



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A/2799/2023

IN

Company Petition No. (IB) – 607/(PB)/2020

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

IN THE MATTER OF:

BANK OF BARODA

...FINANCIAL CREDITOR

VERSUS

MB MALLS PRIVATE LIMITED

...CORPORATE DEBTOR

AND IN THE MATTER OF –

M/s. Cool Cloud Communication Pvt. Ltd.

...Applicant

VERSUS

Mr. Abhimanyu Mittal

Resolution Professional of M/s M.B. Malls Private Limited

At: 29FF, The White House, Sector-57, Gurgaon,

Haryana- 122003

...Respondent



CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicant: AMIKUS LAW, LLP

For the RP: MITAL AND MITAL ADVOCATES

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 31.10.2023

1. The present application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 against partial rejection of claim of the Applicant by the Resolution Professional.

The Applicant has prayed for the following reliefs:

- i. Allow the present applications preferred by the Applicant herein and direct the Resolution Professional to consider and admit the entire claim of the Applicant.
- ii. Pass such other or further order(s) as this Tribunal may deem fit and proper in the facts and circumstances of the case.



2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows:

- i. That the Applicant is the allottee and had filed its claim in FORM CA (proof of claim by creditor in Class) under Regulation 8A of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016 comprising of principal amount, interest and penalty thereon.
- ii. That in the year 2013, the Applicant herein had purchased commercial shop in the project of the Corporate Debtor namely "The Business Tower", situated at Main Mathura Road, 32, Faridabad, Haryana ("said Project" hereafter).
- iii. That subsequent thereafter, a Builder Buyer Agreement was executed between the Applicant and the Corporate Debtor. Upon execution of the said Builder Buyer Agreement, the Applicant, as per the payment plan, had made initial payments which were duly acknowledged by the Corporate Debtor.



- iv. That the Corporate Debtor had completely failed to handover the peaceful physical possession of the said Units to the Applicant.
- v. That in the meantime the Financial Creditor namely Bank of Baroda filed Company Petition bearing C.P. (IB)-607(PB)/2020 titled as "Bank of Baroda Vs. M/s MB Malls Pvt. Ltd." i.e. the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 before this Tribunal, which was admitted by this Tribunal by an order dated 03.08.2022.
- vi. That the Applicant had filed its claim with Mr. Vikram Bajaj, Interim Resolution Professional ("IRP").
- vii. That when no response was received from the IRP, the Applicant through its counsel, sent a reminder email dated 19.09.2022 to the IRP to consider the claim filed by the Applicant.
- viii. That subsequent thereto, an application was filed on behalf of the Committee of Creditors, seeking appointment of Mr. Abhimanyu Mittal i.e. the Respondent herein as the



Resolution Professional, which was allowed by this Tribunal vide order dated 20.09.2022.

- ix. That the Applicant has filed its claim within the prescribed period. Therefore, there is no delay on the part of the Applicant to file the present claim.
- x. That the Resolution Professional has completely failed to assign any reason whatsoever in not accepting the entire claim of the Applicant. Only the partial claim has been accepted by the Resolution Professional.

3. The Resolution Professional of the Corporate Debtor has filed his reply to the averments of the Applicant stating as follows:

- i. That the RP had admitted the claim of the Applicant to the extent of entire principal amount along with interest calculated as per the Clause 7 of Regulation 16 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulations”).
- ii. That clause 14 of the Builder Buyer Agreement provides that in case the project is delayed due to any other condition than the



mentioned conditions in the said clause, the Developer would pay the penalty @Rs 25/- per square feet per month after expiration of the grace period of 3 months and till handing over of the possession to the Allottee.

- iii. That in the present case, Clause 14 of the Builder Buyer Agreement does not apply as the said agreement does not specify the timeline to hand over the possession and as per Clause 14 of the agreement, the penalty will arise when there is delay on the part of Developer to hand over the possession of the unit due to any other condition than mentioned in Clause 14. Since no time period is prescribed or agreed between the parties to hand over the possession of the said unit, the Clause 14 has no applicability to the facts of the case.
- iv. That the Builder Buyer Agreement does not stipulate any rate of interest which has to apply in case where the possession was not handed over to the allottees. As per Clause 7 of Regulation 16A, CIRP Regulations, 2016, in case the rate of interest is not agreed between the parties, financial debt includes an interest of eight percent per annum.



4. We have gone through the documents on record filed by all the parties and arguments advanced by counsels of both the parties.
5. The Applicant in the above-mentioned IA has prayed for issuing directions to the Resolution Professional to admit the entire claim of the Applicant. However, the Resolution Professional in his reply filed in response to such Application has stated his reasons for partially admitting the claim. The issue with respect to partial admission of claim is regarding the amount of interest admitted as claim and the exclusion from the claim amount of the penalty in terms of Clause 14 of the Builder Buyer Agreement executed by the Corporate Debtor with each of the Applicant.
6. The first contention of the Applicant is regarding the amount of interest admitted as claim. After carefully going through the Builder Buyer Agreement, it is noted that no rate of interest was agreed between the parties. Therefore, the Respondent/RP has rightly calculated interest at the rate of 8% p.a. in terms of Clause 7 of Regulation 16A, CIRP Regulations, 2016 which provides as under:



16(A)(7) The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.

7. The second contention of the Applicant is with respect to the exclusion from the claim amount of the penalty in terms of Clause 14 of the Builder Buyer Agreement executed by the Corporate Debtor with the Applicant. Clause 14 is reproduced herein below for ready reference:

14. That the Permissive Possession of the said premises has been offered by the developer to the allottee(s). If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the developer, lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake, storm or floods, tempest or any act of God or any other reason beyond the control of the developer, the developer shall be entitled to extension of time for delivery of the said premises. The developer as result of such contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement if the circumstances beyond the control of the developer so warrant, the developer may suspend the Scheme for such period as it might consider expedient. In case the DEVELOPER is unable to complete the project on account of any law passed by the legislature or any other government agency, in that event the developer if so advised, shall be entitled to challenge the validity, applicability and/or efficacy of such legislation, order and/or bye



law by instituting appropriate proceedings before courts(s), tribunal(s) or authorities. in such situation, the amounts paid by the allottee(s) shall continue to remain with the company and the allottee(s) shall not be entitled to initiate any proceedings against the company for delay in execution of the project. It is specifically agreed that this agreement shall remain in abeyance till final determination of such matter/ cases by appropriate courts(s), tribunal(s) or authorities. in case, the developer succeeds in its challenge to the impugned legislation/ rule/ order and/ or bye-law, in that event this agreement shall be revived. In case the developer is unsuccessful in its challenge to the impugned legislation/ rule/ order and/ or bye-law, in that event the developer shall refund without any interest or compensation and in such reasonable manner as may be decided by the developer the amounts paid by the allottee(s). The decision of the developer in this regard shall be final and binding on all allottee(s). However, in case the project is delayed due to condition other than stipulated above, the Developer will pay penalty @Rs. 25/ per sq. ft. per month after expiration of the grace period of 3 months and till handing over of the possession to the Allottee.”

8. As far as the inclusion of penalty in terms of Clause 14 of the Builder Buyer Agreement is concerned, we are of the view that no penalty can be imposed as no time period was prescribed or agreed between the parties to hand over the possession of the said units and therefore, the question of imposition of penalty does not arise.

9. IA/2799/2023 stands dismissed in terms of the above order.



Let copy of the order be served to the parties concerned.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)