IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

I.A. No. 3590 of 2023

In

C.P. (IB) No. 1140/MB-IV/2020

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by:

Sabari Developers LLP

…Applicant

v/s.

Mr. S. Gopalakrishnan, Resolution Professional of Shankeshwar Properties Pvt. Ltd.

…Respondent

In the matter of:

Rupa Infotech and Infrastructure Pvt. Ltd.

…Financial Creditor

v/s.

Shankeshwar Properties Pvt. Ltd.

…Corporate Debtor

Order Pronounced on: 24.11.2023

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant:	Mr. Chetan Kapadia, Ld. Sr. Counsel a/w Ms. Deepa Pohuja, Mr. Rayan Agarwal i/b. Adv. Varun Agarwal, Ld. Counsel for the Applicant
For the Respondent:	Mr. Shyam Kapadia a/w Mr. Deep Dighe i/b Amit Tungare, Ld. Counsel for the Respondent/ RP

ORDER

1. The instant Application has been filed by Sabari Developers LLP ("**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 interest amounting to INR 13,66,46,519/- (Rupees Thirteen crores, sixty-six lakhs, forty-six thousand, five-hundred and nineteen only).

Submissions on behalf of the Applicant

2. The Applicant is a Limited Liability Partnership (LLP) incorporated on 26.07.2015 upon conversion from partnership firm M/s. Sabari Enterprises, and is a Related Party of Shankeshwar Properties Private Limited ("**Corporate Debtor**") in C.P. (IB) No. 1140/MB-IV/2020.

3. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("**CIRP**") *vide* Order dated 03.02.2023 under Section 7 of the IBC, 2016 by this bench and, Mr. S. Gopalakrishnan bearing Registration Number [IBBI/IPA-002/IP-N00151/2017-18/10398] was appointed as the Interim Resolution Professional of the Corporate Debtor.

4. The Applicant herein submits that in the year 2014, the Corporate Debtor approached the Applicant for need-based finance to meet the funding requirements for construction and development of real estate project *viz.* Sabari Shaan at Chembur Camp Mumbai and, for repayment to its secured creditors. The terms and conditions of the said need-based finance were decided and agreed by both parties *vide* letter dated 20.06.2014, issued by the Corporate Debtor and accepted by the Applicant, whereby interest at 15% p.a. on the unsecured loans provided by the Applicant was payable.

5. Based on the aforementioned terms, the Applicant herein submits that it advanced monies to the Corporate Debtor as and when required, and the Corporate Debtor also made repayment of the principal and the interest thereon from time to time. Admittedly, interest was not booked in the accounts of the Applicant herein from April 2017 although interest was accruing in terms of the Agreement between the parties. The Applicant submits that in relation to the same, it neither renounced its right towards the interest receivable nor agreed for any waver, either in full or in part, of the interest component.

6. The Applicant herein submits that *vide* letter dated 05.04.2019, the Corporate Debtor inter-alia confirmed the balance loan amount of INR 12,18,28,245/- (Rupees Twelve crores, eighteen lakhs, twenty-eight thousand, two hundred and forty-five only) plus interest amount due from 01.04.2017 to 31.03.2019, and sought additional funds from the Applicant for project competition on the same terms of interest at 15% p.a. and promised to make repayment of the principal amount and interest thereon.

7. The Applicant herein submits that *vide* Public Notice in Form A dated 10.02.2023, the Respondent (Resolution Professional) invited claims from

the creditors of the Corporate Debtor and pursuant to the same, the Applicant herein filed a claim of INR 14,86,93,656/- (Rupees Fourteen crores, eighty-six lakhs, ninety-three thousand, six hundred and fifty-six only) in Form C along with supporting documents *via* E-mail dated 22.02.2023. The breakdown of the said claim amount is as follows:

Particulars	**Amount** (INR)
Balance outstanding of the Principal and Interest accounted in the books of the Applicant as on 02.02.2023	1,20,47,139
Interest accrued from 01.04.2017 to 02.02.2023 not provided for in the books of accounts of the Applicant, as a matter of prudence and not a waiver of right	13,66,46,517
Total	**14,86,93,656**

8. The Applicant herein submits that as requested by the Respondent, it submitted working sheet of the claim amount *via* E-mail dated 27.02.2023 in response to which, the Respondent *vide* E-mail dated 03.03.2023, then acting as IRP, inter-alia communicated admission of claim of INR 1,20,47,139/- (Rupees One crore, twenty lakhs, forty-seven thousand, one hundred and thirty-nine only). The Respondent further sought additional documents and information from the Applicant for verification of balance claim of INR 13,66,46,517/- (Rupees Thirteen crores, sixty-six lakhs, forty-six thousand, five hundred and seventeen only).

