

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)
[Through Physical Hearing / VC Mode (Hybrid)]

IA No.107 of 2023 in
CP (IB) No.32/BB/2020

U/s 60(5)(c) of the Insolvency & Bankruptcy Code, 2016

IN THE MATTER OF:

M/s. Parag Finlease Pvt. Ltd.

Regd. Office at Office No.302,
Eden Park, 20, Vittal Mallya Road,
Bangalore – 560 001.

- Applicant

Versus

Mr. Ratnakar Shetty

Resolution Professional of
M/s. Unishire Lifestyle Dwellings LLP
#16, Level 3, Skyline Towers,
7th Cross, Sampige Road, Malleshwaram,
Bangalore – 560 003.

- Respondent

Order delivered on: 31st January, 2024

CORAM:

1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant : Shri Tamoghna, Adv.

For the Respondent : Shri Abhijit Atur & Shri Srivatsa Rao, Adv.

ORDER

Per: Manoj Kumar Dubey, Member (T)

1. This Application has been filed by M/s. Parag Finlease Pvt. Ltd. under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 against the Resolution Professional, seeking the following reliefs:

(a) *Set aside the approval of the resolution plan approved by the committee of creditors at its eighth meeting dated 20.12.2022 and direct that the said resolution is not binding on the Corporate Debtor and its stakeholders;*

(b) *Direct the Respondent to admit the entire claim made by the Applicant in its Form-C submitted on 17.06.2022; and*

(c) *Grant such other and further reliefs as may be just.*

2. Brief facts of the case as stated by the Applicant are given hereunder:

- (a) M/s. Parag Finlease Pvt. Ltd, a financial creditor, invested in M/s. Unishire Lifestyle Dwellings LLP, a real estate Limited Liability Partnership (LLP) in Bangalore, for the 'Unishire Triumph' project. The investment was made through two Memorandum of Understanding both dated 23.02.2016 ('Agreements'). These Agreements were executed between the Corporate Debtor, the Applicant and the original landowners. The total investment was Rs. 50,00,000 with an upfront payment of Rs. 25,00,000. The remaining payments were to be made as demanded by the Corporate Debtor (CD).
- (b) The said Agreements entitled the Applicant to a minimum dividend of 2% per month compounded quarterly. As a Security, two residential units (Apartment Nos. B 1204 and B 1004) were allotted to the Applicant. The Agreements also provided a buy-back option for the Respondent within three years and an option for the Applicant to sell the Apartments with the permission of the Petitioner pursuant to Clause 3.1.
- (c) The Corporate Debtor, engaged in developing residential projects, sought investments for 'Unishire Triumph,' leading to the Applicant's investment based on representations. The Agreement outlined the investment terms, payment schedule, entitlement to dividends, and security in the form of two residential units.
- (d) The Applicant initially invested Rs. 50,00,000 in the CD's project as per the Agreements, acknowledged through on-demand promissory notes. Subsequently, an additional Rs. 50,00,000 was invested in two tranches. The 1st investment of Rs. 50,00,000 was associated with Apartment No. B 1004 as security, and the subsequent amount with Apartment No. B 1204.
- (e) Despite the stipulated dividend of 2% per month compounded quarterly in the Agreements, the Corporate Debtor failed to pay the Petitioner (Applicant). Following persistent follow-ups by the Applicant for the outstanding principal and interest, the CD issued five cheques as part payment. The details of these cheques, dated 15.01.2019, were provided in the Application.

