

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV**

IA-3268/2022 IN CP.IB.68(MB)2021

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

Application moved by:

Uday Grover

... Applicant

Vs.

**Mr. Bhurgesh Amin Resolution Professional of
M/s. Modella Textile Industries Limited & Ors.**

... 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
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant(s):

Mr. Shyam Kapadia a/w Ms. Vinodini
Srinivasan a/w Ms. Krutika, Adv.

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- For the Respondent No.3 : Mr. Tushad Koopa, Ld. Sr. Counsel a/w Mr. Nausher Kohli, Mr. Bhalchandra Palav and Mr. Aniket Dighe, Adv.
- 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: Kishore Vemulapalli, Member (Judicial)

1. This IA No. IA-3268/2022 is filed by Mr. Uday Grover, whose claims 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 following reliefs –
 - a. direction to the Resolution Professional / Respondent No. 1 to produce the claim form along with all attachment as submitted by the Respondent Nos. 2 & 3, to provide copies of Company Petition No. 68 of 2021 under Section 7 filed by Respondents, and to allow Edelweiss Asset Reconstruction Company Limited to exercise voting rights only up to **claim** amount of Rs. 310 Crore until further review and verification of the claims;
 - b. review of claim of the Respondent No. 3 by a newly appointed Insolvency Professional rejection of resolution plan pending for approval of this Tribunal in IA-2319/2023;
 - c. to stay the Corporate Insolvency Resolution Process;

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- d. to appoint an independent valuer cum forensic auditor to conduct a detailed audit into the claims admitted, the utilisation of funds, end use of funds, actions if any taken by Respondents against promoters and corporate debtor, all aspects of the corporate debtor and the CIRP process;
 - e. pending the hearing and final disposal of this Application, defer the hearing in any application for approval of Resolution Plan;
 - f. pending the hearing and final disposal of this Application any monies to be distributed to the creditors should be deferred; and
 - g. to direct investigation into whether the corporate insolvency resolution process is collusive and to pass order under Sec 65 of Insolvency and Bankruptcy Code, 2016.
2. The Applicant has impleaded the Resolution Professional as Respondent No. 1 (R1); Beacon Trusteeship Limited as Respondent No. 2 (R2); and Edelweiss Asset Reconstruction Company Ltd. 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 2640/2022. 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 admission of claim of R2 by an inflated amount, thus, placing R3, who is successor to R2 after assignment of loan, in the predominant position. 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

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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.

4.2. We find that, during the course of argument in IA-3327/2023, the Resolution Professional was asked to place on record detailed working of claim of R2 with supporting documents substantiating each component of their claim. During the argument, the bone of contention was limited to interest claimed on Penal Interest. The Counsel for R2 submitted that even if that amount is not considered, the vote share of R2 shall remain more than the minimum threshold required for approving the plan, hence, this objection is meaningless. We find merit in this argument and are of conscious that the issue of inflated claim is dealt by us separately in IA-3327/2023, where we had found no infirmity in the admission of claim of R2. We are of considered view that the claim form of the R2 can not be provided to the applicant, as the same is confidential documents and the details relating to claim component and documents substantiating each component in claim, have been placed on record before the Tribunal in IA-3327/2023, a copy of which was provided to the applicant in IA-3327/2023 for their perusal. The copy of application u/s 7 filed in CP (IB) 68/2022 also cannot be provided to the Applicant. Accordingly, we reject these prayers.

4.3. As regards prayer for staying the Corporate Insolvency Resolution Process, Further, we feel that the applicant has no locus in so far as these prayers are concerned. The Applicant can agitate only with respect to issues pertaining to his claim, classification of their claim and bias in the process, if any. We also find that the Resolution Professional had appointed valuer(s) registered with IBBI and the books of account of the Corporate Debtor was reviewed

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by a qualified Transaction auditor in terms of Regulation 35A of the CIRP Regulations 2016. It is noted from the minutes of 10th CoC Meeting held on 20.03.2023 that the Transaction Audit Report was shared with the CoC members, one of whom is Authorised Representative representing the class of Home-buyers, of which the Applicant is one of member. The same minutes also record the fact of valuation report. Accordingly, we do not find any merit in prayer for appointment of an independent valuer cum forensic auditor.

4.4. Since, the application for approval of Resolution Plan in IA 2319 of 2022 is also being disposed off on same date, this prayer becomes infructuous. Further, no distribution can take place before approval of Plan, accordingly, prayer for stay on distribution is also meaningless.

4.5. The applicant has not placed any cogent material to demonstrate the collusion, except allegation of inflated claim of R2, succeeded by R3, accordingly, we do not find any merit in the allegation of collusion and necessity of passing any order under Sec 65 of Insolvency and Bankruptcy Code, 2016. The allegation of delayed delivery of flats by the Corporate Debtor does not help the case of the Applicant considering 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. builtup residential area i.e. approximately 57 residential flats depending upon the size of all flats put together under a transaction. The Grover Family in turn transferred its remaining 50% shareholding in the Corporate Debtor, who owned the 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

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form of Residential Flats admeasuring 58,890 Sq. Ft. (Build up area). The plan, in question, already contemplate 100% of principal payment to them, which is equivalent of the consideration value of Rs.31,80,90,000/- for transfer of 50% shareholding of the Corporate Debtor.

5. In view of foregoing discussion, we are of considered view that IA-3268/2022 is deserves to be **dismissed**.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

06.10.2023/-