

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH : COURT-IV

IA-2627/2023 IN CP.IB.68(MB)2021

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

Application moved by:

Vinod Grover and Ors.

...Applicants

Vs.

Mr. Bruges Amin and Ors.

Resolution Professional of

M/S Modella Textile Industries Limited.

...Respondents

In the matter of

Beacon Trusteeship Limited

...Financial Creditor

Vs.

Modella Textile Industries Limited

...Corporate Debtor

Order Pronounced on : **06.10.2023**

Coram:

Mr. Prabhat Kumar

Mr. Kishore Vemulapalli

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

- For the Applicant(s): Mr. Dinyar Madan, Ld. Sr. Counsel a/w Ms. Vinodini, Ms. Sonam Mhatre and Ms. Krutika Mehta, Advocates.
- For the Respondent No.3: Mr. Tushad Koopa, Ld. Sr. Counsel a/w Mr. Nausher Kohli, Mr. Bhalchandra Palav and Mr. Aniket Dighe, Advocates.
- For the Resolution Professional: Mr. Ravi Kadam, Ld. Sr. Counsel a/w Mr. Ayush J. Rajani (PCA) and Ms. Khushboo Shah, Adv.
- For the Resolution Applicant: Mr. Gaurav Joshi, Ld. Sr. Counsel a/w Ms. Ekta Tripathi i/b Mr. Sahil Mahajan, Adv.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This IA No. IA-2627/2023 is filed by Mr. Vinod Grover, whose claim was admitted in class of Homebuyers in the Corporate Insolvency Resolution process in the case of M/s Modella **Textile Industries Limited** ('**Corporate Debtor**') seeking:
 - a. Admission of claim of INR 169,33,47,635/- as against the amount of claim INR 57,48,45,724/- admitted pursuant to Order dated 23th January 2023 passed by this Bench;
 - b. Classification of Applicant as Secured Creditor, instead of one of Creditor in class of Home-buyers;
 - c. Rejection of Resolution Plan pending for approval in IA 2319 of 2022, and stay of hearing therein till the disposal of this application.

2. The Applicant has impleaded the Resolution Professional as Respondent No. 1 (R1); Successful Resolution Applicant as Respondent No. 2 (R2); and CoC of the Corporate Debtor as Respondent No. 3 (R3).
3. The Applicant states that the Applicant along with other members of the Grover family are allottees of flats and therefore, "Financial Creditor" under Section 5(8)(f) of the IBC, 2016 whose claim was admitted by R1 pursuant to the directions of this Tribunal vide order dated 23.01.2023 in IA 2624/2022. Accordingly, R1 admitted the claim in class of Home-buyers of Financial Creditors.
4. We heard the Counsel and perused the material on record.
 - 4.1. On perusal of the Application, we find that the Applicant has mainly raised the issue of partial admission of its claim by R1 and has sought rejection of Resolution Plan.
 - 4.2. This Bench had passed an Order dated 23.01.2023 disposing various IAs filed by Grover Family seeking direction to R1 to admit their claims. The operative part of the order is reproduced below -

"this Bench is of the considered view that the applicant(s) i.e. the Grover Family Members are Allottees of Residential Flats measuring 58,890 sq.ft. built up area in the project of the CD. This has been duly acknowledged by the CD in series of documents, filings and in its own financial statements. Accordingly, we pass the following order:

 - a. The RP is directed to admit the claim of the Grover Family as Allottees of residential flats.*
 - b. They are to be treated as Financial Creditors.*
 - c. The CoC is to be reconstituted and the applicant(s) be inducted in the CoC as its member(s) in accordance with the provisions of this Code."*
 - 4.2.1. On perusal of the prayers in IA 2624/2022, we find that the Applicant had sought admission of its claim together with interest accrued thereon and consequent inclusion in CoC as Financial Creditor. Para IV of the

Application further states that the Applicant is entitled to interest as per provisions of CIRP Regulations read with Interest Act and RERA Act read with Maharashtra Real Estate Regulatory Authority. No where in the application, the applicant has pleaded interest @ 18% p.a., and this rate of interest has been claimed on the ground that the possession of flat has been delayed. We find that the quantification of the claim was not challenged in IA 2624/2022, and the Applicant had only sought the admission of its claim alongwith interest. Accordingly, the R1, the Resolution Professional, has determined the claim on account of interest in accordance with the provisions of CIRP Regulations read with RERA Act pursuant of Order dated 23.01.2023 and allowed interest as permissible under CIRP Regulations read with RERA Act, in the absence of any stipulation in the MOU, pursuant to which the Applicant became entitled to the flats. An attempt by the Applicant to assign the extended meaning to the words “admit the claim” in the Order is devoid of any substance, if these words are looked in the context of averments at Para IV of the his Application where the Applicant had prayed for interest in accordance with CIRP Regulations read with RERA Act. Nonetheless, this Tribunal had adjudicated merely issue of admission of claim and had not dealt with the quantification as can be inferred from the prayers and pleadings in the application. Needless to say, the Order dated 23.01.2023 nowhere deals with award of interest which is evident from its plain reading.

4.2.2. We note that the applicant alongwith other family members, got the area of developed plot under tripartite arrangement amongst Videocon Group, Nirmal Group and themselves under transaction swap whereby the Grover Family was allotted and became entitled to 58,890 sq.ft. built up residential area i.e. approximately 57 residential flats depending upon the size of all flats put together under a transaction involving

transfer of Grover Family's remaining 50% shareholding in the Corporate Debtor, owner of Project land whereupon real estate development was to take place. Under this arrangement, the total consideration was decided at Rs. Rs.31,80,90,000/-, and same was agreed to be discharged in form of (i) cash amounting to Rs. 90,000/-, and (ii) balance of Rs. 31,80,00,000/- In the form of Residential Flats admeasuring 58,890 Sq. Ft. (Build up area). The plan, in question, already contemplate 100% of principal payment to them.

