

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH : COURT-IV**

**IA-3383/2023 In C.P.(IB)-4469(MB)/2019**

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

*Application moved by:*

**Edelweiss Investment Adviser Limited**

... Applicant

Vs.

**Jayesh Sanghrajka, RP & Ors. ...Respondents**

*In the matter of*

**IDBI Trusteeship Services Limited**

...Financial Creditor

Vs.

**Ornate Spaces Private Limited**

...Corporate Debtor

Order Pronounced on : **06.10.2023**

***Coram:***

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

***Appearances:***

For the Applicant(s)

: Mr. Mustafa Doctor, Sr. Counsel a/w  
Mr. Nimay Dave, Mr. Rashid  
Boatwala, Ms. Samiksha Rajput,  
Advocates.

For the Respondent(s)

: Mr. Nausher Kohli a/w Mr. Ashish  
Parwani, Mr. Devesh, Mr. Dikshat  
Mehra, Chetan Gandhi and Ms.  
Anjali Dhoot, Advocates.

**ORDER**

*Per: Kishore Vemulapalli, Member (Judicial)*

1. This is an Application filed on 31.07.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') by Edelweiss Investment Adviser Limited to oppose and challenge the second Addendum to the Resolution Plan dated 21.06.2023, which was submitted by Ashdan Properties Pvt. Ltd. ("Resolution Applicant").
2. The Applicant is a Financial Creditor under the class of "Home Buyers", and has arrayed the Resolution Professional as Respondent No.1, the Resolution Applicant as Respondent No. 2, and Mr. Hemant Mehta, the authorized representative of class of "Home Buyers" as Respondent No. 3.
3. Edelweiss Investment Advisors Ltd. ("Applicant") has filed the present Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code" or "IBC") to challenge the Second Addendum to Resolution Plan dated June 21, 2023 ("Impugned Addendum"). The Impugned Addendum was presented to the Committee of Creditors ("COC") by the Resolution Applicant pursuant to the direction issued by this Tribunal vide its Order dated May 2, 2023 ("said Order") in Interlocutory Application ("IA") No. 291 of 2022 previously filed by the Applicant in the captioned Company Petition. The Applicant submitted that the Impugned Addendum is in direct contravention of the directive issued by this Tribunal, and hence, the Applicant has been constrained to prefer the present Application. The Applicant seeks a fresh order and direction from this Hon'ble Tribunal, directing the Resolution Applicant to submit an Addendum in accordance with the directives issued by this Tribunal.
  - 3.1. It is the case of the Applicant that it appears as if the Resolution Professional and the Resolution Applicant are indirectly trying to seek approval for the very Resolution Plan that was challenged by the Applicant in I.A. No. 291/2022. A deliberate attempt is underway to sideline the interests of the homebuyers.

- 3.2. It is submitted that while the Resolution Professional admitted the entire principal amount of Rs. 15,27,12,000/- claimed by the Applicant, along with an amount of Rs. 13,37,87,729/- as interest on the principal amount, both aggregating to Rs. 28,48,05,788/- (including 18% interest) vide email dated 25 November 2020, the remaining amount of Rs. 1,32,77,146/- was not admitted by the Resolution Professional. The Applicant sent an email on December 18, 2020, to the Resolution Professional, requesting clarification for not admitting the said balance amount of Rs. 1,32,77,146/-. In response, the Resolution Professional, in an email dated December 22, 2020, explicitly stated that the reason for not admitting the remaining amount of Rs. 1,32,77,146/- was because it pertained to the Service Tax component of Rs. 64,06,901/- along with the interest charged thereon.
- 3.3. Several other Homebuyers along with the Applicant had their claims admitted by the Resolution Professional. The overall voting share of Homebuyers as a class of Financial Creditors was 18.34%, as stated by the Resolution Professional in IA No. 2374 of 2021. At that stage, the Applicant held a voting share of 3.99% among all the Homebuyers as a class whose claims were admitted by the Resolution Professional.
- 3.4. Thereafter, the Resolution Plan with all its revisions was submitted by the Resolution Applicant on August 28, 2021. The Resolution Plan of Ashdan Properties Private Limited (**“Resolution Applicant”**) along with all the other Resolution Plans received by the COC was put to vote on September 1, 2021, during the 16<sup>th</sup> COC Meeting. The e-voting facility was open from September 3, 2021, until September 7, 2021. At the request of a financial creditor, the voting period was extended until September 9, 2021. In this round of voting, none of the Resolution Plans received the required number of votes under the Code, which is 66%. Since the Resolution Plan presented by the Resolution Applicant received the highest number of votes, i.e., 51.86%, compared to the other Resolution Plans, it was once again put to vote before the COC. In the second round of e-voting, which concluded on September 18, 2021, the Resolution