- (f) The CD assured timely payment of the outstanding principal and dividends as per the said Agreements. However, when the Applicant presented the cheques for clearance on 13.03.2019, they were dishonoured by the Bank on 14.03.2019 with the endorsement "Payment stopped by drawer", contrary to the CD's assurances. This dishonour indicated the CD's acknowledgment of the debt and inability to repay in accordance with the Agreements. The Applicant, as an investor, was aggrieved by the CD's failure to fulfil its financial obligations.
- (g) Sharad Heda and Sameer Heda, the Financial Creditors of the Corporate Debtor, filed Petition u/s 7 of IBC, 2016 in C. P. (IB) No. 32/BB/2020, in respect of a debt of Rs.3,15,28,583/-. This Adjudicating Authority *vide* order dt.08.03.2022, admitted their Petition and appointed the Respondent herein as the IRP.
- (h) Simultaneously, the Applicant also filed a Section 7 proceeding against the Corporate Debtor in C.P. (IB) No. 109/BB/2020. However, on 08.03.2022, the Tribunal disposed of this petition, citing the initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor in C.P. (IB) No. 32/BB/2020. The Applicant was directed to file the company's claims with the IRP appointed in C.P. (IB) No. 32/BB/2020.
- (i) In accordance with Section 15 of the Code, the Respondent issued a public announcement regarding the initiation of the CIRP against the CD, and invited submission of claims by the Stakeholders of the CD. It is stated that Applicant has raised a claim of a total amount of Rs. 2,55,99,013/- as of 08.03.2022 (Insolvency Commencement Date) including a Principal amount of Rs. 1,00,00,000/- and Dividend of Rs. 1,55,99,013/- calculated at 2% per month, compounded quarterly from 20.01.2016 to 31.01.2022.
- (j) The Applicant submitted a Form-C claim of Rs. 2,55,99,013/- to the RP *vide* email on 18.06.2022, as part of the CD's insolvency proceedings. Despite several reminders, the Respondent delayed processing the claim. On 10.11.2022, the Respondent-RP admitted only a partial claim of Rs.50,00,000/- as principal amount with simple interest totally amounting to Rs.1,13,92,008/-, rejecting a significant portion of the claimed amount. Being aggrieved, the Applicant brought the matter to the attention of the Committee of Creditors (CoC) during a meeting on 11.11.2022.

- (k) The Applicant, in an email dated 15.11.2022, informed the Respondent about an additional cash payment of Rs. 50,00,000/- made on 19.01.2016, supported by promissory notes and cheques issued by the Corporate Debtor's Designated Partner, Mr. Kirti Mehta. The Respondent, upon checking with the Corporate Debtor, denied receiving the cash and claimed it did not reflect in the books, contradicting the documentary evidence provided by the Applicant. The Applicant requested a revaluation of the admitted claim.
- (l) In response to the Applicant's request for revaluation, the Respondent, in an email dated 16.11.2022, accepted the CD's denial without independent verification. The Respondent claimed that the CD issued promissory notes against cheque payments, which contradicts the Applicant's evidence. The Applicant contested the Respondent's reliance on the CD's statements without conducting a proper inquiry.
- (m) In an email dated 15.11.2022, the Applicant notified the Respondent of two major discrepancies in their claim evaluation. First, an omission of Rs. 50,00,000/- and second, an error in interest calculation. The Agreements specified a minimum dividend of 2% per month compounded quarterly, but the Respondent incorrectly applied a flat 24% simple interest. The Respondent, in a reply on 16.11.2022, justified the method, claiming it was consistent with other financial creditors and expressed reluctance to revise it.
- (n) Despite the Applicant's objections, the Respondent proceeded to submit and taken approval for a Resolution Plan on 20.12.2022, excluding the Applicant's contested claims. The Respondent-RP argued against revising interest calculations and asserted that overall claims would rise. The approval by the CoC was perceived by the Applicant as fundamentally illegal and untenable.
- (o) The Applicant contends that the Respondent's treatment of their claim is unjust, illogical, and contrary to established principles, as highlighted in the IBBI CIRP Regulations, 2016. Regulation 8(1) outlines the manner of submitting claims by the financial creditors, emphasizing the need for proper documentation to prove the existence of a debt owed by the CD.

