

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

MA/433/2019 in CP/193/IB/2018 filed
under Section 60 read with Section 31(2) of
the I&B Code, 2016

In the matter of ***M/s P Dot G Constructions Private Limited***

Padam Kumar Tatia

... Applicant

Vs.

Sundaresan Nagarjan & Anr.

.....Respondent/Resolution Professional

CORAM:

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant : Mr. M.K. Bhansali, PCS
For R1 : Mr. Ravi Rajagopalan, Counsel*

ORDER

Per: R.VARADHARAJAN, MEMBER (JUDICIAL)

Order Pronounced on 31st December, 2019

1. This Application has been filed by the Applicant aggrieved by the rejection of the claim of a sum of Rs.25 Lakhs lodged by the Applicant in Form CA under Regulation 8A of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, dated 08.10.2018 in the capacity of

Home Buyer. The detail of quantification of the sum of Rs.25 Lakhs is given by way of tabulation by the Applicant in the Application itself at paragraph 1.1 of the Application, which is extracted below for ready reference:

Details of Registered document no. for registration of UDS of land	Corresponding Memorandum of Agreement specifying project and flat No.	Details of payments made as per registered agreement	Details of payment as per memorandum of Agreement
Regd. Doc No.572/2011 dated 15.03.2011 Registered with Sub Registrar Office Thiyagaraya Nagar	T-Nagar Flat No. AG-1	Rs.2,60,000 confirmed in reg. agreement Cash Receipt of Rs.5,00,000/- dated 15.03.2011	Rs.17,40,000 as mentioned and confirmed in agreement

2. It is further brought to the notice of this Tribunal that by way of an Application filed by the Operational Creditor viz., M/s. IJM Concrete Products Private Limited under Section 9 of the I&B Code, 2016, CIR Process against M/s. P Dot G Constructions Private Limited was initiated on 13.07.2018 and that the claim was lodged in Form CA as already brought forth on ^{08.}~~23~~.10.2018 and the Resolution Professional acknowledged the said lodging of the claim by an email dated 13.11.2018. From the averments, it

is seen that the claim has been made in respect of the property situated at T. Nagar.

3. It is also seen from the averments made in the Application that through the email communications, the Resolution Professional has sought for additional documents which according to the Applicant were duly produced to the Resolution Professional.

4. In response to the Application, it is seen that pursuant to the notice issued to the Respondent namely the Resolution Professional, a reply has been filed by the Respondent wherein the claim filed before the Resolution Professional being lodged beyond the period of 90 days without having the delay being condoned before this Adjudicating Authority, and in the said circumstance, the delay in filing the claim is also a ground for not accepting the claim on the part of the Resolution Professional. It is also contended in the Reply that the claim is *ex facie* not supported by any proof of proper consideration having been paid by the Applicant as Home Buyer as there is an inconsistency between the records furnished namely, Cash Receipt as produced by Applicant and the registered documents namely the Sale Agreement dated 15.03.2011 as well as the Memorandum of



Agreement dated 15.03.2011 in relation to T Nagar property for a sum of Rs.17,40,000/- which according to the Applicant is for booking and allotment of which the payment has been made by the Applicant to the Corporate Debtor.

5. It is also brought to the notice of this Tribunal in the Reply filed by the Resolution Professional that the registered agreement of sale records that a sum of Rs.2,60,000/- has been paid and balance is yet to be paid and the unregistered memorandum bears the recital that the entire sale consideration has been paid and only one receipt recording the tendering of cash to the tune of Rs.5,00,000/- also has been produced. As to the claim made by the Applicant, it is stated by the Resolution Professional that though the Applicant has lodged the claims in Form CA as a Home Buyer, the Applicant cannot be construed as Financial Creditor coming under the category of Home Buyer. Any motives as sought to be attributed by the Applicant against the Resolution Professional is also denied by the Resolution Professional and the allegations that the Resolution Professional is acting *malafide*, biased and against the interest of the Home Buyer are made without any basis or a shred of evidence against the Resolution Professional. In the said circumstances, the



Resolution Professional has prayed that the Application deserves to be dismissed.

6. To the above Reply as elucidated, a Rejoinder from the Applicant has been filed wherein the Applicant has sought to file the email correspondences as exchanged between the Applicant and the Resolution Professional in view of the Claim as covered under the Application. The act of the Resolution Professional in communicating with the Applicant of the proceedings of the CIR Process when the claim of the Applicant has been rejected is also sought to be questioned.

7. In reply to the Rejoinder filed by the Applicant, a sur-rejoinder has been filed by the Resolution Professional, wherein it has been brought to the notice of this Tribunal that even though a Claim has been made, the property / flat pertains to a project long before completed by the Corporate Debtor, much prior to the CIR commencement and is no longer a pending project and raised a suspicion as to why the Applicant had remained silent all these years and has now chosen to file this claim and this would show that the Applicant was not a genuine Home Buyer and he had perhaps entered into some financial arrangement with the erstwhile suspended management of the Corporate Debtor for



which the said documents, which do not convey any title, came to be executed. It was further contended that the impugned transactions relied upon by the Applicant for his claim dates back to more than 3 years being dateable to 15.03.2011 and without any other subsequent document or proof of acknowledgment of debt from the Corporate Debtor, the same becomes barred by limitation. The Resolution Professional also alleges in the Sur-rejoinder that the Applicant in the instant Application is acting in concert with two other Applicants in MA/432/2019 and MA/434/2019 in relation to the same Corporate Debtor in lodging their Claims before the Resolution Professional and seeking for their respective claim to be admitted without any genuineness, and in addition, as not being Home Buyer of the Corporate Debtor thereby disentitling them to make a Claim in Form CA specifically meant for the category of Home Buyers as prescribed in Regulations as the transactions seem to be not *bona fide*.

