

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-2953/2023

In

IB-2130(ND)/2019

IN THE MATTER OF IB-2130(ND)/2019:

M/s. DYNACON PROJECTS PRIVATE LIMITED

..... Operational Creditor

VERSUS

M/s. TODAY HOMES & INFRASTRUCTURE PRIVATE LIMITED

..... Corporate Debtor

IN THE MATTER OF IA-2953/2023:

Mr. Dinesh Gambhir & Ors.

1. Mr. Dinesh Gambhir

2. Mr. Varun Gambhir

..... Applicants

VERSUS

Mr. Nilesh Sharma

Resolution Professional of the Corporate Debtor

..... Respondent

Order Delivered On: 15.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicants : Mr. C.S Gupta, Adv.

For the RP : Mr. Saurabh Kirpal, Sr. Adv, Ms. Anushka Sarkar,
Ms. Swastika Kumari, Mr. Kanishk Khetan, Adv.
for RP a/w Mr. Nilesh Sharma, RP in person.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mr. Dinesh Gambhir & Ors., the Applicants (Homebuyers of Villa at M-5, Opulence Villa, M Block, Mayfield Garden, Sector 51 -Gurgaon, Haryana in the project Mayfield

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Garden) on 23.05.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 read with Rule 11 of the NCLT Rules, 2016 before this Adjudicating Authority, for seeking the following reliefs:

“(a) Allow present application to condone delay in filing details of claim before the Resolution Professional, which is pending for adjudication before Hon'ble National Consumer Disputes Redressal Commission in the Consumer Case No. 569 of 2014 presently stayed due to moratorium u/s 14 of IBC Code 2016, and/OR

(b) Alternatively, Issue an appropriate directions or clarification that the approval of Resolution Plan will not operate as a bar in making payment of Claim finally adjudicated by the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) in Consumer Case No 569 of 2014 granted by the Competent Court; and

(c) Pass such order or further order(s) as deemed fit and appropriate in interest of justice in the peculiar facts and circumstances.”

2. Brief Background of the Case

- i. An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Operational Creditor i.e. M/s. Dynacon Projects Private Limited, against the Corporate Debtor i.e. M/s. Today Homes & Infrastructure Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 31.10.2019 and a moratorium was declared including the appointment of Mr. Deepak Bansal as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Nilesh Sharma was confirmed as Resolution Professional.
- ii. The Resolution Plan was submitted by the Successful Resolution Applicant namely Consortium of Canary Greens Buyers Welfare

Association, Callidora Flat Owners Welfare Association and Royal Elegencia Apartment Buyers Association which was approved by the CoC in its 12th meeting dated 10.08.2021 (voting concluded on 16.08.2021) by 96.93% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Nilesh Sharma, the Resolution Professional of the Corporate Debtor submitted an IA-4766/2021 for seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 20.08.2021, which is pending adjudication before this Adjudicating Authority.

3. Submissions of the Applicants

- i.** The Applicants are joint allottees (father and son) of Villa at M-5, Opulence Villa, M Block, Mayfield Garden, Sector 51 - Gurgaon, Haryana admeasuring 803.71 Square Yards vide Agreement to Sell dated 13-07-2006 in the project known Mayfield Garden conceived by the Corporate Debtor/Respondent. The Applicants and the Corporate Debtor already executed an Agreement to Sell dated 13-07-2006 wherein the said Villa has been allotted for a sale consideration of Rs. 2,25,40,000/- (Rupees Two Crore Twenty Five Lakh Forty Thousand Only) which has already been paid before possession was taken of the said Unit/Villa. The 'possession has been taken on 23-09-2017 and presently the Applicants are in possession of the said Unit/Villa.
- ii.** As per the Agreement to Sell dated 13-07-2006, the Corporate Debtor/ Respondent had agreed to give possession within 18 months from the date of the Agreement to Sell. In view of the extraordinary delay in construction and handing over possession, the Applicants/Allottees were constrained to file a Consumer Complaint No. 569/2014 before the Hon'ble National Consumer Disputes Redressal Commission [NCDRC].
- iii.** The Hon'ble NCDRC vide order dated 16-10-2017, after observing that possession has already been given, fixed the matter for

arguments to determine the quantum of damages/compensation. In view of the fact that the CIRP was initiated against the Corporate Debtor vide order dated 31-10-2019 passed by this Adjudication Authority, the fact was brought to the notice of the Hon'ble NCDRC and informed that since moratorium u/s 14 of IBC Code 2016 is in place, hence adjudication process be stayed till moratorium.

