

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application filed on 08.06.2023 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') by Aarif Ahsan Khan against the partial rejection of the claims by the Resolution Professional and seeking directions to the Respondent to accept his claim under the class of 'Homebuyers' based on the documents submitted by the Applicant in support of his claims.
2. The Applicant is a homebuyer in the project '*The Grove Towers*', which was being developed by the Corporate Debtor, and therefore, fall under the definition of Financial Creditor under the provisions of Insolvency and Bankruptcy Code, 2016. The Respondent is the Resolution Professional (RP) carrying out the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.
 - 2.1. The Applicant states that the proposed building '*the Grove Towers*' ('the said project') was to be developed by the Corporate Debtor over property bearing CTS Nos. 1 (PT) 2A(Pt), 3 (Pt), 4(Pt), 5(Pt), 6(Pt) admeasuring about 6629.18 sq mtrs. situated at village- Oshiwara, Taluka Andheri, Mumbai Suburban District. The said project was consisting of *3 basements plus retail at ground plus 7 levels of podium parking plus one level amenity floor plus 39 habitable floors ('Building')*. This project was registered vide no. P51900009142 under the provisions of Real Estate (Regulation and Development) Act, 2016 ("**RERA Act**") with Real Estate Regulatory Authority at Mumbai.
 - 2.2. The Applicant booked two flats from the Corporate Debtor, being Flat no. 2907, admeasuring 3423.50 sq.ft on the 29th floor for total consideration of Rs. 2,39,64,500/- (Rupees Two Crores Thirty Nine Lakhs Sixty Four Thousand Five Hundred Only), and Flat no. 3007, admeasuring 3484 sq.ft on the 30th floor of the said project vide provisional allotment dated August 19, 2018 for a total consideration of Rs.3,13,56,000/- (Rupees Three Crores Thirteen Lakhs Fifty Six Thousand Only) & letter of provisional allotment

dated March 27, 2018. These bookings also entitled 2 stilt car parking. The Applicant made following payments, which are evidenced by MOU dated December 9, 2018 in respect of flat no. 2907 and a Memorandum of Understanding dated January 11, 2020 :

- a. Flat No. 2907 - a sum of Rs.1,05,00,000/- (Rupees One Crore Five Lakhs only), out of which Rs. 1,00.00,000/- (One Crore Only) to the Corporate Debtor on 26.08.2018 and a sum of Rs. 5,00,000/- to Ornate Developers on November 29, 2018.
- b. Flat No. 3007 - a sum of Rs. Rs.3,33,00,000/- (Rupees Three Crores Thirty-Three Lakhs Only) is paid by the Applicant to the Corporate Debtor from 2017 to 2019. The bank statements of the Applicant also reflects that a sum of Rs. 1,10,00.000/- (Rupees One Crore Ten Lakhs Only) was paid to Ornate Developers and a sum of Rs. 2,23,00,000/- (Rupees Two Crores Twenty-Three Lakhs Only) was paid to the Corporate Debtor.

2.3. The Applicant states that in respect of the amounts, which were paid to the Ornate Developers, the Applicant had in fact addressed emails to the Corporate Debtor informing it that as per the instructions of the director of the Corporate Debtor and such payments in favor of Ornate Developers shall be considered as payment made towards the purchase of the said flats. By a letter dated June 30, 2018, the Corporate Debtor has acknowledged that payments, made by the Applicant in favor of Ornate Developers, are considered in favor of Corporate Debtor for the flat allotted to the Applicant. Even in receipt given by the Corporate Debtor on July 4, 2018 to the Applicant, duly accepts all the payments made to the Corporate Debtor. Hence, it can be seen that the Corporate Debtor has duly accepted and acknowledged the receipt of payments, including those made by the Applicant in favor of Ornate Developers. Therefore, the Resolution Professional has no option but to accept all the claims of the Applicant.

- 2.4. The Applicant, by his email dated November 18, 2021 filed Form CA under Regulation 8A of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Form CA was filed for both the flats. By an email dated November 22, 2021, the Respondent informed the Applicant that the Resolution Plan is approved by committee of creditors and therefore, Respondent is unable to accept the new claims. Respondent requested the Applicant to approach this Hon'ble Tribunal.
- 2.5. The Applicant was therefore constrained to approach this Hon'ble Tribunal by filing an Interlocutory Application No. 2905 of 2021 seeking condonation of delay in filing of these claims and this Hon'ble Tribunal was pleased to partly allow the said application vide Order dated May 2, 2023 directing the Respondent to determine the claim of the Applicant.
- 2.6. Pursuant to the directions of the Hon'ble Tribunal in order dated May 2, 2023, the Applicant had visited the office of Respondent on May 12, 2023 and shared all the necessary documents in support of his claims against the Corporate Debtor. A meeting of Committee of Creditors of the Corporate Debtor was held on May 24, 2023, and the Respondent forwarded the Minutes of 19th Meeting of Committee of Creditors of the Corporate Debtor, along with a revised list with the details of the claims of homebuyers, which showed that claim of the Applicant has been accepted partially vide entry no. 67 and 68 therein. The RP admitted claim of Rs. 75,57,333/- as against claim of Rs. 1,05,00,000/- in relation to Flat No. 2907, and Rs. 2,58,02,200/- as against claim of Rs. 3,33,00,000/- in relation to Flat No. 3007. The books of the Corporate Debtor reflected a credit of Rs. 65,00,000/- and Rs. 2,11,85,000/- in relation to these two flats.
- 2.7. The Applicant states that no explanation or detail is given by the Resolution Professional regarding the figures arrived at by the Resolution Professional, for partial acceptance of claims of the Applicant. It appears that the Resolution Professional only considered the provisional allotment letter dated August 19, 2018 for both the flats i.e Flat no. 3007 and 2907, as reflected in

