

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

IA-2688/2023 IN CP.IB.68(MB)2021

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

Application moved by:

**Homebuyers of Modella Textile Industries
Limited** ... Applicant

Vs.

Bhurgesh Amin & Ors.
... Respondents

In the matter of

M/s. 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. Ganesh Ramani a/w Mr. Sachin
Daga, Ms. Shreyashi Panda, Ms.
Pragati Gilda, Adv.

For the Resolution Applicant:

Mr. Gaurav Joshi, Ld. Sr. Counsel a/w
Ms. Ekta Tripathi i/b Mr. Sahil

Mahajan, Adv.

For the Resolution Professional: Mr. Ravi Kadam, Ld. Sr. Counsel a/w
Mr. Ayush J. Rajani (PCA) and Ms.
Khushboo Shah, Adv.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application IA-2688/2023 filed on 13.06.2023 by Mr. Girish Nalawade, representing 77 of Homebuyers (involving total claim of Rs.43,21,86,529/-), as claimed in the application, under the class of homebuyers seeking rejection of resolution plan pending for approval of this Tribunal in IA-2319/2023; direction for fresh bidding, or directions to successful Resolution Applicant to take care the needs and demands of homebuyers; and their ratification to the contribution towards expenses as ratified by them and not as ratified by Edelweiss Asset Reconstruction Company Ltd. for and on behalf of CoC. The Applicant has impleaded the Resolution Professional as R1; Edelweiss Asset Reconstruction Company Ltd. as R2; the Successful Resolution Applicant as R3 and Corporate Debtor as R4.
2. The Applicant states that it is the group of the home buyers who have purchased the flats in the Real Estate project of the Corporate Debtor named as “Nirmal Sports City” in 2012-2013 (which was a Thane Municipal Corporation “TMC” approved project with commitment of possession by July, 2016). However, the project never came to be initiated. Later on, Modella textile International Limited entered in Development Management Agreement (DMA) with Godrej Properties Limited and relaunched the project as Godrej Alive”, duly registered under Maharashtra RERA in 2017 with commitment of possession by Dec 2024. Under the project “Godrej Alive,” all the Home Buyers were offered (i)

- either continue in the project as per the terms and condition earlier agreed in the allotment letters from the Corporate Debtor; or (ii) to exit the project with 9% compound interest. All the Homebuyers agreed for the first mentioned option of continuing in the project as per the terms and conditions as mentioned in the allotment letters from the corporate debtor.
3. It is alleged that, despite the serious concerns raised by the Home buyers and stating their interests with the Committee of Creditors, the resolution professional failed to entertain them with the sincerity and seriousness required to resolve the matter and he moved further with the Resolution Plan submitted by the Respondent No. 3 which was majorly beneficial for the EARC (Respondent No. 2). That, in the CoC approved Resolution Plan, Respondent No.3 has decided to set-off the claims of the Home buyers by providing them refund of approx. 40% of the claim amount admitted by the RP and to completely overlook the demands and concerns raised by the Home buyers through their authorized representative and the Respondent No.3 has preferred to settle the claim of other financial creditor i.e., Respondent No.2 of INR. 9,98,96,70,414/- more efficiently than the claims of the Home buyers.
 4. One of the main reasons of the Respondent No 3 to be the only resolution applicant, was the negligence and lack of action on part of the Resolution Professional regarding TMC reservation issue which resulted in curtailing the competitive bidding from other Prospective bidders (PRAs) making all resolution applicant's disinterested except the Respondent No. 3. Instead of addressing the reservation issue on priority before inviting the bids from PRAs, the RP had delayed the filing of writ petition in High court as well as necessary applications before NCLT to resolve the TMC Reservation issue. Thus, the Resolution Professional and Respondent No. 3 both have jointly, in collusion, induced the CoC to either vote in favor of Respondent No. 3 being the only bidder, or resolve for liquidation, thus jeopardizing the fate of Home Buyers.

