

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

I.A. 783 OF 2022

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

Pro Earth Housing Corp. Private Limited
...Applicant

Vs.

Mr. Rajendra M. Ganatra & Anr.
...Respondent

I.A. 1312 OF 2020

Under Section 30 (6) of Insolvency &
Bankruptcy Code, 2016

Rajendra M. Ganatra
Resolution Professional
...Applicant

I.A. 3858 OF 2022

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

Rajendra M. Ganatra
Resolution Professional
...Applicant

I.A. 1016 OF 2023

Under Section 60 (5) of Insolvency &
Bankruptcy Code, 2016

Mr. Atul Bharani

...**Applicant**

Vs.

Rajendra M. Ganatra
Resolution Professional

...**Applicant**

In the matter of

C.P.(IB) No. 1015/MB/2019

Shailen S Gala (HUF) & Ors.

.... **Financial Creditor**

Vs.

Mayurpankh Fine Builders Private
Limited

...**Corporate Debtor**

Order delivered on: 21/11/2023

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the RP : Mr. Rohit Gupta a/w Ms.
Suyesha Kakarla, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. The present Application IA 3858/2022 is being filed by Dr. Rajendra M. Ganatra, the Resolution Professional ("RP") of Mayurpankh Fine Builders Private Limited ("Corporate Debtor") pursuant to the Resolutions dated 25.10.2022 passed by the Committee of Creditors ("CoC") in the 9th meeting of the CoC seeking Withdrawal / rejection of IA No. 1312 of 2020, which was filed by the RP for approval of resolution plan for the corporate debtor submitted by Ozone Homes Private Limited ("Successful Resolution Applicant" or "Ozone Group"), owing to the facts which have arisen subsequent to its approval by the CoC such as, (i) deterioration of the financial position of Ozone Homes and the Ozone Group, and (ii) Ozone Home's communication dated March 22, 2022 seeking (a) to withdraw from the resolution of the corporate debtor; (b) Permission of this Tribunal to forfeit the performance security deposit of Rs. 10.00 lakhs received from Ozone Homes and utilize the same for meeting CIRP costs; (c) to submit before this Tribunal, the request of the CoC to make fresh attempt to revive the Corporate Debtor by inviting expression of interest to submit the resolution plan for the Corporate Debtor/ publish Form-G afresh, and seek the permission of this Tribunal for the same; and (d) Exclusion of the period from the date of filing I.A. No. 1312 of 2020 till the date of its withdrawal and extension of time period for completion of the insolvency resolution process for the Corporate Debtor.
2. The Corporate Insolvency Resolution Process ("CIRP") commenced on 19.9.2019 and the Resolution Plan submitted by the Ozone Group was

approved by CoC on 20.7.2020. Consequent to this, an application in IA 1312/2020 was filed on 26.8.2020 seeking approval of this Tribunal in terms of Section 30(2) of the Insolvency & Bankruptcy Code, 2016 (“Code”).

3. One Shri Shailen Gala, Karta of Shailen S. Gala HUF, the original applicant in CP (IB) 1015/2019 filed an affidavit on 7.5.2021 opposing the IA 1312/2020, and thereafter, the Applicant filed an additional affidavit in IA 1312/2020 highlighting the financial distress of the Successful Resolution Applicant for consideration of this Tribunal.
4. Another application in IA 783/2022 was filed on 17.3.2022 by Pro-Earth Housing Corp. Private Limited to place on record additional facts and information relating to the capability of the successful Resolution Applicant to implement the Resolution Plan in terms of resources and expertise and also that the successful Resolution Applicant is ineligible u/s 29A of the Code, and dismiss IA No. 1312/2020.
5. Further, the Successful Resolution Applicant i.e Ozone Homes sent an e-mail dated 22.3.2022 to the Applicant RP communicating its withdrawal from the CIRP of the CD without citing any reason.
6. We have heard the Counsel and perused the material on record.
 - 6.1. We find another IA 1016/2023 filed by one Sh. Atul Bharani submitting that the entire CIRP has been initiated and conducted fraudulently to dupe the other creditors of the Corporate Debtors and its group companies, and the applicant therein has sought the following reliefs –
 - a. passing of Order of Liquidation with respect to the Corporate Debtor;
 - b. declaration that Respondent No. 2 i.e. ICICI Prudential Asset Management Co. Ltd & Respondent No. 3 i.e. IDBI Trusteeship Services Limited have sought to initiate CIRP fraudulently

and/or with mala fide intent as defined u/s 65 of the Code and imposition of penalty upon them;

- c. to take cognizance of conduct of Respondent No. 4 i.e. Sharma Goel & CO. and for appropriate action against him;
- d. Direction for an independent inquiry into the transaction pertaining to execution of the Corporate Guarantee dated 12.12.2018 in favor of the Respondent No. 2 & 3;
- e. To disregard the Corporate Guarantee dated 12.12.2018 for the purpose of computation of Respondent No. 2's claim in CIRP;
- f. To stay the proceedings in IA no. 3858/2022 in so far as same relates to re-running of CIRP of the Corporate Debtor, pending final disposal of IA 1016/2023;
- g. Direction to disregard the Corporate Guarantee dated 12.12.2018 and to prevent Respondent No. 3 from acting as a member of the CoC of the Corporate Debtor on the basis of the same, pending inquiry.

6.1.1. The Applicant in IA 1016/2023, who is a suspended director and ex-promoter of the Corporate Debtor has alleged that the Respondent No. 2 is a private fund who is, in collusion with Respondent Nos 1,3 and 4 acted in a complete highhanded manner and jeopardizing the interest of other participants of the CIRP. It is further stated that Respondent No. 2 through Respondent No. 3 claims to have 79.95% voting share in the CoC of the Corporate Debtor. Respondent No. 4 is Transaction Auditor of the Corporate Debtor and Respondent Nos. 5 to 42 are the other members of the CoC.

6.2. Considering the CoC's resolution to withdraw the plan on account of deterioration in financial health of the Successful Resolution Applicant and consequent inability to implement the proposals in the Resolution Plan pending for our approval in IA 1812/2022, we

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- are left with no option but to allow the withdrawal of the Resolution Plan and dismiss IA 1812/2022 as withdrawn.
- 6.3. In the light of unequivocal communication from the Successful Resolution Applicant expressing its inability to implement the Plan, we find that it is fit case to order forfeit the performance guarantee or any other money deposited by it so far towards the Resolution Plan. Accordingly, we allow the Applicant in this IA to forfeit the amounts underlying performance guarantee, and any other money deposited by the Successful Resolution Applicant in the CIRP process and appropriate it towards the CIRP Costs.
- 6.4. We further allow the Applicant in IA 3638 of 2022 to make fresh attempt to revive the Corporate Debtor by inviting expression of interest to submit the resolution plan for the Corporate Debtor/ publish Form-G afresh. For this purpose, we exclude the period from the date of filing I.A. No. 1312 of 2020 till the date of its withdrawal and extension of time period of another 90 days for completion of the insolvency resolution process for the Corporate Debtor.
- 6.5. The Applicant in IA 3638 of 2022 is further directed to look into the facts brought on record by the Applicant in 1016/2023 and take appropriate action after appreciation of the facts placed in the application, as required. The Resolution Professional may consider the forwarding the matter to IBBI for necessary inquiry, if prima-facie any substance is found therein. We refrain giving any finding on the facts narrated in the IA 1016/2023, as the same pertains to matter of inquiry, for which we are authorising the Resolution Professional to take note.
7. In view of the foregoing discussion and directions, IA 3858/2022 is disposed of as allowed; IA 783/2022 is disposed of as allowed; IA

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 783 OF 2022
I.A. 1312 OF 2020
I.A. 1016 OF 2023
I.A. 3858 OF 2022

In
C.P.(IB) No. 1015/MB/2019

1016/2023 is disposed of with directions to Resolution Professional to consider the facts; and IA 1312/2022 is disposed of as withdrawn.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)