the CoC, it is binding on the Resolution Applicant and the commercial wisdom of the CoC will prevail.
9. The Resolution Professional has further submitted that as per the **“Note to Clause 13: Term of Resolution Plan and Implementation Schedule (Regulation**



38(@)(a))” of the Resolution Plan, the Resolution Applicant has undertaken to provide for the payments to dissenting Financial Creditors in priority over Financial Creditors who voted in favour of the Plan. It is further submitted that in terms of the Implementation Schedule provided under Clause 13 of the Resolution Plan, the payments proposed to be made to the dissenting Financial Creditors will be made within 180 days from the date of approval of the Resolution Plan by this Tribunal. Further, the payments proposed to be made to the Financial Creditors and also to the Financial Creditors in Class whose bookings are cancelled and refund orders have been passed will be made within 730 days from the date of approval of the Resolution Plan by this Tribunal. Therefore, the Resolution Plan is compliant to Section 30(2)(b) of the Code read with Regulation 38(1)(b) of the CIRP Regulations.

10. We have heard the submissions made by the Learned Counsel appearing for the Applicant as well as Learned Counsel appearing for the Resolution Professional/Respondent and perused the records. After having considered the rival submissions, we are at the outset of the considered view that the decision of the CoC in approving the Plan cannot be interfered with by this Adjudicating Authority as has been held by the Hon’ble Supreme Court of India in Catena of judgments.

11. We further note that “**Note to Clause 13: Term of Resolution Plan and Implementation Schedule (Regulation 38(a))**” adequately takes care of the dissenting Financial Creditors and provides for payments in priority over the Financial Creditors who voted in favour of the Plan. The said relevant Clause is reproduced below: -

“Also, the Resolution Applicant undertakes to provide for the payment of debts of dissenting Financial Creditors which shall not be less than the amount to be paid to such Creditors in accordance with Section 53(1) of the IBC, 2016 in the event of Liquidation of the Corporate Debtor. Such amount will be paid in priority over Financial Creditors who voted in favour of the Resolution Plan.”



12. The Resolution Professional has also submitted that as per the terms of the Implementation Schedule provided under Clause 13 of the Resolution Plan, payments proposed to be made to the dissenting Financial Creditors will be made within 180 days from the date of approval of the Resolution Plan by this Tribunal. Thus, it is clear that no payments have been proposed to be made to the assenting Financial Creditors prior to the payments proposed to be made to the dissenting Financial Creditors and therefore the Resolution Plan is compliant to Section 30(2)(b) of the Code read with Regulation 38(1)(b) of the CIRP Regulations.

13. Further, Clause 9.2.3(j) of the Resolution Plan provides that: -

“The Resolution Applicant will pay Liquidation value to the dissenting Financial Creditor which is due in accordance with sub-section (1) of Section 53 in the event of liquidation of the Corporate Debtor and amount will be paid to such Financial Creditors in priority to the other Financial Creditors as per applicable CIRP Regulations within the proposed amount under Financial Creditors (other than Financial Creditors in Class). (Compliance with Regulation 38(1). That it is added that construction cost will be paid in priority as the rights of the allottees are to be prioritized and expeditious completion of the project is required. After the construction cost, Liquidation value shall be paid in priority, if due.”

14. The above Clause makes it very clear that the funds will be primarily used or utilized for the payment for construction costs and then towards payment of Liquidation Value due to dissenting Financial Creditors.

15. On an analysis of the various Clauses of the Resolution Plan as discussed in the abovementioned paragraphs, we are of the considered view that the Resolution Plan is compliant with the provisions of Section 30(2)(b) of the Code and Regulation 38 of the CIRP Regulations of the Code. We do not find any merit in the present application, therefore the same is **dismissed**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)