- (p) The Applicant contends that the RP has exceeded administrative powers by baselessly rejecting the Applicant's claim of Rs.50,00,000. The Respondent, without proper scrutiny or independent inquiry, disregarded documentary evidence, including five promissory notes and cheques, acknowledging the CD's total debt of Rs. 1,00,00,000 to the Applicant, and no justifiable reasons were provided for this rejection.
- (q) The Applicant asserts that the Resolution Plan submitted by M/s. S. A. Enterprises is inherently illegal, as it fails to consider the complete debt owed to the Applicant. Such a flawed consideration renders the Plan unsustainable and the rejection of more than half of the Applicant's claim by the Respondent affects the Applicant's substantial voting rights in the CoC. Therefore, the Applicant seeks to set aside the Resolution Plan to address the Applicant's claim equitably, as the same was unjustly diminished.
- 3.** The Respondent-Resolution Professional has filed his objections *vide* Diary No.2181 dated 19.04.2023 *inter alia* contending as under:
- (a) The Respondent contends that the Applicant made a claim of Rs.2,55,99,013/- with the Respondent but the latter has admitted only Rs. 1,13,92,008/- and rejected the balance amount, and that there was inordinate delay on part of the Respondent in responding to the claim filed by the Applicant. The Applicant states that it had filed its Form C with the Respondent via email on 18.06.2022. However, the Respondent points out that as per Regulation 12(2) of the IBBI Regulations, the Applicant should have submitted its claim within 90 days of the CIRP commencement i.e. by 06.06.2022.
- (b) The Respondent further contends that the Applicant failed to follow proper communication procedures by sending emails to the personal email ID instead of the official CIRP email mentioned in public announcements. The Applicant's lack of inquiries and delayed communication cannot be blamed on the Respondent for the errors in submitting the claim.
- (c) Further also it is contended that the Applicant asserts that, based on two Agreements dated 23.02.2016, it was obligated to invest Rs. 49,98,000 each for flats B-1004 and B-1204 in the CD's project. An amount of Rs.

50,00,000 was transferred to the Corporate Debtor on 20.01.2016. However, the Applicant now claims to have made a cash payment of Rs. 50,00,000 on 19.01.2016. The Applicant argues that five demand promissory notes were issued by the Corporate Debtor on 19.01.2016 as acknowledgment. However, during verification of the claim, the Respondent did not find any record of receipt of any cash payments from the Applicant in the CD's books and therefore, the claim of the Applicant in respect of alleged cash payments were rejected.

- (e) Further, the Applicant has not provided any documentary proof to show issuance of the purported promissory notes was towards the transaction alleged by the Applicant. Further, the purported notes produced by the Applicant is in favour of Mr. Manoj Gupta and not the Applicant and therefore, production of the said notes appears to be with mala fide intent.
- (f) It is needless to state that it is illegal to make any investment by cash to the extent of the amounts alleged by the Applicant and no explanation has been given in its application as to how a Company could even advance investment by way of cash. Therefore, the conduct of the Applicant itself would come under question. Further, even on perusal of the Agreements produced by the Applicants at Page Nos.19-36 of the Application, it is evidenced that the aspect of alleged investment is nowhere mentioned.
- (g) It is the contention of the Applicant that the cash investment was made by the Applicant on 18.01.2016. However, the Agreements, which were executed subsequently on 23.02.2016, have no reference of the same. The said Agreements duly acknowledge the receipt of the amounts received by the Applicant vide RTGS but remain silent on the alleged cash investments.
- (h) The Respondent denied the allegation that he has not conducted independent investigation enquiry/verification of claims as he has issued email on 15.11.2022 to the erstwhile management of the CD seeking explanation from them regarding the claim filed by the Applicant. The Respondent received a reply on 16.11.2022, asserting that only one transaction for an amount of Rs.50 Lakhs was forthcoming in the books of accounts. Copies of the e-mail communications are placed on record. It is contended that the RP has undertaken careful examination of the books of accounts of the CD and concluded that there was no record of cash

payment to the tune of Rs.50 Lakhs being mentioned in the said books. Accordingly, the Applicant's claim was partially accepted and the same was communicated to the Applicant vide email dated 10.11.2022.

- (i) The Applicant had produced five cheques issued by the Authorised Representative to state that the said cheques were issued towards 'part payment' of the principal amount invested by the Applicant in the CD. However, no documents have been produced by the Applicant to support such a claim. It is averred that the said cheques were dishonoured when presented for encashment. It is pertinent to note that even the said cheques are not drawn in favour of the Applicant but are drawn in favour of the Authorised Representative of the Applicant and no explanation is again forthcoming as to why cheques would be drawn in favour of the Authorised Representative of the Applicant when it has been claimed all along that it was the Applicant which had allegedly invested cash in the CD's Project. Therefore, the claim of the Applicant as regards alleged cash investment was rightly rejected by the Respondents for the said reasons.
- (j) Further, the Applicant has chosen to file this application challenging the partial rejection of its claim only after approval of the Resolution Plan where it was also part of the CoC. The Plan was approved by CoC on 20.12.2022 and only after a delay of 92 days from the date of rejection of its partial claim, the present application has been filed.
- (k) The Applicant's sole contention for setting aside of the Resolution Plan was the rejection of the part of the claim filed by the Applicant. However, it is now clear that the Applicant is not entitled to claim either principal or interest of the purported 'cash investment' alleged to have been made by it in the CD. Further, the Applicant has not attended the CoC meeting held on 20.12.2022 in which the resolution was accepted by the CoC. The Applicant has also not voted on the resolution items of the said CoC meeting, one of them being approval of the Resolution Plan. Such conduct is indicative of the dis-interest of the Applicant in the entire CIRP of CD. The instant application is only filed to scuttle the CIRP of the CD and is thus liable to be dismissed.

4. Heard the Ld. Counsels appearing for the Applicant and the Respondent-Resolution Professional and perused the pleadings on record.
5. It is the case of the Applicant that M/s. Parag Finlease Pvt. Ltd, a financial creditor, invested Rs. 50,00,000 in M/s. Unishire Lifestyle Dwellings LLP for the '*Unishire Triumph*' project in Bangalore. The investment, outlined in two Agreements dated 23.02.2016, entitled the Applicant to a minimum 2% monthly compounded quarterly dividend. Two residential units served as security, with a buy-back option for the Corporate Debtor (CD) and an option for the Applicant to sell with permission. Despite the Agreements, the CD failed to pay dividends. The Applicant's constant follow-ups led to dishonoured cheques in 2019, indicating the CD's debt acknowledgment. In parallel, other financial creditors initiated insolvency proceedings against the CD, resulting in the Applicant filing a claim of Rs. 2,55,99,013/- as of 08.03.2022. The Applicant submitted a Form-C claim on 18.06.2022, but the Respondent-Resolution Professional, delayed processing. On 10.11.2022, the RP admitted only a partial claim amounting to Rs.1,13,92,008/-, prompting the Applicant to inform the Committee of Creditors (CoC) during a meeting on 11.11.2022. The Applicant revealed an additional Rs. 50,00,000 cash payment made on 19.01.2016, supported by promissory notes and cheques, which the RP, without verifying, rejected. The Applicant protested, citing discrepancies in the claimed amount and interest calculation. The RP, justifying its method, proceeded with an excluded Resolution Plan which was approved on 20.12.2022. The Applicant aims to rectify these injustices and ensure equitable treatment in accordance with the IBBI CIRP Regulations, 2016.
6. On the other hand, the Respondent in its objections has contended that the Applicant filed a claim of Rs. 2,55,99,013 with the Respondent, who admitted only Rs. 1,13,92,008, citing delays and non-compliance with Regulations. The Applicant claims a cash investment of Rs. 50,00,000, supported by demand promissory notes. However, the Respondent contends that no cash receipt evidence exists, and the purported notes favor Mr. Manoj Gupta, raising doubts about the claim's authenticity. The RP, having sought explanations from the CD's management and finding no cash entry, partially accepted the claim. The Applicant's reliance on dishonoured cheques, not in its name, is

challenged. Additionally, the Applicant challenges the rejection only post-Resolution Plan approval, indicating potential ulterior motives.

