



THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT III

IA – 5122/2021
In
IB – 1771(ND)/2018

Under Section – 60 (5) of the IBC, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

PRIYANSHI ARORA

.....Financial Creditor

Versus

M/s. DREAM PROCON PRIVATE LIMITED

.....Respondent

ON BEHALF OF:

ADITYA KRISHAN

.....Applicant

Order Pronounced On: 05.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Divyanshu Agarwal, Advocate

For the Financial Creditor : Mr. Aditya Singh, Advocate

For the Resolution Professional : Ms. Varsha Banerjee, Advocate



ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The application has been filed under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016 by Applicant seeking following prayers:-

a. To allow the present Application;

b. Issue appropriate directions declaring the arbitrary decision of reduction of claim of the applicant in contravention of law and consequently issue appropriate directions for amendment of the claim list submitted by the Resolution Professional and accept the claim in full.

c. To pass any other orders as this Adjudicating Authority may deem fit under the facts and circumstances of the present case.

2. The present Application has been filed by one Mr. Aditya Krishn being a creditor of the Corporate Debtor 'M/s. Dream Procon Private Limited'. The Corporate Debtor is engaged in the business of Real estate activities including buying and selling real estate properties on contract basis.

3. It is submitted by the Ld. Counsel appearing for the Applicant that, on 15.01.2015, Corporate Debtor took a loan of Rs. 50,00,000/- at an interest rate of 36% per annum from the Applicant. Further, on 26.06.2015, a Memorandum of Understanding was signed by the Corporate Debtor and the Applicant. As per the terms of 'MoU' the amount was to be settled in a year.

4. It is further submitted by the Ld. Counsel appearing for the Applicant that, to secure the interest of the Applicant, the Corporate Debtor agreed to allot 1 residential unit having cost of Rs. 50,00,000/- on a condition that if Corporate Debtor fails to make repayment, the Applicant will become the legal owner of the above mentioned residential unit.



5. It is further submitted that, the abovementioned memorandum was expired after a lapse of one year and was renewed from time to time with last renewal being from 15.01.2019 to 14.01.2020 on the same terms and condition as the earlier memorandum. The Corporate Debtor also issued fresh post dated cheques against the interest amount and the principal amount in favour of the Applicant. However, the same cheques were returned as dishonoured and due amount was not settled.

6. It is further averred that, on 06.09.2019 CIR process was initiated against the Corporate Debtor by this Adjudicating Authority and Resolution Professional was appointed. Further, Applicant filed the claim with all requisite formalities along with proof for Rs. 59,78,082/-. The claim of Applicant was verified by the Resolution Professional.

7. It is further submitted that, a fresh list of Financial Creditors was published and as per the list the Applicant found that his claim was reduced to Rs. 21,02,575/-.

8. In response, the Ld. Counsel appearing for the Respondent submitted that, the Applicant had failed to place on record valid documents such as Bank documents/RTGS details/receipts etc. to prove that the Applicant had disbursed a sum of Rs. 50,00,000/- in terms of Section – 5(8) of IBC. The entire amount which is claimed is not reflected in the books of Corporate Debtor.

9. It is further submitted that, as per receipt of the CRM data and Tally data in terms of Regulation 14(2) of CIRP Regulations only amount of Rs. 19,40,052/- was reflected in the books of account of the Corporate Debtor. It is further submitted that, the Committee of Creditors (CoC) has approved the



Resolution Plan by 90.66% of CoC voting in the favour and Application under 30(6) of IBC is pending before this Adjudicating Authority.

10. We have heard the arguments advanced by the Ld. counsel appearing for the Applicant as well as for the Resolution Professional.

11. The claim of Applicant is that, the Respondent/RP has admitted only claim of Rs. 21,02,575/- out of Rs. 59,78,082/-. We have perused the record available on record and we are of the considered view that, it is obligatory on the part of the Resolution Professional to collate, verify and admit such claims of all the creditors, which are duly supported by the appropriate evidence along with proper books of Accounts of Corporate Debtor. Therefore, The Resolution Professional can always ask for information/documents/evidence and even can revise the amount claim, when Resolution Professional comes across additional information i.e., the books of accounts (Tally data) and customer relationship management data (CRM data), warranting such revision, as done in the present case. We also hold that, mere placing a 'MoU' on record which is signed by the party does not prove that a payment was made and it should be supported with proof of payments. The Respondent has placed on record the tally data of the Applicant wherein opening balance is mentioned as Rs. 19,40,052/- only. Therefore, we have no hesitation to hold that the Resolution Professional has verified the claims correctly of all creditors on the basis of information received from Tally Data and CRM Data and carried out revision of claims as per terms of Regulation 14(2) of CIRP Regulations.

12. It is pertinent at this stage to refer the decision of ***Hon'ble NCLAT given in Shabeena Ashrad & Anr. vs. Nilesh Sharma (RP) Company Appeal (AT) 581 of 2021***. The relevant paragraph is reproduced below for reference: -



'The Payments claimed to be made by the Petitioners/Appellants for one Mr. Rohit were not supported with any of the entries in the Books of Account' of the Corporate Debtor then I.A. No. 2771 of 2020 filed by the Applicants/Appellants seeking issuance of direction to the Resolution Professional of the Corporate debtor accept the claim in full filed by the Applicants is not maintainable and in fact the Adjudicating Authority had pertinently proceeded to observe in the impugned order that RP had admitted the claim of Rs. 15,75,279/- after allowing interest 8% on Rs. 15,29,057/- which was rightly calculated, which was not arbitrary in nature and no direction can be issued to the Resolution Professional etc. We are in complete agreement with the view taken by the Adjudicating Authority' in dismissing the application. Looking at from the angle, the Appeal sans merits'.

13. It is also noted that, the Committee of Creditors (CoC) has approved the Resolution Plan by 90.66% and Application under 30(6) of IBC is pending before this Adjudicating Authority.

*"Hon'ble Supreme Court in recent Judgment in **M/s. R.P.S. Infrastructure Limited Vs. Mukul Kumar and Anr. (Civil Appeal No. 5590 of 2021)** has already taken the view that after approval of the plan by the CoC, the claims cannot be entertained. There is no dispute with the facts that the claim was filed by the Appellant after approval of the plan by the CoC. The Appellant has also not been able to show that claim of the Appellant was reflected in the records of the Corporate Debtor".*



14. In the light of the above findings, IA – 5122/2021 stands ***dismissed***.

SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

SD/-

BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)