4.2.3. The Home-buyers class is a distinct class and does not require further classification as Secured Creditors and Unsecured Creditors. The Resolution Professional has not treated the applicant differently than other Home-buyers, hence this prayer can not be allowed. This Bench is perturbed with the stand taken by the Applicant in this Application, while his claim in IA 2624/2022 rested purely on allotment of flats.

4.2.4. In view of above, we do not find any infirmity in admission of claim by the Resolution Professional and classification of the Applicant. This application seems to be a frivolous attempt to seek more than what the class of homebuyers is entitled to.

4.3. As regards the prayer for rejection of Resolution Plan pending for approval in IA 2319 of 2022, and stay of hearing therein till the disposal of this application, we find that the Home Buyer's through their Authorised Representative has voted against the proposed Resolution Plan, and the only other member of CoC i.e. R3 has voted in favor of the plan. The Plan was approved by CoC as R3 itself constituted 88.95% vote share, and remaining 11.05% are held by the Homebuyers class. Considering the fact that class of Homebuyers had voted against the plan, we consider it appropriate to deal with the objection of group of creditors under this class on merit, even though no objection has been filed by class of Home-buyers

through their Authorized Representative, which would have been appropriate course of action under the Code.

4.4. We find that the Applicant has sought rejection mainly on ground of negligence on part of R1 in maximising the value of Corporate Debtor resulting from failure to protect the asset and withdrawal of other Resolution Applicants from CIRP process, besides deflated admission of claim of the applicant.

4.4.1. We find that the reservation of Thane Municipal Corporation (TMC) in respect of project land, over which the commercial/residential development was to take place, has impacted the value of asset of Corporate Debtor. The applicant alleges that the R1, the Resolution Professional, should have approached appropriate legal forum to deal with the so-called reservation of TMC, and this negligence in seeking appropriate clarification in this respect caused other prospective Resolution Applicant to withdraw from the process, thus, leaving R2 as the only Resolution Applicant. The Applicant has stated that the Home buyers have emphasized on option of continuing the project at old rates agreed with the corporate debtor, and the bids for the fresh Resolution Plans should have been invited again so that there would be more competition and better offers as opposed to the current offer in the discussion from 9th meeting of CoC held on 01.02.2023. We note that a joint meeting (at the request of home buyers) was scheduled amongst home buyers, the AR, the RP and the Lead Lender to address the concerns of the home buyers, however, the Home-buyers insisted upon flat against their claim, and not the cash refund. We find from the minutes of 10th CoC meeting held on 10.3.2023 placed in IA 2319 of 2023 that the Resolution Professional had taken steps to find out the correct position relating to TMC reservations and have also filed an application to TMC for clarification on Development Plan vide letter

dated 26.09.2022 through its Architect Sakaar Architects and also reminded TMC for withdrawal of said Reservation vide letter dated 26.12.2022. RP had also sought legal opinion from DSK Legal on 23.12.2022 and had appointed M/s J Sagar Associates for filing appropriate writ petition to deal with said reservation issue.

4.4.2. The Prospective Resolution Applicants, except Successful Resolution Applicant, withdrew from the Resolution Process on account of TMC reservation, and no bias can be established merely on account of their act of withdrawal on account of facts pertaining to TMC reservation, as all the Prospective Resolution Applicants were shared all facts pertaining to this aspect without any additional advantage having been accorded to the Successful Resolution Applicant. It was not argued before us that the Successful Resolution Applicant knew what others didn't or the Successful Resolution Applicant was not told about such Reservation what others were told. Every Prospective Resolution Applicant is within its right to make a business decision based on its risk appetite and no collusion can be inferred merely from this fact.

4.4.3. We also find that the issue of TMC reservation was argued at length during the other Objector's IA, and it was found that, no notification inviting objections to the proposed acquisition has so far not been made by the Competent Authority, as the reservation over the Project Land is at the initial proposal stage. However, we find that the Town Planning Authority can take into account future proposals also while according to the approval to the building plan as held in *Indian National Trust for Art & Cultural Heritage & Ors. Vs. The State of Maharashtra & Ors. 2006 SCC Online Bom 527*. The Hon'ble Bombay High Court noted that Hon'ble Apex Court in the case of *S N Rao Vs. State of Maharashtra 1988 1 SCC 586* took note of Section 427 of the Act, providing that the planning Authority in provisions of any draft or final plan or proposals

published by means of notice submitted or sanctioned under the Act, and Hon'ble Bombay High Court held *that under Section 46 of the Act the Planning Authority has to have due regard amongst others to the proposals published by means of notices. It also has the liberty to consider any other material or relevant fact while considering the application for permission for development.*

4.4.4. In view of aforesaid, we feel that there exists a doubt as to whether the approval of Town Planning Authority will come through after considering such proposed changes in the land use, which is still to be legally binding on the land-owners? We note that the R3 has proposed 100% payment of principal amount during the course of argument and has filed an additional affidavit to this effect. Since, a Resolution Plan is required to be certain as well as feasible, we feel that contemplation of flats to the home-buyers, as against proposed cash pay-out, may make the plan uncertain and will also put question mark on its feasibility. Accordingly, we do not find merit in this argument also.

5. In view of foregoing discussion, we are of considered view that IA-2627/2023 deserves to be **dismissed**.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

06.10.2023/-