- 7.** On perusal of the records, it is seen that the Respondent has undertaken examination of the books of accounts of the Corporate Debtor and has come to the conclusion that there was no record of cash payment to the tune of Rs.50,00,000/- being mentioned. Therefore, the claim of the Applicant was partially accepted by the Respondent and the same was also communicated to the Applicant *vide* email dated 10.11.2022. Further, the Respondent sent email dated 15.11.2022 to the erstwhile management of the Corporate Debtor seeking explanation from them regarding the claim filed by the Applicant herein. The Respondent received a reply email dated 16.11.2022, asserting that only one transaction for an amount of Rs.50 Lakhs was forthcoming in the books of accounts. Therefore, we are of the view that Respondent has duly verified the books of accounts and cannot be faulted upon his duties.
- 8.** In compliance to Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulations, 2016”), the Respondent herein has issued public announcement in Form-A calling upon the Creditors of the Corporate Debtor to submit their claims with proof on or before 30.03.2022. Further, as rightly contended by the RP, the Applicant has not attended the CoC meeting held on 20.12.2022, in which the Resolution Plan was accepted by the CoC and the Applicant has also not voted on the Resolution items of the said CoC meeting, one of them being the approval of Resolution Plan. The Applicant filed the instant IA only on 10.02.2023 i.e. after a delay of 92 days from the date of rejection of its partial claim on 10.11.2022.
- 9.** As per Regulation 12(2) of the CIRP Regulations, 2016, the Applicant was bound to submit its claim with the Respondent within 90 days from the date of the commencement of CIRP. Thus, in the instant case, the Applicant ought to have filed its claim on or before 06.06.2022. However, the Applicant herein has filed the claim in Form-C dated 17.06.2022 to the RP *vide* e-mail dated 18.06.2022. Therefore, there was a delay on part of the Applicant in filing the dues with the Applicant. Moreover, as stated *supra*, in another Section 7 application bearing CP (IB) No.109/BB/2020 filed by the Applicant herein

against the same Corporate Debtor i.e. M/s. Unishire Lifestyle Dwellings LLP, this Adjudicating Authority *vide* order dated 08.03.2022 passed in CP (IB) No.109/BB/2020 had granted liberty to the Applicant herein to prefer its claims, if any, to the IRP appointed in CP (IB) No.32/BB/2020 in accordance with the Code and Regulations made thereunder. However, when the IRP issued public announcement on 16.03.2022 inviting claims from the creditors of the Corporate Debtor, the Applicant herein, inspite of having knowledge about the CIRP Process against the Corporate Debtor has filed its claim to the Respondent-RP by e-mail only on 18.06.2022. It is also observed that the RP has considered the claim of the Applicant even though it is filed belatedly by the Applicant without any condonation application approval of this Adjudicating Authority.

- 10.** Moreover, it is apt to refer the recent Judgment passed by the Hon'ble Supreme Court in *RPS Infrastructure Ltd. v. Mukul Kumar & Anr.* in Civil Appeal No.5590 of 2021 dated 11.09.2023, wherein, at paras 20 to 22 it is held as under:

“20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

21. The mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”

- 11.** Considering the aforesaid decision of the Hon'ble Supreme Court that, mere fact that the Adjudicating Authority has not yet approved the Plan does not imply that the Plan can go back and forth, thereby making the CIRP an endless process as this would result in the reopening of the whole issue. Moreover, it is not the case of the Applicant that his claim was completely

rejected. Instead, even though it is filed belatedly, the Respondent has partly admitted the claim of the Applicant after due verification of the books of accounts of the Corporate Debtor and also by seeking clarification from the erstwhile management of the Corporate Debtor.

12. In view of the foregoing reasons, we are of the considered view that the instant Application is not maintainable. Accordingly, **IA No.107 of 2023 is hereby dismissed.**

Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

jsr

Sd/-

**K. BISWAL
MEMBER (JUDICIAL)**