5. It is further alleged that the FSI of the flats has been increased to three and there shall be increase in the land valuation after the order of the Tribunal resolving the issue of unauthorized parking and the IA dealing with TMC reservation pending for its consideration.
6. R3, the Successful Resolution Applicant, has filed written submission dated 14.09.2023 stating that the present application is not maintainable as Homebuyers can be represented only by their authorized representative and not by group of homebuyers. All applicants under the homebuyers category are entitled to interest @8% p.a. under Section 13(b) and Section 18(b) of IBC r/w Regulation 13, 16(A)(7) of IBBI (CIRP) regulation, 2016 and all homebuyers claiming excess of that can be allowed interest @8% only. Further, resolution plan is not contingent and is certain and viable, and to ensure its certainty, the plan offers the refund of sum advanced by homebuyers in view of the project land being subject to reservation of TMC and development thereon may face legal hazzle.
7. R1, the Resolution Professional, has filed reply dated 21.06.2023 stating that the allegation of collusion is baseless and the role of RP is limited. Further, the claim of R2 was admitted after detailed scrutiny and supported working. That the facts of Flat Buyers Association Winter Hills vs. Umang Realtech Pvt. Ltd. are distinguishable and pertains to reverse CIRP, as well as the facts of case of Chitra Sharma and Ors. vs. Union of India are also not relevant to the present case.
8. We heard the Counsel and perused the material available on record.
9. 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 R2 in the predominant position. The Applicant has also quoted from IA-3268/2022 filed by another Financial Creditor in relation to such inflated claim. 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. R2 has voted in favor of the plan. The Plan was approved by CoC as R2 itself constituted 88.95% vote share, and

remaining 11.05% are held by the Homebuyers class. Considering the fact 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.

10. 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. Accordingly, we reject this contention.
11. The other issue pertains to reservation of Thane Municipal Corporation (TMC) in respect of project land, over which the commercial/residential development was to take place. The applicant alleges that the R1, the Resolution Professional, should have approached appropriate legal forum to deal with the so-called reservation of TMC, and this negligence in seeking appropriate clarification in this respect caused other prospective Resolution Applicant to withdraw from the process, thus, leaving R3 as the only Resolution Applicant. The Applicant has stated that the Home buyers have emphasized on option of continuing the project at old rates agreed with the corporate debtor, and the bids for the fresh Resolution Plans should be invited again so that there would be more competition and better offers as opposed to the current offer in the discussion from 9th meeting of CoC held on 01.02.2023. We note that a joint meeting (at the request of home buyers) was scheduled amongst home buyers, the AR, the

RP and the Lead Lender to address the concerns of the home buyers, however, the Home-buyers insisted upon flat against their claim, and not the cash refund. We find from the minutes of 10th CoC meeting held on 10.3.2023 placed in IA 2319 of 2023 that the Resolution Professional had taken steps to find out the correct position relating to TMC reservations and have also filed an application to TMC for clarification on Development Plan vide letter dated 26.09.2022 through its Architect Sakaar Architects and also reminded TMC for withdrawal of said Reservation vide letter dated 26.12.2022. RP had also sought legal opinion from DSK Legal on 23.12.2022 and had appointed M/s J Sagar Associates for filing appropriate writ petition.

12. The Prospective Resolution Applicants, Successful Resolution Applicant, withdrew on account of TMC reservation, and no bias can be established merely on account of their act of withdrawal on account of facts pertaining to TMC reservation, as all the Prospective Resolution Applicants were shared all facts pertaining to this aspect without any additional advantage having been accorded to the Successful Resolution Applicant. It was not argued before us that the Successful Resolution Applicant knew what others didn't or the Successful Resolution Applicant was not told about such Reservation what others were told. Every Prospective Resolution Applicant is within its right to make a business decision based on its risk appetite and no collusion can be inferred merely from this fact.
13. We also find that the issue of TMC reservation was argued at length during the other Objector's IA, and it was found that, no notification inviting objections to the proposed acquisition has so far not been made by the Competent Authority, as the reservation over the Project Land is at the initial proposal stage. However, we find that the Town Planning Authority can take into account future proposals also while according to the approval to the building plan as held in *Indian National Trust for Art & Cultural Heritage & Ors. Vs. The State of Maharashtra & Ors. 2006 SCC Online Bom 527*. Accordingly, we feel that there exists a doubt as to

whether the approval of Town Planning Authority will be after considering such proposed changes in the land use, which is still to be legally binding on the land-owners? We note that the R3 has proposed 100% payment of principal amount during the course of argument and has filed an additional affidavit to this effect. Since, a Resolution Plan is required to be certain as well as feasible, we feel that contemplation of flats to the home-buyers, as against proposed cash pay-out, will make the plan uncertain and will also put question mark on its feasibility. Accordingly, we do not find merit in this argument also.

14. In view of foregoing discussion, we are of considered view that the IA-2688/2023 deserves to be **dismissed**.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

06.10.2023/-