

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-V**

**IA 1777/MB-V/2021**

**In**

**CP (IB) No. 2995/MB/2019**

Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 Read with  
Rule 11 of the National Company Law Tribunal Rules, 2016

Mrs. Taruna Suhas Saraph	...Applicants No. 1
Mr. William Simon Mascarenhas	...Applicants No. 2
Mrs. Kavita Chanchalkumar Dhadiwal	...Applicants No. 3
Mr. Chanchalkumar L. Dhadiwal	...Applicants No. 4
Ms. Amita Saurabh Bihani	...Applicants No. 5
Mrs. Madhu Pradeep Bihani	...Applicants No. 6
Mr. Manas Jagdish Karmarkar	...Applicants No. 7
Mrs. Roma Moti Thakur	...Applicants No. 8
Mr. Ashok Mulchand Khatpal	...Applicants No. 9

**Versus**

Mr. Dyaneshwar Chaudhari ( <b>Suspended Director</b> )	... Respondent No. 1
Mr. Ganesh K Ahire ( <b>Suspended Director</b> )	... Respondent No. 2
Mr. Hiranman Madhavrao Patil ( <b>Suspended Director</b> )	... Respondent No. 3

**In the matter of:**

Small Industrial Development Bank of India ...Financial Creditor

Versus

E & G Global Estates Limited ...Corporate Debtor

**Order Dated:11.08.2023**

**Coram:**

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)  
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**Appearances:**

For the Applicant (s) : Mr. Ankit Lohia and Ms. Pooja Batra i/b Adv.  
Gaurav Shrawat and Adv. Meet Pandya  
For the Respondent : Mr. Pulkit Sharma, Advocate  
(Suspended Directors)

**Per: Anuradha Sanjay Bhatia, Member (Technical)**

**ORDER**

1. The above captioned I.A. was filed by **Mrs. Taruna Suhas Saraph and others** (hereinafter referred to as "**Applicants**") to challenge the constitution of the Committee of Creditors and appointments of certain Holiday Home Owners to the COC of the Corporate Debtor, under Section 60(5) of the Insolvency and Bankruptcy Code 2016 ("**Code**"), praying for following reliefs:

*In light of the foregoing, it is humbly prayed to pass the following directions:*

- a) *That the following illegitimate Holiday Home Buyers who are involved in such transactions must not be considered to be "financial creditors", and they should be immediately removed from the COC:*

(i) *Bela Gujarati;*

- (ii) Pallavi Girish Malani;*
- (iii) Govind Malani;*
- (iv) Madan Vallabhdas Devi;*
- (v) Mina Gopal Gokhale;*
- (vi) Gaurav Anil Mahajan; and*
- (vii) Gokulsing Morkar.*

*b) That in the interest of time and in order to expedite the corporate insolvency resolution process of the Corporate Debtor, the votes cast by illegitimate Holiday Home Buyers (referred to in paragraph (a) above) pursuant to the eighth COC meeting held on 20th April, 2021 with respect to approval of resolution plan should be disregarded and pursuant thereto a recounting of the votes be undertaken by the Resolution Professional.*

*c) That a forensic audit of the accounts of the following related parties of the Corporate Debtor which appear to have entered into fraudulent and circuitous transactions must be undertaken:*

- (i) Nishant Ganesh Ahire, son of Ganesh K. Ahire (suspended director of the Corporate Debtor);*
- (ii) Dipesh Prakash Bhadane (erstwhile director of the Corporate Director); and*
- (iii) Nikita Dipesh Bhadane, daughter of Ganesh K. Ahire and wife of Dipesh Prakash Bhadane.*
- (iv) Hiranman Patil, suspended director of Corporate Debtor; and*
- (v) Such other entities/ individuals, including illegitimate Holiday Home Owners and related parties, as the Hon'ble Tribunal may deem fit and necessary.*

- d) *That the illegitimate and unsanctioned Holiday Home Owners with respect to whom a prior NOC of SIDBI has not been received not be classified as “homebuyers/ allottee” and accordingly be removed from the COC.*
- e) *That the Holiday Home Owners with respect to whom Agreement to Lease has not been duly registered in accordance with provisions of applicable law not be classified as “homebuyers/ allottee” and accordingly be removed from the COC.*
- f) *That Mrs. Sangita Milind Matkar, whose agreement for sale/ lease of a villa is unexecuted/ unsigned, must not be considered to be a “homebuyers/ allottee” and accordingly must also be removed from the class of financial creditors classified as “homebuyers/ allottee” and from the COC.*
- g) *That Committee of Creditors be appropriately reconstituted with genuine “homebuyers/ allottees” forming part of the COC.*
- h) *That the resolution plan submitted M/s. G. S. Constructions be approved on the basis of it being a superior and commercially viable plan as compared to the resolution plan submitted by Mrs. Asha Sanap.*
- i) *Any other orders as the Hon’ble NCLT may deem fit.*

### **Facts of the case**

2. The Financial Creditor i.e. Small Industrial Development Bank of India (**SIDBI**) had filed a Company Petition (IB) No. 2995 of 2019 dated 2<sup>nd</sup> August, 2019 before this Tribunal, to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) against the Corporate Debtor. The CIRP of the Corporate Debtor was initiated, vide an

order dated 24.06.2020, under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as '**the Code**') and Mr. Gajesh Labhchand Jain, was appointed as Interim Resolution Professional.

