



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT III)**

I.A-5764/2021

In

Company Petition No. (IB)-2130(ND) 2019

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

IN THE MATTER OF:-

M/s. Dynacon Projects Pvt. Ltd

..... Applicant/Operational Creditor

Versus

M/s. Today Homes & Infrastructure Pvt. Ltd

..... Respondent/Corporate Debtor

AND

IN THE MATTER OF:-

M /s Shree Resham Textile Mills Ltd

.....Applicant

Versus

Mr. Nilesh Sharma, RP & Others

Resolution Professional

.....Respondent No. 1

&

Consortium of Canary Greens Buyers Welfare Association

Callidora Flat Owners Welfare Association and

Royal Elegancia Apartment Buyers Association (RP)

.....Respondent No. 2

Pronounced on 01.08.2023

CORAM:-

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

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

PRESENT:-

For the Applicant : Mr. Ashok Rajagopalan, Advocate in IA-5764/2021

For the Respondent :

ORDER

Per Shri Bachu Venkat Balaram Das, Member (J)

1. This application has been filed by M/s. Shree Resham Textile Mills Limited, the Applicant herein, who is a dissenting Financial Creditor, under Section 60(5) read with Section 30 & 31 of the Code, raising objections to the Resolution Plan submitted by Consortium of Canary Greens Buyers Welfare



Association, Callidora Flat Owners Welfare Association and Royal Elegancia apartment Buyers Association.

2. It is stated that M /s Shree Resham Textiles Mills Ltd. (“ the Objector”) is a Financial Creditor of the Corporate Debtor by virtue of an Arbitral Award dated 01.07.2017 in favour of the Objector for a sum of Rs. 55,22,91,777/- along with interest @18% p.a. on the said amount and costs of Rs. 33,33,000/-.
3. The Applicant/Objector is an unsecured Financial Creditor having no charge over the fixed assets of the Corporate Debtor. The Applicant has filed this application raising objections to the Resolution Plan submitted by the Resolution Applicant on the ground that the Plan fails to comply with the mandatory provisions contained in Section 30(2)(b) of the Code and Regulation 38 of the CIRP Regulations of the Code.
4. It is submitted that the Resolution Professional received two Resolution Plans which were placed before the CoC in its 12th Meeting and put to vote. The CoC approved the Resolution Plan with 96.93% voting. It is submitted that the Applicant having 2.84% voting right abstained from voting and is a dissenting Financial Creditor to the Resolution Plan and therefore entitled to be paid in priority over all other Financial Creditors who voted in favour of the Resolution Plan under the provisions of Section 30(2)(b) of the Code and Regulation 38 of the CIRP Regulations of the Code.
5. The Applicant has submitted that the Resolution Plan neither provides for the payment of debts of Financial Creditors who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such Creditors in accordance with Section 53(1) of the Code in the event of liquidation of the Corporate Debtor nor provides the same in priority as is mandated by Regulation 38 of the CIRP Regulation.
6. The Applicant/Objector has submitted that as per Clause 9.2.3(j) of the Resolution Plan pertaining to the payment of Liquidation value to the Dissenting Financial Creditors states that the construction cost will be paid in priority as the rights of the allottees are to be prioritized and for the expeditious completion of the project and thereafter, the liquidation value shall be given priority. The present Objector having abstained from voting is a dissenting financial creditor and should be paid in priority over the



construction cost to the Real Estate Allottees who voted in favour of the Approved Resolution Plan in terms of the Regulation 38(1) of the CIRP Regulations. Clause 9.2.3(j) of the Resolution Plan is reproduced herein below :-

“The Resolution Applicant will pay liquidation value to the dissenting financial creditor which is due in accordance with sub-section (1) of section 53 in the event of liquidation of the corporate debtor and amount will be paid to such financial creditors in priority to the other financial creditors as per applicable CIRP Regulations within the proposed amount under Financial creditors (other than financial creditors in class). (Compliance with Regulation 38(1). That it is added that construction cost will be paid in priority as the rights of the allottees are to be prioritized and expeditious completion of the project is required. After the construction cost, liquidation value shall be paid in priority, if due.”

- 7.** It is further submitted that the Applicant/Objectors being a dissenting Financial Creditor had filed its claim before the Resolution Professional for an amount of Rs. 79,01,42,043/- inclusive of interest @ 18% p.a. calculated upto 31st October 2019. The Resolution Professional verified the same and admitted the claim of the Objector to the extent of Rs.78,93,52,526/-. The Resolution Professional reduced the admitted claim amount to Rs.31,57,41,010, being 40% of the admitted claim amount on the basis that there was an inter-se agreement between the Corporate Debtor and (i) Today Hotels Pvt. Ltd. (ii) New India City Developers Pvt. Ltd., and (iii) GPS Properties Pvt. Ltd., by virtue of which the Corporate Debtor was liable/entitled to only 40% of the awarded/claimed amount. On this basis, the Resolution Professional accepted the claim amount of Rs. 31,57,41,010 vide his email dated 24th December 2020. It is also stated to note that the Liquidation value of the Corporate Debtor is Rs. 773,46,91,673/- as per the Form H issued by the Resolution Professional.
- 8.** It is submitted that the Objector has a share of 2.84% on the Liquidation Value of Rs.7,73,46,91,673/-. The other costs mentioned in the Resolution Plan are as under.
 - a. Payment of CIRP Costs in full - Rs. 4 crores.
 - b. Payment to workmen and employees – Rs. 3.5 crores
 - c. There are no secure Creditors.



d. Hence, the minimum liquidation amount payment to the objector is 2.84 of the following:-

