



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

**IA No.111/2022 & IA No.201/2022
IN CP (IB) No.76/ALD/2019**

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF:

Geeti Bhagat Applicant

Versus

Anuj Kumar Tiwari RP/Respondent

AND

IN THE MATTER OF:

Shri Deepak Gupta HUF Financial Creditor

Versus

M/S Sparkspell Homes Pvt. Pvt.Corporate Debtor

Order pronounced on 18th September, 2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Yash Tandon, Adv.

: For the Respondent in IA NO.111/2022 & IA
NO.201/2022 Sh. Yash Tandon, Adv.



Sh. Niraj Kumar Singh with Sh. Mrityunjay Mahendra, Advts.
: For Applicant in IA NO.111/2022 & IA
NO.201/2022

ORDER

IA No.111/2022

1. This application has been filed seeking the following reliefs.
 - i. *That in view of the facts and circumstances enumerated herein above it is respectfully prayed that this Hon'ble Tribunal may kindly be pleased to condone the delay and direct the Resolution Professional to admit the claim of the applicant or else the applicant shall suffer irreparable loss and injury.*
 - ii. *Interim order, if prayed for, pending final decision of the application, the applicant prays for the following interim relief: That this Hon'ble Tribunal may be pleased to direct the Resolution Professional/respondent to consider and admit the claim of the applicant.*
2. The case of the applicant is that the Corporate Debtor has launched a Group Housing Project known as "Pratham" located at Bijnor Road Lucknow and one Sri Deepak Gupta HUF through its Karta had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016.
3. The said Corporate Debtor was admitted in CIRP in terms of an order dated 28th August, 2019 and accordingly, an Interim Resolution Professional was also appointed which was later



on replaced by another Resolution Professional as per the resolution passed by the Committee of Creditors.

4. It is alleged in the application that no paper publication was made by the Resolution Professional with respect to the CIRP initiated against the Corporate Debtor.
5. The case of the applicant further is that it had entered into an agreement on 31st March, 2014 with the Corporate Debtor for acquiring 18 flats in the said project and the copy of the said agreement has already been attached as Annexure No.4 with the application.
6. As a part of the agreement vide its clause 5, the Corporate Debtor had undertaken to buy back the above 18 allotted flats on or before completion of 12 months from the commencement of the agreement with the stipulated total sum including the interest payable on monthly basis. The details of such payment due have been made in paragraph 14. Further the Corporate Debtor had handed over 16 cheques to the applicant in order to buy back the above flats out of which one cheque was not honored amounting to Rs. 5.0 crores and thereafter another agreement was executed on

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31st March, 2015 wherein also the buyback arrangement was made and the cheques were issued which again bounced.

7. The applicant on 10th March, 2021 submitted its claim in FORM CA and an e-mail dated 8th April, 2021 was received from the Resolution Professional thereby requiring certain documents and queries to be answered by the applicant. It is averred that the applicant duly replied to the Resolution Professional vide e-mail communication dated 5th May, 2021, a copy of which also being attached as Annexure No.8.
8. In this background the applicant submits that after giving the reply to the queries raised by the Resolution Professional, it has not received any further communication nor the claims have been considered by the Resolution Professionals.
9. The application has been contested by the Resolution Professional thereby refuting the allegation of the applicant about the publication of the CIRP. It has been replied by the Resolution Professional that it is a matter of record that the IRP Mr. Mohit Maheswari had made public announcement on 31st August, 2019 in Financial Express and on 1st September, 2019 in Jan Satta. Since there was no complete information provided, therefore, certain information and queries were

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raised by the Resolution Professional as except for the agreement and the fact regarding bouncing of the cheques, no further information was supplied alongwith the claim submitted by the applicant.

10. It is also alleged by the Resolution Professional that the applicant has taken mere recourse to recovery of the dues and the applicant is continuing with the process of recovery from the Directors despite advisory and therefore the present application deserves to be dismissed on the ground of malafidy as the same has been filed with the purpose of recovering dues and not with an intention to be part of the Resolution Process.
11. The rejoinder has been filed by the applicant reiterating the points which have already made in the application.
12. We have considered the rival submissions and the averments made in the application as well as reply and rejoinder and the oral submissions made by the Ld. Counsels representing the parties during the course of hearing.
13. CIRP has been triggered against the Corporate Debtor in terms of the aforesaid order passed by this Tribunal and the due publications having been made by the then IRP in the

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newspapers on 31st August, 2019 and 1st September, 2019, therefore, it cannot be said that the applicant was not aware of the Corporate Debtor being under CIRP. However, we also find that after queries were raised by the Resolution Professional, the applicant had supplied some information and documents, on which however the Resolution Professional has not taken any final decision.

14. In view of the foregoing discussions, we hereby direct that the claim lodged by the applicant be considered by the Resolution Professional within a time bound manner but not later than two weeks with regard to the admissibility of the claim, entitlement/eligibility of the claim in view of delay in filing the claim before the Resolution Professional and pass a speaking order in this regard which shall be communicated to the applicant forthwith thereafter. Our this order will however not be construed as an expression of merit or opinion whatsoever with respect to the adjudication of the claim of the applicant.
15. IA No. 111/2022 stands disposed of accordingly.

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IA No.201/2022

The applicant has also filed the IA No.201/2022 whereby the FORM CA has been sought to be amended which will also be looked into by the Resolution Professional while adjudicating the claim in terms of our aforesaid order.

IA No.201/2022 also stands disposed off accordingly.

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(ASHISH VERMA)
Member (Technical)

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(PRAVEEN GUPTA)
Member (Judicial)

Priya Agarwal
(Stenographer)