3. It is submitted that during the course of proceedings, this Bench vide its order dated 16<sup>th</sup> September, 2020, had instructed that a forensic audit of the books of accounts of the Corporate Debtor to be undertaken. Pursuant thereto, in the Second (2<sup>nd</sup>) COC meeting dated 1<sup>st</sup> September, 2020, the Resolution Professional, Mr. Gajesh Labhchand Jain ("**RP**"), appointed Mazars Business Advisors Pvt. Ltd. as **Forensic Auditor** to undertake the forensic audit of the Corporate Debtor for the period from 1<sup>st</sup> April 2014 till 24<sup>th</sup> June 2020. Based on the findings, **the forensic auditor filed their report dated 12<sup>th</sup> January 2021 ("Forensic Audit Report")** and the Forensic Audit Report listed out various financial irregularities conducted by the Corporate Debtor by certain suspended directors in collusion with certain illegitimate and alleged Holiday Home Owners.
4. It is further submitted that due to the fraudulent transactions undertaken by certain suspended directors of the Corporate Debtor in collusion with certain individuals and related parties, numerous illegitimate Holiday Home Owners become a part of the committee of creditors ("**COC**") and for the aforesaid reason the RP had filed an interlocutory application under section 66 read with section 60(5) of the IBC before this Tribunal, praying for cancelling the voting rights and the removal of certain homebuyers from the COC.
5. It is submitted that while the application on Fraudulent Transactions were pending before the NCLT, the COC in its 8<sup>th</sup> meeting held on 20<sup>th</sup> April, 2021, had proposed to discuss and approve the Resolution Plans submitted by the three Resolution Applicants namely M/s. G. S. Construction (sole proprietorship of Mr. Sushil Uttarwar), Mrs. Archana Sanap and Mrs. Asha Sanap. It is further submitted that the Resolution

Plan of Mrs. Asha Sanap was approved by the COC, which was wrongly constituted, since it includes illegitimate Holiday Home Owners that are involved in fraudulent and circuitous transactions in collusion with certain suspended directors of the Corporate Debtor.

6. It further submitted that the Resolution Plan submitted by G.S. Constructions is commercially and practically viable and beneficial for the revival of the business of the Corporate Debtor as compared to the resolution plan submitted by Ms. Asha Sanap. Hence, this Application.

### **Summarised Reply of the Respondents**

7. The Respondent no. 2, Mr. Ganesh K Ahire, submitted that the management of the Corporate Debtor was taken over by M/s G.S Constro & Infra Private Limited, through the suspended director Mr. Sushil Uttarwar and Mrs. Kalapana Uttarwar (hereinafter referred to as “**Uttarwars**”) and the same has been recorded by this Tribunal vide order dated 24.06.2020 in MA 3182 of 2019 in CP No. 2995 of 2019.
8. It is further submitted that the necessary terms and conditions of the said takeover of the management by the Uttarwars were documented and recorded on Memorandum of Understanding (**MOU**) dated 30.11.2018 executed between the out-going directors and the Uttarwars. According to the said MOU, the Uttarwars shall be liable to pay the outstanding loan obligation to the Small Industries Development Bank of India (**SIDBI**) and in consideration thereof the existing management would give their share of equity and interest vested in the Corporate Debtor along with the unsold inventory of the Corporate Debtor for repayment of SIDBI loan. Hence, the repayment of unsecured loan to the Respondent No. 2 was just mere attempt to achieve the objective of the MOU.

9. It is submitted that as per the clause 5 of the MOU, it will be the obligation of the Corporate Debtor as well as the Uttarwars to ensure that all the unsecured loan of the Corporate Debtor will be repaid.
10. It is further submitted that alongside handing over the management of the Corporate Debtor to the Uttarwars, from 01.04.2019 to 31.09.2019, a total sum of Rs 1,45,62,000/- was deposited into the account of the Respondent No. 2 by the Corporate Debtor with the consent of the Uttarwars towards the repayment of the unsecured loan advance by the Respondent no 2 to the Corporate Debtor.
11. It is submitted that pursuant to receipt of the amount in the personal account of the Respondent No. 2, the same were transferred for the repayment of the unsecured loan availed by the Respondent no. 2 from his family members and other individuals including the part payment of the consideration for purchase of the property. Thus, the said transactions cannot be said to be a circuitous transaction undertaken to defraud the creditors of the Corporate Debtor.