- iv. The Applicants approached the Resolution Professional and filed a Claim in Form C on 05-03-2022 for Rs. 2,95,00,000/- which was declined by the Resolution Professional vide email dated 09-03-2022 on the ground that he cannot entertain and accept the claim at this belated stage as he has no power to admit claim beyond 90 days of the CIRP.
- v. The Applicants further submits that in the books of accounts and records of the Corporate debtor, details of allottees, allotment agreements and deposits are available and the present nature of the Claim being contested in the NCDRC, is in the records of the Corporate Debtor. The pendency of Consumer Case No. 569/2014 is not only in the records of the Corporate Debtor, it is also in the public domain of the NCDRC website. Therefore, the Claim pending adjudication is to be considered to be incorporated for making appropriate provisions during the final consideration of the Resolution Plan.
- vi. The Applicants relied on the Judgment of **Puneet Kaur & Others Vs K.V. Developers Private Limited & Others** Order dated 01-06-2022 reported in 2022 SCC Online NCLAT 245, wherein the Hon'ble NCLAT held that even if the claim is not filed by the Home Buyer who is a genuine and bonafide allottee, the claim ought to have been incorporated by the Resolution Professional as per the records of the Corporate Debtor.

4. **Submissions of the Respondent**

- i. The Resolution Professional has filed a reply affidavit denying the contentions and allegations made in this application filed by the

Applicants/homebuyers. The Respondent/ Resolution Professional has submitted that since the claim of the Applicants has been filed belatedly, the same cannot be verified/adjudicated till now as the issue is the delay in filing of the claim which will be decided by this Adjudicating Authority.

- ii.** Pursuant to the CIRP of the Corporate Debtor, the IRP made the public announcement in Form-A in various newspapers on 01.11.2019. The Last date for the submissions of claims was 14.11.2019.
- iii.** Thereafter, the RP collated the claims and constituted the CoC and the first CoC meeting was convened on 01.12.2019. The 90th day from the commencement of CIRP, up to which, belated claims could be filed in terms of Regulation 12(2) of the CIRP Regulations was 29.01.2020.
- iv.** The Respondent thereafter issued Form-G on 29.02.2020, inviting Expression of Interest ("EOIs") from the Prospective Resolution Applicants ("PRAs"), as advised by the CoC in terms of the provisions of Section 25(2)(h) of the Code. The last date for submission of EOIs was 15.03.2020. Due to the nationwide lockdown in the wake of the Covid-19 pandemic, the CoC decided to re-issue Form-G to invite EOIs. Thereafter, the RP re-issued Form-G on 16.10.2020. As a satisfactory response was not received, the RP re-issued Form-G for the third time on 06.11.2020. The last date for submission of EOIs was 13.11.2020.
- v.** The RP submitted that the creditors of the Corporate Debtor are supposed to file their claim with Resolution Professional before the last date, as mentioned in the public announcement. Thereafter, if any creditor still fails to file its claim within the stipulated period, the said creditors, in terms of Regulation 12(2) of CIRP Regulations may submit their claims to the Resolution Professional on or before the 90th day of the commencement of CIRP date.
- vi.** It is submitted that the Applicants in the instant Application were clearly sleeping over their rights. The legal position is well settled that

a person who sleeps over his rights ought not to be given any indulgence. Without prejudice, it is difficult to comprehend how the Applicants, who purchased a unit in the project of the Corporate Debtor, was never aware of the ongoing CIRP proceedings for 28 months.

- vii.** It is further stated that even if the Applicants' names are there in the record of the Corporate Debtor, the claim of the Applicants need not be taken cognizance of, by the Respondent. It is not the duty of the RP to verify each unit holder's claim and admit the claim, without even filing the same by the claimant.

5. **Analysis and Findings**

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicants/ homebuyers as well as Ld. Counsel appearing for the Resolution Professional/Respondent.
- ii.** It is also noted that, the Committee of Creditors (CoC) has approved the Resolution Plan in its 12th meeting dated 10.08.2021 (voting concluded on 16.08.2021) by 96.93% and Application under 30(6) of IBC is pending before this Adjudicating Authority.
- iii.** It is the settled principle of Law as held by the Supreme Court of India in **M/s. R.P.S. Infrastructure Limited Vs. Mukul Kumar and Anr.** (Civil Appeal No. 5590 of 2021) that *“after approval of the plan by the CoC, the claims cannot be entertained. There is no dispute with the facts that the claim was filed by the Appellant after approval of the plan by the CoC. The Appellant has also not been able to show that claim of the Appellant was reflected in the records of the Corporate Debtor”*
- iv.** We are of the considered view that if such claims are allowed, then this Adjudicating Authority will continue to receive further such applications and the case will never reach resolution. Further, it will also cause a hurdle to the Successful Resolution Applicant in executing the Resolution Plan.

6. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-2953/2023** filed by the Applicants is **dismissed.**
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)