Annexure B, attached to the email received from the Resolution Professional on May 24, 2023. The Applicant states that the Resolution Professional has failed to consider that provisional allotment letter dated August 19, 2018 is for Flat no. 2907 and provisional allotment letter dated March 27, 2018 is for Flat no. 3007. Even the receipts and memorandum of understanding entered between the Applicant and the Corporate Debtor are not considered. Hence, the act of rejection of partial claims of the Applicant by the Resolution Professional is arbitrary and wholly unjustified.

3. We heard the Counsel and the perused the material available on record, including the Bank statement of the account of the Applicant to ascertain the amount out of which the money claimed in the application came to be paid to the Corporate Debtor.

3.1. From the perusal of the Provisional allotment letter, receipts issued by the Corporate Debtor and Memorandum of Understanding placed on record in respect of both the flats, we find that the Applicant had paid a sum of Rs. 1,05,00,000/- and Rs. 3,33,00,000/- towards these two flats, the possession and ownership of which is yet to be transferred by the Corporate Debtor. It is the case of the Applicant that he had paid a sum of Rs. 1,00,00,000/- and Rs. 2,33,00,000/- to the Corporate Debtor and the balance amount of Rs. 1,05,00,000/- is claimed to be paid to Ornate Developers, which is a firm in which director of Corporate Debtor is substantially interested, on instruction of the suspended Board and acknowledged by the Corporate Debtor.

3.2. It is the case of the Respondent that he admitted the claim with respect to amount paid to the Corporate Debtor along with interest as per RERA, and has rejected the claim in respect of the amounts paid to Ornate Developers. This Bench asked the Applicant to file the Bank Statement to evidence the source of payments made by him to the Corporate Debtor, as this Bench had found a transaction between the Aryan Spaces and the Corporate Debtor in IA-1927/2021 to be irregular.

3.3. On perusal of the Bank statement submitted by the Applicant, this Bench found that the payment made to the Corporate Debtor or Ornate Developers were essentially from the funds received from the Corporate Debtor prior in time.

3.3.1. The Applicant received a sum of Rs. 1,10,00,000/- from Ornate Spaces Pvt. Ltd. during 07.08.2018 to 14.08.2018 in account of Aryan Spaces and paid Rs. 1,00,00,000/- on 16.8. 2018, which is claimed as payment towards booking of Flat No.2907. Further, a sum of Rs.10,00,000 on 17.9.2018 and Rs. 35,00,000/- on 15.11.2018 was also received from Ornate Spaces Pvt. Ltd. and Rs. 5,00,000/- was paid on 29.11.2018 towards Flat No. 2907.

3.3.2. Further analysis of Bank statement of the applicant reveals that the applicant had received money transfer of Rs. 1,00,00,000/- on 28.12.2017, Rs. 40,00,000 on 15.1.2018, Rs. 71,75,000/- on 29.5.2018, Rs. 73,00,000/- on 25.06.2018, Rs.15,25,000/- on 27.7.2018, Rs. 4,75,000/- on 30.08.2018 in ARYAN Spaces from account no. 0065160479904, and these amounts were immediately transferred to the Applicant's personal account. All these payments have been utilized to make payment towards booking of Flat No. 3007 as claimed in the application. The Bench is not clear whether account no. 0065160479904 belongs to the Corporate Debtor or its associate concerns or related parties, and the Resolution Professional may look into this aspect after seeking clarification in this relation for correct admission of the claim.

3.4. This clearly shows that the applicant appears to be merely a conduit to facilitate diversion of funds from Corporate Debtor or third persons and book these two flats from proceeds of such diverted funds only. Accordingly, this Bench is of considered opinion that these booking of flats is a sham transaction, having been made by using the funds received from the Corporate Debtor. It also follows from this analysis that the Resolution Professional have been mechanical in accepting the claim without looking into the trail of

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transaction, as could have been evident from the bank statement of corporate debtor also. Even the claim admitted by the Resolution Professional does not appear to be an admissible claim in view of aforesaid findings.

- 3.5. In view of the above discussions, this Bench directs the Resolution Professional to re-appreciate the evidence(s) on record and decide whether this money claimed to have been paid to Corporate Debtor and Ornate Developers is in fact out of proceeds of money routed from the account of Corporate Debtor after taking into consideration the transactions of Corporate Debtor with Ornate Developers and the Applicant around the relevant period; and whether these amounts, routed through Ornate Developers, have already been considered as Avoidance Transactions under the Code? If these transactions have already been considered as recoverable from Ornate Developers, the amount claimed as receivable should be reduced by the amounts claimable from Ornate Developers under avoidance Transactions. If there remains any amount outstanding thereafter, the same may be admitted as claim under the class "Other Debts", and not under the class "Home-Buyers".
4. With the above directions, the IA-2772 of 2023 in CP (IB)-4469(MB)2019 is hereby **dismissed**.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

06.10.2023/-