

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT

I.A No. 2687 of 2022

In

CP (IB) 315 (MB) of 2019

Under Section 60 (5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
the NCLT Rules, 2016.

In the matter of

Chandrakant Shah (Suspended Director of
Nirmal Lifestyle Realty Private Limited),
having its registered office at Jawahar Talkies
Compound, Dr Rajendra P Road. Mulund
(W), Mumbai-400020.

... Applicant

Vs

Mr. Jayesh Sanghrajke, Resolution
Professional of Nirmal Lifestyle Realty
Private Limited; having registered office at
Jayesh Sanghrajka & Co LLP 405-406, Hind
Rajasthan Building. D.S. Phalke Road, Dadar
East, Mumbai -400014

... Respondent

Coram:

Hon'ble Shri H.V.Subba Rao, Member (J)

Hon'ble Mrs. Madhu Sinha, Member (T)

Order delivered on: 07.03.2024

ORDER

[Per se: Shri H.V.Subba Rao , Member (J)]

1. The above IA is filed by Mr. Chandrakant Shah (Suspended Director of Nirmal Lifestyle Realty Private Limited), praying the following reliefs:

- i. Set aside the current ongoing CIRP of the Corporate Debtor owing to the material irregularities and illegalities;*
 - ii. Reject and set aside the Conditional and defective Resolution Plan submitted by Oberoi Constructions Limited which is in violation of Code.*
 - iii. Direct the Respondent to issue a fresh Form & notice.*
 - iv. Pending hearing and final disposal of the present Interlocutory Application, stay the ongoing CIRP of the Corporate Debtor;*
 - v. Costs of the present Interlocutory Application.*
2. Brief facts behind filing of the above application are as follows:
- 2.1 *Vide* order dated 06.12.2021 in Company Petition No. 315 of 2019, Corporate Insolvency Resolution Process against the Corporate Debtor-Nirmal Lifestyle Realty Private Limited was initiated by this Tribunal. Subsequently, *vide* order dated 07.03.2022, the Respondent was appointed as the Resolution Professional.
 - 2.2 The Applicant noticed several material irregularities in the conduct of the CIRP of the Corporate Debtor.
 - 2.3 The Respondent has prevented other bidders from making their applications and granted unilateral extensions without justification with the malafide intent to enable a single resolution applicant to make a plan and constrain the CoC to approve the same, to the detriment of the Corporate Debtor and in stark contravention of the spirit and intent of the Insolvency and Bankruptcy Code, 2016.
 - 2.4 The preconditions imposed for inviting the bids were arbitrarily imposed in as much as they have prevented and precluded other bidders from coming forward.

- 2.5 Moreover, material information as required under the Code has not been made available on the public domain, raising further doubts and suspicion.
- 2.6 The Resolution Plan submitted by the Resolution Applicant is conditional and contingent in nature, and is in contravention of the procedure laid down in the Code. It appears that the said Plan is ineffective to be implemented and ought to be rejected.
- 2.7 The aforementioned sequence of events makes it a fit case to set aside the ongoing CIRP and direct re-issuance of fresh Form - G with regard to the Corporate Debtor. Hence, this Interlocutory Application.
3. Respondent RP filed affidavit in reply dated 16.12.2022 opposing the above application. The important paragraphs of the reply are extracted hereunder:
- 3.1 The Respondent as a Resolution Professional have not only followed each and every procedure as required under the law but also sent all the notices of the CoC meetings to the Applicant herein. Therefore, the Applicant was well aware of the CIRP status of the Corporate Debtor at every juncture. Emails addressed by the Respondent to the Application with regard to the agenda to be discussed in the CoC meetings have been annexed.
- 3.2 All the Minutes of Meetings were also emailed to the Applicant. Emails addressed by the Respondent to the Applicant with regard to the Minutes of Meetings of CoC meetings have been annexed.
- 3.3 Pertinently, on not even one occasion did the Applicant raise any objection, whatsoever, to the CIRP process conducted by the Respondent/ Resolution Professional. The Applicant has filed the instant Application simply as an afterthought with the intent to misguide this

Tribunal and prevent hearing and adjudication of Interlocutory Application No. 2048 of 2022 filed by the Respondent under the provisions of Section 43, 45, 66 & 60(5) of the Code revealing the undervalued, preferential and fraudulent transactions undertaken by the Applicant. The Applicant is one of the Respondents in the said Application. The present captioned Application has been taken out by the Applicant merely as a counterblast to the said IA No. 2048 of 2022 and to attempt to muddy the waters.

- 3.4 Additionally, the Respondent had also filed Interlocutory Application No. 822 of 2022 under Section 19 (2) of the Code (the "Non- Cooperation Application") against the Applicant and another director due to non-cooperation on the Applicant's part wherein the Applicant took 241 days to provide the Respondent with the details sought . This Tribunal *vide* its order dated 14.07.2022 forfeited the right of the Applicant to file a reply to the said Non-Cooperation Application and further, directed the Applicant to physically appear before this Tribunal on the next date, being 01.08.2022. And only after repeated warnings did the Applicant provide a few details as sought by the Respondent under the Non-Cooperation Application. Copy of the Order dated 14.07.2022 passed in the Non-Cooperation Application has been annexed.
- 3.5 Based on the Applicant's contention in the present Application, it seems that the captioned Petition under Section 7 of the Code was never liable to be admitted in view of the fact that there was a property that could have been sold to settle the dispute between the parties. The Applicant had already argued this contention before this Tribunal at the time of hearing of the captioned Petition and this Tribunal had rejected the said argument. The same has also been recorded in the Admission Order.

Additionally, an appeal was preferred by the Applicant against the Admission Order before the Hon'ble NCLAT agitating the said contention which also came to be rejected by the Hon'ble NCLAT *vide* its order dated 12.01.2022. Thus, the Applicant's argument was not only rejected by this Hon'ble Tribunal but also by the Hon'ble NCLAT in appeal. The Applicant cannot reagitate and reiterate the same argument by way of the above captioned Application when the same has already been adjudicated upon both at the stage of the hearing of the captioned Section 7 Petition as well as the aforementioned Appeal. Further, the admission of the Petition has got nothing to do with the Respondent herein as the Respondent came into picture only after initiation of CIRP

3.6 As regards all the other allegations mounted by the Applicant, the falsity of the same is evident as the Respondent at all times followed the procedure prescribed by the Code and the Rules and Regulations thereunder. The Respondent published the EOI in Form-G and strictly adhered to all the timelines stipulated in the Code. The extension of the CIRP has taken place with the permission of this Tribunal *vide* its order dated 09.09.2022. Further, the extension in submission of the resolution plan was duly approved by the CoC as stated in the submissions hereinabove and only thereafter, the last date of submission of the resolution plan stood revised. The Applicant was abreast of the minutes of each of the CoC meetings since the same were provided by the Respondent to the Applicant via emails. Therefore, at all times, the Applicant was fully aware the CIRP stage and process that was going on and is now resorting to false averments only with the intention to create hindrances in the approval of the resolution plan.

- 3.7 Moreover, the Respondent states that the eligibility criteria had been approved and fixed with the approval of the members of the CoC and the same is not at the discretion of the Respondent/Resolution Professional. Therefore, the allegations made by the Applicant are completely baseless and incorrect. The Resolution Plan received 100% approval from the CoC on 01.09.2022 and accordingly, the Application for approval of the Resolution Plan was filed by the Respondent/ Resolution Professional within the timeline stipulated under the Code. Therefore, the Respondent has always duly abided by the timelines stipulated under the Code and approved by this Tribunal.
- 3.8 The Applicant's case *inter alia* that the Respondent did not inform the workmen of their claim being admitted and further did not make the same being an operational creditor allegedly with more that 10% of the admitted claim, a member of the COC. The Respondent denies the contents thereof as the same are incorrect, vexatious and totally baseless. The last date for submission of claim as per the Public Announcement was 03.01.2022 and, on the same day, the Authorised Representative of the 575 workmen submitted their claims which was thereafter verified and admitted on the basis of the documents and proof of claims that were submitted. Even for the other 101 workmen, an intimation was sent regarding the initiation of CIRP and submission of claims to Mr. Naresh Kadam on 02.01.2022 itself, however, Mr. Kadam submitted the claims for the 101 workmen on 26.08.2022 which is much beyond the 90 Day of the Insolvency Commencement Date as required under the Code. However, in the best interest of the workmen and resolution of the Corporate Debtor, the Respondent/Resolution Professional had verified and admitted the claim on the basis of the documents submitted by the

Authorized Representative of 101 workmen on 29.08.2022. Further, with regard to the Applicant's allegation that the claim of Operational Creditor is eligible to be member of the COC meeting, it is pertinent to note that the claim of additional 101 workmen was submitted at the last minute, i.e., during the process of discussion on and/or of approval of the Resolution Plan. Further, the claim filed by Mr. Raut on behalf of 575 workmen or by Mr. Kadam on behalf of 101 workmen individually does not constitute 10% of the total claim. It is curious that the Applicant now seems to be so keen on taking up cudgels for the workmen's dues when he did not in fact ensure that the same were paid during his time in control of the Corporate Debtor, which itself led to such large dues being owed to them in the CIRP. The Respondent has made its best endeavours to take steps which is in the interest of all the stakeholders as well as Corporate Debtor.

- 3.9 An application for approval of Resolution Plan is already filed and currently pending adjudication before this Tribunal. *Vide* email dated 20.10.2022, the Resolution Applicant informed the Resolution Professional that, in view of the Order dated 23.09.2022, passed by the Supreme Court in the matter of *T.N. Godavarman Thirumulpad v Union of India and Ors.*, the condition set forth in Section 8.4(ii) of the revised Resolution Plan dated 30.08.2022 stands satisfied and therefore the same is not liable to be rejected as contended by the Applicant. The email dated 20.10.2022 has been annexed.
- 3.10 With regard to the Applicant's allegation of increased CIRP costs, it is submitted that fees payable to any other professionals is projected as INR 1,00,00,000/- as it is estimated towards the appointment of legal counsels, including senior advocates if necessary, that may be required

for hearings before this Tribunal, the Hon'ble NCLAT and the Hon'ble Supreme Court etc. This amount is the estimated amount and not the incurred amount. On approval of the Resolution Plan, the final amount will be submitted and, obviously, only if any such expenditure is incurred, the amount can and will be claimed as CIRP cost and not otherwise.