Plan was approved by the COC after receiving 80.86% of the votes. Importantly, the Applicant, along with other Homebuyers represented by Mr. Hemant Mehta, the Authorized Representative of the Homebuyers, voted against the Resolution Plan presented by the Resolution Applicant due to various reasons.

- 3.5. Subsequently, the Resolution Professional filed an Application (being IA No. 2374/2021) under Section 30(6) of the Code before this Hon'ble Tribunal, seeking approval of the Resolution Plan, which is still pending adjudication. Since this Resolution Plan discriminated against homebuyers such as the Applicant, the Applicant filed IA No. 291 of 2022 under Section 60(5) of the Code before this Hon'ble Tribunal, which was partly allowed vide its Order dated May 2, 2023, whereby it held that -

*“This bench finds that home-buyers have deposited principal amounts on different dates and different amounts have been deposited so far by each of the home-buyers. The proposed Resolution plan provides for deduction of principal amount paid by each one of them against the amount payable by each flat buyer determined as payable in terms of Resolution Plan. This Bench is of considered view that such treatment discriminates home-buyers within that class, as time value of money deposited by each of home-buyer to equalise them in class of home-buyer should be factored. Accordingly, this Bench feels that the amount eligible for deduction from total sum payable by each home-buyer against their entitlement of a flat under the Resolution plan should be the amount of claim admitted by the Resolution Professional”.*

- 3.6. Thereafter, purportedly to comply with the directives issued by this Hon'ble Tribunal, the Resolution Applicant circulated a 'Revised Business Plan' on May 20, 2023, among the COC members. This Plan was then shared by the Authorized Representative of the Homebuyers with the Applicant and the other Homebuyers. However, a bare perusal of this 'Revised Business Plan' made it apparent that it was not in tune with the directives issued by this Hon'ble Tribunal. Through the "Revised Business Plan", the Resolution Applicant *inter*

*alia* agreed to offer credit to all Homebuyers, which included the principal amount paid by each Homebuyer to the Corporate Debtor, along with 8% interest on such principal, the Resolution Applicant also proposed to withdraw discount of 5% on Minimum Sale Price offered earlier in the CoC approved Plan pending for consideration of this Bench.

- 3.7. Subsequently, on May 24, 2023, the Resolution Professional convened the 19<sup>th</sup> COC Meeting to, *inter-alia* discusses, the aforesaid “Revised Business Plan” dated May 20, 2023. During this COC meeting, the Authorised Representative on behalf of the Homebuyers informed the COC that they had interacted and discussed the “*Revised Business Plan*” and had made certain observations / raised queries in relation thereto. It was thereafter decided that a meeting of the Homebuyers would be conducted by the Authorised Representative, which would be attended by the Resolution Applicant, the Resolution Professional, and his team, to address the concerns raised by the Homebuyers regarding the “Revised Business Plan”. In view thereof, the agenda item i.e., “*Item No. 6 i.e., To Discuss and approve the revised resolution plan*” came to be adjourned to May 30, 2023 for further consideration in the meeting to be held thereafter.
- 3.8. Subsequently, the Homebuyers raised their concerns qua the Revised Business Plan in the virtual meeting held on 26<sup>th</sup> May 2023 amongst the Homebuyers, the Resolution Applicant, Resolution Professional and the Authorised Representative. Based on the deliberations held, the Resolution Professional reconvened the adjourned meeting on May 30, 2023 for further discussions on “*Item No. 6 i.e., To Discuss and approve the revised resolution plan*”. Pertinently, the Minutes of 19<sup>th</sup> CoC Meeting, *inter alia* recorded the serious concerns harbored by the Homebuyers, including but not limited to the vagueness of the term, “*Minimum Selling Price*”.
- 3.9. Interestingly, it appears from the minutes of the 19<sup>th</sup> COC Meeting that the Resolution Professional even stated that unless the Addendum to the Resolution Plan was approved by a threshold of 66% votes, the original Plan

