



**THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT III**

IA-3777/2023  
In  
(IB) 440/ND/2021

*Order under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016*

**IN THE MATTER OF IB-440(ND)/2021:**

Mr. ANIL KAUSHAL & Ors. .... Financial Creditors

VERSUS

M/s. LOGIX CITY DEVELOPERS PRIVATE LIMITED .....Corporate Debtor

**IN THE MATTER OF IA-4145/2023:**

COLLIERS INTERNATIONAL INDIA PROPERTY PVT. LTD. .... Applicant

VERSUS

RESOLUTION PROFESSIONAL OF CORPORATE DEBTOR

..... Respondent

Oder Pronounced on: - 09.01.2024

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS**

HON'BLE MEMBER (JUDICIAL)

**SHRI ATUL CHATURVEDI**

HON'BLE MEMBER (TECHNICAL)

**Parties / Counsels present**

For Applicant : Mr. Pulkit Deora, Adv.

For the Respondent : Mr. Krish Kalra, Adv.

**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/ Allottees seeking following prayer: -

*A. Direct the Respondent/ RP to verify and admit the claims of the Applicant that is entire principal along with interest - both as an operational creditor as claimed in prescribed Form B, and as a financial creditor (in the class of Allottees) as claimed in prescribed Form CA, and established by subsequent clarifications and documents provided by the Applicant, in accordance with law, and/ or*

*B. Direct the Respondent/ RP to consider the Claim filed by Applicant in Form CA as "Financial Debt" and Applicant be treated as "Financial Creditor".*

*C. Pass such other further order/ order(s) as may be deemed fit and proper in the facts and circumstances of the case.*

2. Briefly stated the facts of the present case are that, an application under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditors i.e., Mr. Anil Kaushal & Ors. against the Corporate Debtor i.e., M/s. Logix City Developers Private Limited and the said application was admitted by the order of this Adjudicating Authority vide



order dated 17.08.2022 and a moratorium was declared including the appointment of Mr. Manohar Lal Vij as an Interim Resolution Professional.

3. It is submitted by the Ld. counsel appearing for the Applicant that, on 05.07.2011 Synergy Property Development Services Private Limited (now merged with Applicant) entered into an Agreement with the Corporate Debtor for providing Construction Management Consultancy Services at its project 'Blossom Zest' (CMC Contract). Further, on 09.08.2018, an Amendment Agreement was executed for making certain amendments to the CMC contract.

4. It is further submitted that, on May 2019, Synergy Ltd. purchased three units from Corporate Debtor, namely A006, C003 and C006 in the project 'Blossom Zest' of Corporate Debtor vide three separate allotment letter and flat buyer agreement. The complete sale consideration to the tune of Rs. 1,31,04,000 was paid by the Synergy Ltd. to the Corporate Debtor. Further, on 12.02.2020, a second Amendment Agreement was executed for making further amendments to CMC contract.

5. It is further averred by the Ld. Counsel appearing for the Applicant that, on 10.04.2020/11.04.2020, the Corporate Debtor failed to clear the payments for several invoices of Synergy Ltd. for the services rendered during February 2016 to March 2020. Further, Synergy Ltd. sent an email dated 10.04.2020 to the Corporate Debtor and requested it to provide a confirmation of the outstanding balance amount of Rs. 1,08,12,591/-. The Corporate Debtor vide email dated 11.04.2020 confirmed the outstanding amount as mentioned by the Applicant.



6. It is further submitted that, Synergy Ltd. filed an Application u/s 9 of the code against the Corporate Debtor which was registered as IB – 883 of 2020 before this Tribunal. On 10.08.2020, a letter of Intent was issued by the Corporate Debtor to the Applicant for awarding Property Management Contract to Applicant for its project 'Blossom Zest'. Further, in 2021 Synergy got amalgamated with Colliers/Applicant vide Order of the Hon'ble NCLT, Mumbai in C.P (CAA) 19/2021 and the same was taken on record by the Tribunal and name of Colliers Ltd. was substituted as petitioner in place of Synergy Ltd.

7. This Tribunal on 22.03.2022, allowed C.P. IB – 883 of 2020 filed by the Applicant (formerly Synergy) and initiated CIRP against the Corporate Debtor. Further, the aforesaid CIRP order was set aside by the Hon'ble NCLAT vide order dated 02.08.2022 in Company Appeal No. 448 of 2022. On 17.08.2022 this Tribunal again initiated CIRP against the Corporate Debtor under Section – 7 of code filed by Homebuyers in Company Petition No. 440 of 2021 and appointed Respondent as RP.