**FINDINGS:-**

12. We have heard the Counsel for the Parties and have gone through the records.
13. While perusing the daily orders, this Bench has observed that on 04.05.2023, when the matter was listed on board, the Applicant nos. 3 & 4 were physically present before this Bench seeking deletion of their names in the Present I.A. 1777 of 2021. **The request of the Applicant nos. 3 & 4 was granted vide daily order dated 04.05.2023 and the names of the Applicant nos. 3 & 4 were deleted from the present IA No. 1777 of 2021.**

14. It has further been observed by this Bench that the Resolution Professional, who has admitted the claims of the homebuyers under challenge has not been made a party in the present Interlocutory Application. Further, the allottees, whose claims have been challenged in the present IA, are also not made a party in this IA. In the given situation no order can be passed at the back of such allottees without providing them an opportunity of being heard.
15. This bench has further observed that the present application is filed by the owners of holiday homes/ villas in the Project collectively having 25.55% voting share in the COC out of which 2 applicants namely Applicant nos. 3 & 4 having 2.85% and 3.17% voting share have already sought removal of their names from the present application which had been allowed by this Bench vide daily order dated 04.05.2023. Furthermore, the individual homebuyers who have been sought to be removed from the list of home buyer/ Committee of Creditors constitute just about 12% voting share in the COC. Therefore, assuming if their names are excluded, even that would not alter the final outcome and the plan of Mrs. Asha Sanap would still fetch more than 66% of voting share. Even otherwise, the applicants as the Home Buyers do not have any locus to agitate as to which plan should be approved especially when the Home buyers as a class having 79.60% voting share have voted in favour of the Resolution Plan submitted by Mrs. Asha Sanap.
16. Even otherwise, the Applicants being the individual home buyers, as per the terms of **Section 25-A(3-A) of IBC**, can vote only through the Authorised Representative who is required to cast the vote on behalf of the Creditors in class after taking into account majority percentage of the Homebuyers against or in favour of a particular Resolution Plan. The relevant extract of Section 25-A(3-A) of IBC is as under:

**25A.** (1) *The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.*

**(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent of the voting share of the financial creditors he represents, who have cast their vote:**

17. In the instant case, the class of creditors (**i.e. Home Buyers**) have voted in favour of Resolution Plan of Mrs. Asha Snap with 42.03% voting which represents more than 50% of the total voting strength of their class i.e.79.60%. Therefore, the entire vote (i.e. 79.60%) would be considered to have been cast in favour of the plan submitted by Mrs. Asha Sanap, as required in terms of provisions of the Code.

18. In view of the above, the objections raised by the Applicants in an individual capacity as a home buyer are inconsequential as they represent homebuyers in minority and are thus bound by the decision taken by the majority within the class of homebuyers. In this regard, reliance can be placed as the law laid down by the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC(India) Ltd. and Ors.(2022)1 SCC 401** wherein it was held that when Homebuyers as a class have voted in favour of the Resolution Plan, any particular constituent of that class cannot be heard in opposition to

the Resolution Plan by way of objection as there is no concept of dissenting homebuyers within Creditors in class. The relevant extracts of this judgement are reproduced below:-

*“164.4 Having regard to the scheme of IBC, and the law declared by this Court, it is more than clear that once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority of those who vote, as also all others within that class, are bound by that decision. There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. It is obvious that if this finality and binding force is not provided to the vote cast by the authorize representative over the resolution plan in accordance with the majority decision of the class he is authorized to represent, a plan or resolution involving large decision of the class he is authorized to represent, a plan or resolution involving large number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation, which is not the prime target of the Code. In the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the provisions relating to voting on the resolution plan and binding nature of the vote of authorized representative on the entire class of the financial creditor/s he represents.*

*170. To sum up this part of discussion, in our view, after approval of the resolution plan of NBCC by CoC, where*

*homebuyers as a class assented to the plan, any individual homebuyer or association cannot maintain any challenge to the resolution plan nor could be treated as carrying any legal grievance.*

171. Once we have held that these dissatisfied homebuyers and associations are not entitled to put up any challenge to the resolution plan contrary to the decision of the requisite majority of their class, all their objections are required to be rejected outright....”

19. In the light of what has been held by the Hon’ble Supreme Court in the afore-cited judgment it becomes abundantly clear that Home Buyers can vote for or against the Plan only as a class and if there are some Home Buyers pitted against the Resolution Plan, who are otherwise in minority, they have absolutely no locus to oppose the Plan in the capacity of dissatisfied or dissenting Home Buyers. It is also abundantly clear that such dissenting minority segment within the class of Home Buyers cannot arrogate themselves to be dissenting Financial Creditors.

20. In view of the above discussions, the above Interlocutory Application No 1777 of 2021 is **dismissed** being devoid of any merit.

**SD/-**

**ANURADHA SANJAY BHATIA  
MEMBER (TECHNICAL)**

**SD/-**

**KULDIP KUMAR KAREER  
MEMBER (JUDICIAL)**