9. The Applicant herein submits that various E-mail communications were exchanged between the Applicant, and the Respondent acting as the Resolution Professional, in relation to claim amount of INR 13,66,46,517/- (Rupees Thirteen crores, sixty-six lakhs, forty-six thousand, five hundred and

seventeen only), and that the Applicant provided information and documents to the latter as and when required by him. The Applicant further submits that no information till date has been received by it about the non-admission of the interest component of the claim amount and that; Per the second Committee of Creditors ('**CoC**') meeting held on 27.04.2023, the Designated Partner of the Applicant herein attending in his capacity as the Suspended Director of the Corporate Debtor, came to know that its claim of interest amounting to INR 13,66,46,519/- has not been admitted. Thus, the present Application.

Submissions on behalf of the Respondent

10. The Respondent submits that in the Claim Form submitted by the Applicant, the Applicant relied upon (i) its ledger account, (ii) a rough calculation of alleged interest accrued as on commencement of CIRP, (iii) confirmation of accounts by the Corporate Debtor for period commencing from 01.04.2018 to 01.04.2022, and (iv) an alleged communication dated 05.04.2019 addressed by the Corporate Debtor to the Applicant allegedly requesting for additional loans.

11. The Respondent submits that both the relevant documents on record being the ledger account and confirmation of accounts, showed an outstanding amount of INR 1,20,47,139.53 (Rupees One crore, twenty lakhs, forty-seven thousand, one hundred and thirty-nine, and fifty-three paise only) and the claim was thereby admitted to this extent by the Respondent while the balance claim for interest was kept under verification and, various material documents being the financial contract between the Corporate Debtor which were not provided along with Form C were sought for from the Applicant. The said financial contract was later provided to the Respondent *vide* E-mail dated 21.03.2023, whose veracity is alleged to be vague and misleading by

the Respondent. The Respondent further relies on official records and books of accounts of both, the Applicant and Corporate Debtor to compute the amount due and payable by the Corporate Debtor to the Applicant as INR 1,20,47,139.53/-.

12. Furthermore, the Respondent alleges collusion, indiscriminate siphoning-off of funds and circular transactions by the Related Parties *viz.* Applicant and the Corporate Debtor. Additionally, the Respondent places reliance on the documents handed over to him by the suspended Board of Directors of the Corporate Debtor in compliance with order dated 26.07.2023 passed by this Tribunal, and contends the documents to be forged and fabricated by the Applicant and the Corporate Debtor and further seeks reference of the present matter to the Serious Fraud Investigation Office.

<u>Findings</u>

13. Heard the arguments of Learned Counsel(s) for the Applicant and the Respondent.

14. Upon perusal of all record files, we find that the Applicant has not brought any evidence before us to interfere into the decision of the Resolution Professional. The Applicant has placed reliance upon confirmation of accounts for F.Y. 2014-15, 2015-16 and 2016-17 in which interest and subsequent TDS deductions are duly reflected. However, with effect from F.Y. 2017-18, there is no reflection of deductions of TDS on interest income for the period thereafter in the Audited Financial Statements of the Applicant. Furthermore, no other documentary evidence has been produced by the Applicant to support their claim.

15. We further place reliance on the Hon'ble NCLAT's judgement in

Himalayan Crest Power Pvt. Limited v. Pankaj Khaitan Resolution Professional, M/s. Sasi Power Pvt. Limited [*Company Appeal (AT)(Insolvency) No. 927 of 2020*]. If any claim cannot be verified with reference to the evidence presented and the Books of Accounts of the Corporate Debtor, the Resolution Professional cannot admit such claim. It is also trite to mention that the Adjudicating Authority is not a fact-finding Authority so as to determine the claims of the Creditors.

ORDER

16. This Adjudicating Authority in any view of the matter, is not inclined to entertain the present application for the claim amount of INR 13,66,46,519/- (Rupees Thirteen crores, sixty-six lakhs, forty-six thousand, five-hundred and nineteen only)

17. Resultantly, the present application *viz.* I.A. 3590/2023 in Company Petition (IB) No. 1140/MB/2020 stands dismissed.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

24.11.2023