8. The claim of the Applicant is based on the fact that, the Applicant filed claim in Form – B for Rs. 2,33,16,357/- including dues under CMC contract and LOI for Property Management Services. In response, the RP sent an email dated 03.09.2022 and provisionally verified the claim of Rs. 67,05,746/- only. On 31.10.2022, the Applicant filed another Claim as a Financial Creditor and filed claim in Form CA along with annexures against three units allotted to Synergy Ltd. (Now Applicant) for sale consideration paid to the Corporate Debtor for sum of Rs. 1,31,04,000/-. In response, the RP/Respondent erroneously admitted the claim of the Applicant as an Operational Creditor instead of Financial Creditor and informed to the Applicant that 'as original transaction was in the nature of Operational Creditors only and there was no payment for purchase of flats'.



9. The Applicant sent a reply to the aforesaid erroneous admission of Claim of Applicant as Operational Creditor instead of Financial Creditor and informed the RP that, in fact the Applicant has purchased flats from the Corporate Debtor through Flat Buyer Agreement. The Resolution Professional has provisionally admitted Rs. 1,98,09,746/- (Rs. 1,31,04,000 for Claim Form CA and Rs. 67,05,746/- for Claim Form B). Further, on 27.04.2023, the Resolution Professional has increased the provisional admitted Applicant's total claim for Rs. 2,13,79,408 (Rs. 1,31,04,000 for Claim CA and Rs. 82,75,808/- for Claim Form B.)

10. In response to the first contention raised by the Applicant, regarding the claim filed by the Applicant as Operational Creditor, the Resolution Professional submitted that, the Applicant has filed its claim as an Operational Creditor in FORM-B on 31.08.2023, claiming an amount of Rs. 2,33,16,357/-. Subsequently, the Respondent/RP admitted the claim of Applicant as Operational Debtor to the extent of Rs. 82,75,808/-, i.e. the amount reflecting in the books of account of the Corporate Debtor. Further, the Respondent requested the Applicant to submit confirmation form with the erstwhile management, manifesting that the amount as claimed by the Applicant is outstanding and payable to the Applicant. Further, it is submitted by the Resolution Professional that, the Applicant failed to submit any document/record manifesting confirmation from Corporate Debtor or the erstwhile management.

11. In response to the second contention raised by the Applicant, regarding the claim filed by the Applicant as Allottee, the Resolution Professional submitted that, on scrutiny of the claims and after analysing the supporting documents, it is observed that, the Applicant did not disburse any payment towards the purchase of the flats, rather the flats were allotted against the Operational Debt payable by the Corporate Debtor to the Applicant. Further, in accordance with Section 5(8) of the Code, disbursement of debt against the



consideration of time value of money is sine qua non for categorizing a debt to be financial debt. In the present case, Operational Debt has been adjusted for allotment of flat and patently, there is no disbursement of debt. Hence, the claim of the applicant does not fall within the purview of financial debt and Applicant cannot be categorized as financial creditor.

12. We have heard the Ld. Counsels appearing for both the parties.

13. As regards to the first issue it is observed that, the Respondent/RP admitted the claim of Applicant as Operational Debtor to the extent of Rs. Rs. 82,75,808/- i.e. the amount reflecting in the books of account of the Corporate Debtor. We have perused the documents 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 warranting such revision, as done in the present case. Further, it is pertinent at this stage to refer Regulation 14(2) of the IBBI Insolvency Resolution Process for Corporate Persons, Regulations, 2016, the same is reproduced below for reference: -

#### **14. Determination of amount of claim**

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

**(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.**



Hence, it is clear from the aforesaid Regulation that the RP has been vested with the power to revise the claim on the basis of the documents on record. With respect to the issue of claim filed by the Applicant, it is observed that the RP has taken a conscious view while calculating the claim. Therefore, we have no hesitation to hold that the Resolution Professional has verified the claims correctly of all creditors on the basis of information available in the books of account of the Corporate Debtor.

14. As regards to the second contention raised by the Applicant, the Respondent submitted that the Applicant has failed to satisfy the basic requirement of Section – 5(8) of IBC i.e., disbursal against consideration for the time value of money. In the case in hand, Operational Debt has been adjusted for allotment of flat and patently, as there is no disbursement of debt. It is pertinent at this stage to refer the decision of Hon'ble Supreme Court in **Jaypee Infratech Limited Vs. Axis Bank Ltd. (2020 SCC online 237)**.

***"The essentials for financial debt and financial creditor"***

*43. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an tota of doubt that for a debt to become 'financial debt' for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. It may include any of the methods for raising money or incurring liability by the modes prescribed in sub clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per sub-clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in sub-clauses (a) to (i) of Section 5(8), even*



*if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of 'disbursement' against 'the consideration for the time value of money' could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said sub clauses (a) to (i) of Section 5(8) would be falling within the ambit of 'financial debt' only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money.”*

15. Thus, from the perusal of the above mentioned judgement it is clear that the essential element of disbursal is of paramount importance against the consideration for time value of money, and it needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of Section 5(8) of the Code. We have perused the document available on records carefully and thus, we are of the considered view that the Applicant has failed to demonstrate how the disputed transaction falls within any sub clauses (a) to (h) of Section – 5(8).

16. In the light of above findings IA – 3777/2023 stands **dismissed**.

**SD/-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**SD/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**