Rs. 7,73,46,91,673/-

Less Rs. 7,50,00,000/-

9. In view of the above facts and circumstances, the Applicant/Objector seeks that the Resolution Plan be approved and suitably and following directions be passed:-

(a) this Hon'ble Adjudicating Authority be pleased to pass an Order directing the Successful Resolution Applicant to amend the Resolution Plan to provide for payment to the Objector in terms of Section 53 of the Code i.e. an amount of Rs.21,75,00,000/- and that such payment be made in priority i.e. even before any amount is paid towards the construction cost by the Successful Resolution Applicant into the Corporate Debtor

(b) this Hon'ble Adjudicating Authority be pleased to pass an Order directing that for any delay of making payment after receipt of approval received from NCLT, interest @ 18% per annum be paid to the Objector till date of payment;

(c) In the alternative to prayer clauses (a) and (b) above, this Hon'ble Adjudicating Authority be pleased to pass an Order directing the Successful Resolution Applicant to amend the Resolution Plan and specify that the Objector is covered under Clause 9.2.2(iv) of the Resolution Plan and in addition to the "total admitted claim amount", the Successful Resolution Applicant be directed to pay to the Objector, interest @ 18% p.a. on the "total admitted claim amount" from 1st November 2019 till the date of payment.

10. The Resolution Professional/Respondent in its reply has submitted that the Resolution Plan submitted by the Respondent No. 2 has been approved by the Committee of Creditors with 96.93% votes and the application seeking approval of the Resolution Plan is pending before this Adjudicating Authority. The Respondent has submitted that since the Committee of Creditors have approved the Resolution Plan, in view of the law laid down by the Hon'ble Supreme Court of India in the case of Ebix Singapore Private Limited versus Committee of Creditors of Educomp Solutions Limited and Anrs. (2021 SCC online SC 707) wherein it has been held that the role of the Adjudicating Authority is very limited and once a Resolution Plan has been approved by the CoC, it is binding on the Resolution Applicant and the commercial wisdom of the CoC will prevail.



11. The Resolution Professional/Respondent has also submitted that as per “**Note to Clause 13: Term of Resolution Plan and Implementation Schedule (Regulation 38(2)(a))**” of the Resolution Plan, the Resolution Applicant has undertaken to provide for the payments to dissenting Financial Creditors in priority over Financial Creditors who voted in favour of the Plan. It is further submitted that in terms of the Implementation Schedule provided under Clause 13 of the Resolution Plan, the payments proposed to be made to the dissenting Financial Creditors will be made within 180 days from the date of approval of the Resolution Plan by this Tribunal. Further, the payments proposed to be made to the Financial Creditors and also to the Financial Creditors in Class whose bookings are cancelled and refund orders have been passed will be made within 730 days from the date of approval of the Resolution Plan by this Tribunal. Therefore, the Resolution Plan is compliant to Section 30(2)(b) of the Code read with Regulation 38(1)(b) of the CIRP Regulations.

12. We have heard the submissions made by the Learned Counsel appearing for the Applicant as well as Learned Counsel appearing for the Resolution Professional/Respondent and perused the records. After having considered the rival submissions, we are at the outset of the considered view that the decision of the CoC in approving the Plan cannot be interfered with by this Adjudicating Authority as has been held by the Hon’ble Supreme Court of India in catena of judgments.

13. We further note that “**Note to Clause 13: Term of Resolution Plan and Implementation Schedule (Regulation 38(2)(a))**” adequately takes care of the dissenting Financial Creditors and provides for payments in priority over the Financial Creditors who voted in favour of the Plan. The said relevant Clause is reproduced below: -

“Also, the Resolution Applicant undertakes to provide for the payment of debts of dissenting Financial Creditors which shall not be less than the amount to be paid to such Creditors in accordance with Section 53(1) of the IBC, 2016 in the event of Liquidation of the Corporate Debtor. Such amount will be paid in priority over Financial Creditors who voted in favour of the Resolution Plan.”

14. The Resolution Professional has also submitted that as per the terms of the Implementation Schedule provided under Clause 13 of the Resolution



Plan, payments proposed to be made to the dissenting Financial Creditors will be made within 180 days from the date of approval of the Resolution Plan by this Tribunal. Thus, it is clear that no payments have been proposed to be made to the assenting Financial Creditors prior to the payments proposed to be made to the dissenting Financial Creditors and therefore the Resolution Plan is compliant to Section 30(2)(b) of the Code read with Regulation 38(1)(b) of the CIRP Regulations.

15. Further, Clause 9.2.3(j) of the Resolution Plan provides that: -
“The Resolution Applicant will pay Liquidation value to the dissenting Financial Creditor which is due in accordance with sub-section (1) of Section 53 in the event of liquidation of the Corporate Debtor and amount will be paid to such Financial Creditors in priority to the other Financial Creditors as per applicable CIRP Regulations within the proposed amount under Financial Creditors (other than Financial Creditors in Class). (Compliance with Regulation 38(1). That it is added that construction cost will be paid in priority as the rights of the allottees are to be prioritized and expeditious completion of the project is required. After the construction cost, Liquidation value shall be paid in priority, if due.”
16. The above Clause makes it very clear that the funds will be primarily used or utilized for the payment for construction costs and then towards payment of Liquidation Value due to dissenting Financial Creditors.
17. On an analysis of the various Clauses of the Resolution Plan as discussed in the abovementioned paragraphs, we are of the considered view that the Resolution Plan is compliant with the provisions of Section 30(2)(b) of the Code and Regulation 38 of the CIRP Regulations. We do not find any merit in the present application, therefore the same is **dismissed**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)