would continue to subsist. At that point in time, the said Addendum had not yet been circulated. The voting on this Addendum was therefore deferred.

3.10. Subsequently, by an email on June 6, 2023, the Authorised Representative of Homebuyers informed the Applicant that the Resolution Applicant has agreed to continue with the 5% discount on the Launch Price, i.e., Rs. 33,000/- per sq. ft. This email too did not address the directives issued by this Hon'ble Tribunal.

3.11. On June 12, 2023, the Applicant sent an email to the Authorised Representative, raising concerns about the Resolution Applicant's offer. Even though this Hon'ble Tribunal had directed that a deduction to the extent of Rs. 28,48,05,786/- ought to be allowed in a case such as that of the Applicant, the offer made by the Resolution Applicant unilaterally reduced this offer to Rs. 21,14,20,350/-.

3.12. On June 22, 2023, the Resolution Professional, while circulating the agenda of the 20<sup>th</sup> COC Meeting scheduled for June 24, 2023, also circulated a Second Addendum dated June 21, 2023 (i.e. the Impugned Addendum), submitted by the Resolution Applicant for discussion and approval. Notably, this Impugned Addendum, which was required to be considered and voted upon by homebuyers, as a class, was circulated only 3 days prior to the next COC meeting. Pertinently, the Impugned Addendum to the Resolution Plan also included a list of 13 new Homebuyers who were added to the Financial Proposal dated August 28, 2021 pursuant to the Orders dated May 2, 2023 passed by this Hon'ble Tribunal.

3.13. The Minutes of the 20<sup>th</sup> COC Meeting recorded *that The Chairman further mentioned that impact of the Addendum to Resolution Plan is on all the stakeholders and that it will prevail only if there is a 66% voting in favor of the Addendum to Resolution Plan. It was discussed that the addendum was primarily aimed at getting the homebuyers on board and achieving favorable voting from homebuyers as a class. In the event that homebuyers financial creditors in the class do not vote in favor of the resolution plan, the resolution plan as originally approved without the addendum*

*would prevail and the NCLT would be informed accordingly while it considers adjudication of the application for approval of Resolution Plan i.e. I.A. 2374 of 2021.*

- 3.14. It is apparent from a bare perusal of the minutes of the 20<sup>th</sup> meeting that a vote on Impugned Addendum had a direct bearing on the rights and interests of homebuyers. Surprisingly however, the Authorised Representative did not take any steps whatsoever to convene a meeting of homebuyers as a class on or before 25<sup>th</sup> June 2023. Therefore, the Applicant was compelled to address an email on June 26, 2023, considering that the e-voting would be closed by June 27, 2023, and the rights of the Homebuyers as a class would be infringed upon.
- 3.15. Since the Authorized Representative held a meeting with the class of homebuyers only on June 27, 2023 to discuss the Impugned Addendum, it was then decided by the representative of the Resolution Professional to extend the voting timeline to June 29, 2023.
- 3.16. Since the entire class of Homebuyers, along with PNB Housing Finance Limited (which holds a voting share of 28.74%), voted against the Impugned Addendum, it did not achieve the required 66% voting percentage as per the Code. Given the glaring illegality in the Impugned Addendum, which ex-facie did not comply with the directives issued by this Tribunal, the homebuyers were left with no choice but to vote against the impugned addendum.
- 3.17. The Applicant has sought direction from this Tribunal to the Resolution Applicant to submit a fresh Addendum to the Resolution Plan in consonance with the observations and directives of this Hon'ble Tribunal; in the alternative and without prejudice to prayer clause (a), declare that the Resolution Plan dated August 28, 2021, as supplemented by the Impugned Addendum dated June 21, 2023 stands rejected in light of the threshold of 66% not being cleared in the voting which concluded on June 29, 2023; and direction to the Resolution Professional that a deduction to the extent of Rs. 28,48,05,786/- ought to be allowed instead of the amount of Rs. 21,14,20,350/- as reduced by the Resolution Applicant.

4. During the course of hearing held on 04.08.2023, Ld. Counsel for Resolution Professional (RP) as well as Resolution Applicant were shown the Application and confirmed that they did not seek to file any reply, however, they contended that this Application is not maintainable on the ground of locus, and argued on this aspect.
5. We heard the Counsel and perused the material available on record.
  - 5.1. It is not in dispute that the applicant is a financial creditor in class of Home-buyers. The Applicant has raised three issues in this Application i.e. (a) Though, full principal amount has been accepted as claim, but the interest claimed @ 18% p.a. thereon has been reduced to the rates provided under RERA; (b) the Addendum takes away 5% discount on MSP previously provided in the Resolution Plan approved by CoC; and (c) the addendum to the Plan was not approved by requisite majority of CoC, as class of Home-buyers and PNB Housing Finance Limited voted against it, hence, the existing plan pending before this Tribunal for approval is in defiance of the Order dated 2.5.2023 passed by this Bench.
  - 5.2. This bench finds merit in the contention of the resolution professional representing Corporate Debtor that the applicant has no locus to file the present application as the applicant is part of class of home buyers and in terms of provisions of the code the applicant along with other home buyers is represented by an Authorised Representative to represent the class. It has been held by Hon'ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors.** (Supra), "*That being the position, and the authorized representative having voted in accordance with the instructions given to him from the class of financial creditors i.e. homebuyers, every individual falling in this class remains bound by his vote and any association or homebuyer of JIL cannot be acceded the locus to stand differently and to project its /his own viewpoint or grievance by way of objections or by way of appeal*".
  - 5.3. In view above, this Bench is of considered opinion that the Applicant has no locus to file separate objections, in relation to (a) the Addendum taking away

5% discount on MSP previously provided in the Resolution Plan approved by CoC; and (b) the addendum to the Plan having been not approved by requisite majority of CoC, as class of Home-buyers and PNB Housing Finance Limited voted against it. The Applicant's contention that the existing plan pending before this Tribunal for approval can not be approved as being in defiance of the Order dated 2.5.2023 passed by this Bench, does not merit consideration because, the Applicant is represented by the Authorised Representative of a class of Financial Creditors, and it can be represented by such Authorised Representative only. Nonetheless, this Bench finds that the Counsel appearing for the Successful Resolution Applicant submitted that the Approved Resolution Plan shall be acceptable to it even if it may entail enhancement in its obligations to give effect to the Order(s) passed by this Bench in so far, such Order(s) have the effect on the quantum of claim or rights of the any Creditors. Accordingly, this aspect shall be dealt with in the Order disposing of IA 2374/2021 seeking approval of the Resolution Plan.

5.4. As regards contention of the Applicant in relation to quantum of interest on the principal amount admitted by the Resolution Professional, this Bench is of considered view that the Applicant's claim was under the class of "Home-Buyers" and was admitted in that class. Home-buyers' rights on delayed possession of flats are governed by Maharashtra RERA ACT, which provides for payment of interest @ 8% p.a. u/s 18 thereof in such cases. Accordingly, this bench does not find any infirmity in the determination of quantum of interest by the Resolution Professional.

6. In view of the above discussion, this IA-3383/2023 is **dismissed** and disposed of accordingly.

**Sd/-**  
**PRABHAT KUMAR**  
**Member (Technical)**

**Sd/-**  
**KISHORE VEMULAPALLI**  
**Member (Judicial)**

06.10.2023/-