



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

IA 1257(ND)/2023 in CP No.: IB 304(ND)/2022

In the matter of:

M/s GENESIS COMTRADE PRIVATE LIMITED

... Financial Creditor

VERSUS

M/s OPULENT INFRADEVELOPERS PVT. LTD

...Corporate Debtor

And in the matter of IA 1796(ND)/2024:

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

M/s URBTECH XAVIERS WELFARE SOCIETY

... Applicant

VERSUS

MR. DEVENDRA UMRAO

*RESOLUTION PROFESSIONAL M/S. OPULENT INFRADEVELOPERS PVT.
LTD*

... Respondent

Pronounced on: 17.04.2025

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)**

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Present:

For Applicant : Adv. Haisween Sharma



For RP : Adv. Gaurav Mitra, Adv. Abhishek Parmar

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This Application is filed under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016, by M/s Urbtech Xaviers Welfare Society ("**Applicant**") against Mr. Devendra Umrao, "**Resolution Professional**" of M/s Opulent Infradevelopers Pvt. Ltd ("**Corporate Debtor**") seeking the following reliefs:

"i) That this Hon'ble Tribunal may be pleased to direct the Resolution Professional to take the averments made in paragraph No. 4 to paragraph No. 14 and para No. 19 to para No. 41 in to consideration while filing his avoidance provisions application in terms of section 25(2)(j) of IBC.

ii) That this Hon'ble Tribunal may be pleased to direct the Resolution Professional to prevent asset stripping of the Corporate Debtor, preserve and protect the assets of the corporate debtor, prepare inventory of flats available with the Corporate Debtor and prevent transfer of Benami Apartments held for the benefit of the Corporate Debtor, its related parties and its ex-directors.

iii) That this Hon'ble Tribunal may be pleased to direct the Resolution Professional to take steps and render assistance and co-operation in order to get the AOA registered;



iv) That this Hon'ble Tribunal may be pleased to direct the Resolution Professional to hand over the routine maintenance of the Society to the Applicant Society forthwith.

v) That this Hon'ble Tribunal may be pleased to direct the Resolution Professional to establish and maintain a transparent system of utilization of funds received in lieu of maintenance charges and provide an account statement after assuming cSSontrol as IRP of the CD, until Association of Apartment Owners is formed and the handover is completed;

vi) Direct the RP to take imperative actions in order to secure remaining Occupancy Certificates and get remaining Sale Deed Registrations:

vii) Direct the RP to make requisite arrangements to secure permanent water, sewage and electricity connection in order to provide basic amenities to the allottees/ residents;

viii) Pass any such order as deemed fit by the Hon'ble Tribunal in the interest of justice.

2. A brief background of the **Corporate Debtor** is that the CIRP of the Corporate Debtor was commenced on 12.07.2022 by this Adjudicating Authority the Applicant was appointed as IRP and subsequently as confirmed as RP. Presently, a Resolution Plan submitted by Amtex Infrastructure has already been approved by the committee of creditors in its 8th meeting of creditors held on 08.07.2023 with 100 percent votes and same has been filed before this Bench by way of IA 4608/2023 which is pending for adjudication before this Tribunal.

3. Ld. Counsel for the Applicant has made the following submissions:



- a) Legislative intent while promulgating IBC was to maximise value of assets, to promote entrepreneurship, availability of credit and to balance interests of all stakeholders. IBC cannot be construed to mean as an instrument of enablement of powerful organised white collar crime syndicates, following set templates to deprive general public and state exchequers of their lawful entitlements.
- b) The Respondent Ld. RP had been submitted claims amounting to Rs.155.33 Crore of Government Dues and Rs.158.18 Crore by the Applicant. The Respondent RP was pleased to admit claims amounting to only Rs.108.61 Crore out of aforementioned claims of Rs.313.51 Crore.
- c) Simultaneously the Respondent Ld. RP has also benevolently admitted the claim of DTH Masters Manufacturing Private Limited ('DTH') amounting to Rs.2.89 Crore, although the amount claimed by DTH was Rs.2.87 Crore only, thereby granting DTH 41.86% voting share in the CoC.
- d) DTH was formerly known as Urbtech Buildcon Private Limited and was promoted by Mr. Arun Kumar Ghai and Mr. Balwant Rai Ghai who continued to control 100% shareholding of DTH till March 30, 2020. Mr. Arun Kumar Ghai had also been a director of CD and had been signing financial statements of CD. CD and DTH have been companies under the same management with common directors and shareholders, yet the Respondent Ld. RP included DTH in CoC. Mr. Arun Kumar Ghai, Mr. Bablu Kumar and Mr. Ravinder Kumar Mishra have been directors of CD & directors of DTH in the past.



- e) Insolvency Commencement order of the CD was passed, primarily on the basis of admission of a dubious debt by the CD, which causes apprehension of connivance between CD and the purported financial creditor, who had claimed to have given a loan, despite not having been an NBFC and having negligible operations. Effective control of CoC is vested in a related party with 41.86% voting share therein, along with purported financial creditor who controls another 16.04%. The RP is an appointee of these two entities and has been claiming non-co-operation by the CD, while ignoring plethora of information available about all these entities on the website of MCA and through other open sources.
- f) It is interesting to note that the Respondent Ld. RP has presented to CoC. a Resolution Plan submitted by a proprietorship firm, which has proposed to invest mere Rs.25 Lakh and to infuse another Rs.66 Lakh to revive the CD, and the CoC has gladly accepted and approved the Resolution Plan. Approval of the Resolution Plan would obviate the need to pay Rs.155.33 Crore of Government Dues and give the Resolution Applicant control over a project having 882 apartments. Present worth of the project runs into hundreds of crores.
- g) Hundreds of families, consisting of ailing senior citizens, school-going kids and helpless housewives depend upon indulgence of this Hon'ble Tribunal for their very survival and protection of their life savings. It is an apt case for investigation under provisions of IBC, the Companies Act and PMLA. Perpetrators of illegal actions and real beneficiaries thereof must not be permitted to hide behind the



'Corporate Veil', complex web of transactions between interrelated entities, shell companies and ignorant individuals, who agreed to be nominated as directors of enterprises engaged in fraudulent activities.

- h) As at March 31, 2020, the Corporate Debtor had Net-worth of Rs.23.60 Crore and Total Assets of Rs.106.84 Crore consisting of Current Assets of Rs.73.87 Crore and Non-current Assets of Rs.32.97 Crore. Shareholding of the CD was transferred to Parsvanath Trading Private Limited ('Parsvanath') during FY 2020-21. Parsvanath had a paid up capital of Rs.9.90 Lakh and had not filed Audited financial statements after FY 2018-19 with MCA. Registered office of CD was shifted to a co-working space taken on a monthly rent of Rs.1,000 for a period of 11 months in an unauthorised regularised colony in East Delhi. The rental agreement prescribes that the address can only be used as the official address and that the CD cannot occupy any office space and cannot function from its registered office. This points to a scenario where CD was dressed up painstakingly for admission in to CIRP.
- i) During FY 2020-21, CD claimed to have made an investment of Rs.16.39 Crore in shares of unlisted companies and further claimed to have incurred a loss from derivative transactions of Rs.7.66 Crore and a loss of Rs.7.66 Crore from Loss on sale of Investments. It is pertinent to note that as at March 31, 2020 the Investments by CD was Nil. Primarily consequence of aforementioned investment activities, the CD alleged to have incurred a net loss of Rs.34.54 Crore during FY 2020-21.



4. In reply to the contentions raised by the Ld. Counsel for the Applicant, the Ld. Counsel for the Respondent has putforth the following submissions:

On Maintainability

- a) At the outset, the Respondent states that the present application filed by the Applicant is liable to be dismissed on account of being non-maintainable in view of the facts stated in the Reply and the present short written submissions.

- b) The Respondent submits that the Applicant has no locus to file such application, as the Applicant is neither a CoC member/stakeholder nor a creditor and therefore cannot seek such prayers from this Hon'ble Tribunal, as is prayed in the Application. Reference is drawn to the Prayer clause @ pg 37 of the Application.

- c) The Applicant is a welfare society comprising of only some homebuyers who are in possession of their respective units for several years and thus, as a welfare society they cannot be considered as a creditor of the Corporate Debtor.

- d) Further, to avoid such frivolous applications from being filed by homebuyers before the Hon'ble AA, the IBBI amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') in September 2023. Pursuant to the amendment, the newly inserted Regulation 16A(10)(j) mandated that the authorised representative shall act as a representative for the creditors in class before the Hon'ble AA, NCLAT and other regulatory authorities. Therefore, the



homebuyers could not have directly approached the Hon'ble AA seeking such untenable prayers.

- e) That it is very surprising for the answering respondent that having conducted multiple regular meetings with the members of the applicant where the grievances of the applicant as stated by them in their application have been discussed/resolved to their satisfaction time and again.

On Verification of Claims

- f) That as alleged by the applicant in its Para 24 of the application that the claims of creditors are under verification since 26.07.2022 is completely baseless and the same is denied, since the Respondent has time to time updated the list of creditors and filed the report of re-constitution of CoC on 4 different occasions before this Hon'ble AA and further, the same was duly taken on record by this Hon'ble AA.
- g) The Applicant has submitted that the Respondent is in breach of Reg 13 of CIRP regulations in relation to verification of claims. The fact that each claim submitted is thoroughly verified and necessary steps are taken, can be evidenced by the numerous CoC reconstitution reports filed by the Respondent before the Hon'ble AA.
- h) The Respondent submits that the IM has been prepared incorporating all assets and liabilities of the Corporate Debtor on the basis of the limited information available to him. It is equally important to note that a Sec 19(2) application is already pending before the NCLT seeking directions against the ex-directors of the Corporate Debtor.



On Related Party Concerns

- i) The Applicant has alleged that the claim of M/s DTH Masters Manufacturing Private Limited (herein referred as 'DTH') is a related party claim, which has been admitted by the Respondent and consequently the alleged related party has been made a part of the CoC.

- j) The Respondent submits that such an assertion is misguided and made on an improper appreciation of the prevailing law. In Para 26 of the Application, the Applicant has itself contended that the shareholding of DTH was transferred on 31.03.2020 i.e. beyond two years from the CIRP initiation date of 12.07.2022. Therefore, it is categorically submitted that DTH does not fall under Sec 5(24) of the IBC. (Refer Para 9 and 10 of the Reply)

- k) The Respondent seeks to place reliance on the Supreme Court decisions in *Eva Agro Feeds Private Limited v. Punjab National Bank and Anr.* [Civil Appeal No. 7906 of 2021] as well as in *Phoenix ARC Private Limited v. Spade Financial Services Private Limited* [(2021) 3 SCC 475] wherein the bench held that the disqualification in relation to a related party must be considered *in praesenti*. As the facts will show, it is not the case of the Applicant that DTH was a related party to the Corporate Debtor at the time of initiation of CIRP, much less at the time of submission of its claim. Therefore, the Respondent submits that the decision to accept the claim filed by DTH, and consequently be a part of the CoC, does not suffer from any infirmity.

On Fraudulent and Extortionate Transactions



- l) The Applicant has alleged that the Corporate Debtor requires urgent intervention and thorough investigation. It is submitted that after commencement of CIRP of the Corporate Debtor, the IBC specifically empowers the Resolution Professional to file/report transactions before the Hon'ble AA if any irregularities are discovered, by filing appropriate applications under Sections 43, 45, 50 or 66 of the IBC.

- m) In this regard, the Resolution Professional has appointed a transaction auditor to review transactions of the Corporate Debtor and the final report is awaited from the said auditor. Thereafter, the Resolution Professional will take all necessary steps under the IBC to protect the Corporate Debtor.

On Maintenance Services

- n) The Applicant has alleged that the maintenance amount collected by the Respondent is being mis-utilised for ulterior purposes. Not only is such an allegation completely baseless, it is contrary to established facts on record. It is not the case of the Applicant that the Resolution Professional has been non-cooperative or unreachable. To the contrary, the Resolution Professional has organised multiple regular meetings with the Applicant on the project site to duly resolve their grievances.

- o) In fact, during the course of the 2nd CoC meeting dated 21.07.2022, the Resolution Professional provided a detailed update regarding the termination of the maintenance agreement with Nelson Projects Limited. The decision was made due to numerous complaints from homebuyers about subpar services being provided by the said agency. Consequently, a new agency was appointed and has been closely monitored by the



Resolution Professional. Reference is drawn to Annexure B @ pg 24/26 of the Reply wherein a copy of the email relating to maintenance services along with the termination letter furnished to the erstwhile maintenance agency has been provided.

- p) The Respondent categorically submits that the money collected towards maintenance is solely used for maintenance of the project. Further, a list of major works undertaken by the new maintenance agency has also been provided in the Reply. Refer Para 19 @ pg 6 and 7 of the Reply.

On Deficiencies in Project Services

- q) The Applicant has alleged certain deficiencies in the project services and has listed such concerns in its Application. Reference is drawn to Para 63 @ pg 26 of the Application.
- r) The Respondent submits that he has painstakingly ensured that each of these concerns are mitigated and resolved. A detailed response to each of the Applicant's concerns has been provided in the Reply. Reference is drawn to Para 21 @ pg 8 of the Reply.

On Registration of Sale Deed

- s) The Applicant, in Prayer vi of the Application, has sought registration of the remaining sale deeds. In this regard, the Respondent submits that steps have been taken from September 2022 to ensure that such sale deeds are registered.
- t) The Respondent submits that it has already filed IA. No. 5570 of 2022 against Noida seeking directions from the Hon'ble AA to direct Noida to



execute the sale deeds in favour of the homebuyers. The application is currently pending adjudication.

- u) That the Hon'ble NCLAT in the matter of *Shri Guru Containers v. Jitendra Palande*, Comp. App. (AT)(Ins.) No. 106 of 2023 vide its judgment dated 22.02.2023 held as follows:

“16. We do not hesitate to add that though the scope of CIRP related work became limited and restricted by the fact that progress got stonewalled due to lack of flow of information and lack of claims, diligence on the part of the IRP in proceeding with the CIRP cannot be found to be wanting. Shifting the entire blame on the IRP on grounds of non-performance of duty and making him the scapegoat does not appear to be justified.”

5. We have heard the learned counsels appearing for both the parties at length and have carefully considered the submissions made on their behalf. After a thorough examination of the case, including the arguments advanced by both sides and the evidence presented, at the threshold, we are constrained to observe that the Applicant lacks the requisite locus standi to maintain the present application.
6. The legislative scheme under the Insolvency and Bankruptcy Code, 2016 (IBC), particularly post the 2023 amendment to Regulation 16A(10)(j) of the CIRP Regulations, contemplates a structured mechanism whereby creditors in a class, such as homebuyers, participate in the CIRP through their authorised representative. The objective of such a mechanism is to ensure procedural discipline and avoid disaggregated litigation by individual allottees or associations not recognised under the Code. The Applicant, admittedly, is



not the authorised representative of the class and therefore cannot independently seek directions from this Adjudicating Authority on behalf of homebuyers. This renders the application legally untenable.

7. Further, the allegations against the Resolution Professional relating to the verification of claims and reconstitution of the Committee of Creditors (CoC) are vague, unsubstantiated, and unsupported by any specific instance of statutory breach. On the contrary, the material placed on record establishes that the Resolution Professional has periodically updated the list of creditors and reconstituted the CoC as required under Regulation 13. Mere dissatisfaction with the process by a few stakeholders cannot be a ground for interference when the procedural framework has been duly adhered to.
8. On the issue of suspected fraudulent or preferential transactions, it has been categorically submitted that a transaction auditor has been appointed and that appropriate applications, if necessary, will be moved based on the findings of the audit. At this stage, there is no material before us to hold that the Resolution Professional has failed in his duties under Sections 43 to 66 of the Code. Premature invocation of judicial intervention in matters where statutory processes are underway is not warranted and would set a counterproductive precedent.
9. With respect to the concerns raised on project services, maintenance, and use of funds collected from allottees, we note that the Resolution Professional has responded to the grievances and has acted upon complaints by replacing the earlier maintenance agency. These are operational aspects which fall within the commercial wisdom and day-to-day management functions during



CIRP and are not amenable to adjudication under a petition that otherwise fails on the ground of maintainability.

10. Lastly, the proceedings under the Code are governed by the twin pillars of discipline and stakeholder coordination. While stakeholder concerns must be addressed, the process cannot be permitted to be derailed by applications that seek to substitute the judgement of the Resolution Professional with individual perceptions or preferences. As observed by the Hon'ble NCLAT in **Shri Guru Containers v. Jitendra Palande**, unwarranted attempts to vilify the conduct of the Resolution Professional, in absence of cogent material, must be deprecated.

11. In view of the above findings, the application is dismissed as not maintainable and devoid of merit. The Applicant, being an unauthorised body, has acted beyond the scope of the procedural framework laid down by law. This not only burdens the judicial process but also causes avoidable hindrance in the timely conduct of the CIRP.

Accordingly, the application bearing **IA No. 1257(ND)/2023** in CP IB 304(ND)/2022 stands **dismissed**.

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-sd-

(DR. SANJEEV RANJAN)

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)