- 3.11 The Present Application is a gross abuse of the process of law in as much as the same is being used as an arm-twisting tactic to coerce the Respondent into withdrawing IA No.2048 of 2022, against the Applicant, and/or delaying the hearing and final disposal of the application for approval of the Resolution Plan.

4. Findings and observations:

- 4.1 In so far as the grievance of the Applicant with regards to the admission of Section 7 Petition is concerned, it is observed that the issue has already been adjudicated by the Hon'ble NCLAT vide its order dated 12.01.2022 in Company Appeal (AT) (Ins)/1085/ND/2021. The Applicant cannot reargue and reiterate the same argument by way of the present application.
- 4.2 In so far as the grievance of the Applicant with regards to the registered Power of Attorney (PoA) dated 06.08.2005 executed in the name of Mr. Dharmesh Jain and Mrs Anju Jain are concerned, Mr. Dharmesh Jain has already filed separate application bearing IA No. 3689 of 2022 elaborately expressing his grievance with regard to the PoA which was dismissed by this Tribunal today *vide* separate order and therefore no separate findings and observations in this regard are necessary.
- 4.3 In so far as the grievance of the Applicant with regards to the resolution plan being conditional and contingent in nature is concerned, appropriate

orders to be passed by this bench at the time of passing final orders approving/rejecting the resolution plan.

- 4.4 With regards to the other contention of the Applicant as to the increase in CIRP Costs is concerned, the RP has already clarified in his affidavit in reply stating that the said amount is the estimated amount and not the incurred amount. The said amount of Rs. 1 Crores includes the estimated fees payable for the appointment of legal counsels, including senior advocates, if necessary, that may be required for hearings before the Tribunals and Courts. On approval of the Resolution Plan, the final amount shall be submitted and, obviously, only if any such expenditure is incurred, the amount can and will be claimed as CIRP cost.

Even otherwise, it is a matter of concern to be agitated by the Financial Creditors and other CoC Members and not by the Applicant who is the member of the Suspended Board of Management of the Corporate Debtor.

- 4.5 Similarly, the other grievance of the Applicant with regards to the non-inclusion of the workmen who are the Operational Creditor having more than 10% stake in the subsequent CoC meetings is concerned, it is also a cause to be raised and agitated by the aggrieved party and not by the present Petitioner/Applicant.

- 4.6 The contention of the Applicant with regards to the material irregularities in the conduct of the CIRP of the Corporate Debtor, the RP has already clarified that the due procedure was followed at all times while conducting the CIRP process. The RP published the EOI in Form-G and strictly adhered to all the timelines stipulated in the Code. The extension of the CIRP was accorded with the permission of this Tribunal *vide* its order dated 09.09.2022. Further, the extension in submission of the

resolution plan was duly approved by the CoC and only thereafter, the last date of submission of the resolution plan stood revised. If at all, the Applicant is aggrieved by the extensions granted for receiving the resolution plans either by the CoC or by the Adjudicating Authority, he could have challenged those decisions either by filing an application before the Adjudicating Authority or before the Hon'ble NCLAT.

- 4.7 In so far as the grievance of the Applicant that he was not made aware of the CIRP status with regards to the CoC meetings and minutes of the meetings are concerned, the RP *vide* his affidavit in reply has already clarified that the Applicant was abreast of the minutes of each of the CoC meetings since the same were provided by the RP to the Applicant via emails. Therefore, at all times, the Applicant was fully aware of the CIRP stage and process that was going on. Even otherwise, none of the other members of the Suspended Board of Management raised the above issue which shows that they were all having knowledge and have been attending the CoC meetings. The other Suspended Board member Mr. Dharmesh Jain did not raise these grievances anywhere in his application and the above contention in this regard is nothing but out and out false.
5. For the forgoing reasons, this Bench is of the considered opinion that the above application is nothing but a dishonest attempt made by the Applicant who is none other than the member of the Suspended Board of the Corporate Debtor to stall the CIRP of the CD and encouraging this kind of applications would certainly lead to extending helping hand to the people like the Applicant which may ultimately prevent revival of viable companies and defeat the very object of the Code. The above application is nothing but a collusive application filed by joining hands with the other member of suspended board of the Corporate

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Debtor. Therefore, this Bench feels this is a fit case to be dismissed with exemplary costs.

6. Accordingly, the above I.A No. 2687 of 2022 in CP (IB) 315 (MB) of 2019 is dismissed by imposing cost of Rs. 1,00,000/- payable by the Applicant- Mr. Chandrakant Shah to the CoC within two weeks from the date of uploading the order.

Sd/-
Madhu Sinha
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)