8. The parties were heard in detail. From the records as filed with the Application, it is seen that the document bearing 572/2011 is registered with Sub-registrar, T. Nagar, which is sought to be relied upon for the purpose of conveyance of undivided share of land as prescribed in the Schedule of property

in the said registered documents. In addition, the Memorandum of Agreement as entered into between the parties dated 15.03.2011 is also sought to be relied on by the Applicant to establish that the monies which are figuring in the respective Sale Agreement or Memorandum of Agreement have been duly paid to the Corporate Debtor, and in the said circumstance, the Claim cannot be rejected and that the payment which is also extracted hereinabove by way of tabulation in Para *supra* are in relation to the purchase of properties, and hence, it is appropriate that the Applicant should be categorised as 'Home Buyer' and that the Resolution Professional was wrong in not entertaining the Claim as filed under Form CA meant for the Home Buyers.

9. It is further pointed out by the Learned Counsel for the Applicant that from the fact of acknowledgement in the registered document of the payment wherein the Corporate Debtor had clearly disclosed that the sums as reflected therein have been paid. Further, the payment made by way of cash as evidenced by Cash Receipt enclosed for a sum of Rs.5 Lakhs dated 15.03.2011 in relation to the T Nagar property had also been got remitted by the Applicant, and in the circumstance, the

Learned Counsel for the Applicant submits that, the rejection of the Claim on the part of the Resolution Professional is not correct.

10. On the part of the Resolution Professional, the Claim was vehemently denied as being entitled to be admitted, and in this connection, during course of arguments, it has been brought to the notice of this Tribunal by the Resolution Professional that there is inconsistency which are quite glaring on the face of it in relation to the documents filed and in relation to the same the Learned Counsel for the Resolution Professional points out to the Receipt as issued in relation to the T Nagar property as annexed at page 25 of the typed set filed by the Applicant namely the document which had been registered on 15.03.2011 of the same date as annexed at page 31 of the typed set filed with the Application being the Agreement for Sale registered with the concerned Sub-Registrar Office, and from the said document, it is pointed out that at page 6 of the document, the consideration is stated to be Rs.7.6 Lakhs as price agreed for the sale of property being 380 sq.ft. undivided share of vacant land covered under the said agreement as payable, of which Rs.2.6 Lakhs which is reflected to be paid and the balance amount of Rs.5 Lakhs was



required to be paid within a period of two month from the date of the completion of the transactions in all respects.

11. The Resolution Professional questioned by juxtaposition of the said two documents and contents that even though the entire payment of Rs.7.6 Lakhs as agreed upon by the Applicant seems to have been paid on 15.03.2011 itself and in the circumstances as to why only Rs.2.6 Lakhs has been reflected in the said registered document as having been paid and the balance amount of Rs.5 Lakhs had been left out of the said amount of Rs.7.6 Lakhs not acknowledged of having been received even though stated to have been received in cash on the same day itself.

12. Further, the filing of the claims in the capacity of the Home Buyers in Form CA, the Applicant has chosen to rely on the booking of T. Nagar property which can only be treated in the nature of speculation or in the alternative as security for financial transactions by way of loan, if any, given by the Applicant to the Corporate Debtor if taken in tandem with the Applicants in MA/432/2019 and MA/434/2019 who have acted in concert as evident from the documents executed and each other acting as

witnesses and in the circumstance, filing of the claim in Form CA by the Applicant as Home Buyer is also not appropriate as the rights of the home buyers seem to stand on a different footing as compared to the other financial creditors and in the said circumstance, the claim should be rejected as contended by the Resolution Professional which argument we find credence.

13. Hon'ble Supreme Court in the case of ***Pioneer Urban Land and Infrastructure Limited & Anr -Vs- Union of India & Ors.*** in *Writ Petition No. 43/2019* has held that a speculative home buyer is not entitled to come as a Financial Creditor under the category as defined under Section 5 (8) (f) of the I&B Code, 2016 as a Home Buyer. The fact that the Sale Agreement along with the Memorandum of Agreement which are being touted by the Applicant clearly shows that the transactions, if at all are to be considered as being speculative and the transaction cannot be considered as genuine made from the stand point of a Home Buyer so as to come for the claim to be lodged in Form CA.

14. In any case, it is also pointed out by the Learned Counsel for the Resolution Professional that in relation to the T Nagar property it is not the asset of the Corporate Debtor presently as the same has been allotted and sold a long time back much prior



to the initiation of CIRP. Hence, the claim also seems to suffer from delay and laches on the part of the Applicant in enforcing the claim. In the circumstance, on this count also, the delay on the part of the Applicant to exercise its remedy as against the Corporate Debtor also disentitles the Applicant to lodge the claim. From all the documents filed, it is seen that it is of the year 2011 and if at all any action based on the said documents for consideration is taken, should have been taken within a period of three years from the date of the said agreement which the Applicant has miserably failed. In the said circumstances, the lodging of the claim with the Resolution Professional being a stale claim and trying to enforce before the Adjudicating Authority upon its rejection cannot also be countenanced. In these circumstances, the Application stand **dismissed**. However there will be no order as to costs.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond