

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.-103
IA-3216/2020

In
IB -1771(ND)/2018

IN THE MATTER OF:

Ms. Priyanshi Arora
Vs.
M/s. Dream Procon Pvt. Ltd.

....FINANCIAL CREDITOR
....CORPORATE DEBTOR

SECTION

U/s 7 IBC Code 2016

Order delivered on 06.11.2020

CORAM:

CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

PRESENT:

For the Applicant/FC : -
For the Respondent/CD : -

For the Intervener : -

ORDER

IA.3216 :

The matter stands adjourned.

List on 18.11.2020.

-Sal-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

-Sal-

(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)

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IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, DELHI
BENCH III

IA-3665/2020 filed under Section 60(5)
of IBC, 2016 in CP No. IB-
1771(ND)/2018

In the matter of Dream Procon Private Limited.

Priyanshi Arora

....Financial Creditor

Versus

Dream Procon Private Limited

....Corporate Debtor

And

In the matter of IA-3665/2020 filed under Section 60(5)

Mr. Sanjay Jain

.... Applicant

Versus

Mr. Nilesh Sharma

RP for CD

.... