

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

IA No. 1881/MB/C-I/2021

In
C.P. (IB) No. 1633/MB/C-I/2019

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

Sunny Jagdish Shah

Residing at 1074, Shukrawar Peth, Hirabaug Chowk,
Pune – 411002.

...Applicant

Versus

Manoj Kumar Agarwal

Office No. 40, 2nd Floor, Sanas Plaza, Bajirao Road,
1302 Shukrawar Peth, Pune - 411002

...Respondent/Resolution Professional

In the matter of,

Bank of Maharashtra

...Financial Creditor

Versus

D.S. Kulkarni Developers Limited

...Corporate Debtor

Order Pronounced on: 03.03.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

IA No. 1881 of 2021

For the Applicant : None present

For the Respondent : Mr. Vikram Nankani, Sr. Advocate a/w
Mr. Shyam Kapadia, Advocate

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. The Application is filed by **Sunny Jagdish Shah**, seeking direction from this Tribunal to the Resolution Applicant to admit the claims of flat purchasers based on the allotment letter and thereafter make provision in the Resolution Plan.

Submissions on behalf of the Applicant:

2. It is the submission of the Applicant that he is a flat purchaser and holder of the Allotment Letter issued by the Corporate Debtor in the project of “DSK Vishwa Ph-VI Aanandgan”.
3. It is submitted that the Corporate Debtor upon receiving 90% of the total consideration issued allotment letters to the Applicant. The balance consideration was to be disbursed only at the time of registration of agreement. Further, post the issuance of allotment letters there was no

progress in construction of flat and the possession of the flat was not handed over.

4. It is submitted that the Resolution Professional while inviting claims from homebuyers had issued a set of directions and uploaded it online. As per the directions, the homebuyers were required to submit their claims in Form CA, there were specific category calling for claims from Allotment Letter holders. Based on these directions, the concerned flat purchasers submitted their claims based on the 'Allotment Letter'.
5. The Applicant submits that the claim filed by the Financial Creditor came to be rejected on the ground that claim being solely on the basis of the Allotment Letter.
6. The Applicant submits that an amount raised from an allottee under a real estate project shall be deemed to be an amount having commercial effect of borrowing. Moreover, the Applicant relying on Indian Contract Act submits that the Allotment Letter amounts to an enforceable contract.
7. In summation, the Applicant submits that they are bonafide flat purchasers and the Resolution Professional is not acting interest of all flat purchasers.

Submissions on behalf of the Respondent:

8. At the outset, the Respondent submits that Allotment Letter holders are treated as Financial Creditors within the meaning of 5(8)(f) of the Code provided the claim is submitted in the manner as provided under Form CA. The Allotment Letter holders failed to submit proof of payment and other supporting documents.
9. The Applicant in the present Application also have failed to attach proof in support of the claim. The Respondent submits that the Corporate Debtor has not received any monies pursuant to these Allotment Letters and the books of accounts of the Corporate Debtor do not reflect the same.
10. The Respondent submits that the Form CA requires the claimant to furnish details of documents by reference to which the debt can be substantiated. It is urged that while the allotment letter can be basis of a right to be treated as the Financial Creditor, the claimant has to still prove actual payment to be made. Therefore, the Resolution Professional submits that in the absence of any proof of payment, the claim was rightly rejected.

Findings:

11. We have heard the Counsels for the parties and perused the records.

12. It is not in dispute, that under Section 5(8)(i) Financial Debt includes an amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of borrowing and consequently if the financial debt is owed to them, they are deemed to be financial creditors under the Code.
13. However, in the instant case it is observed that the Applicant has not attached proof of actual payment along with the claim form to substantiate its claim. The Resolution Professional submits that the books of accounts of the Corporate Debtor also do not reflect any payment qua the said transaction.
14. In the above factual backdrop, we are not inclined to change the decision of the Resolution Professional of rejecting the claim.
15. The Application bearing **IA No. 1881 of 2021 in CP(IB) 1633/MB/C-I/2019** is thus **disposed of as dismissed**.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

03.03.2023
DSB

Sd/-

H.V. SUBBA RAO
Member (Judicial)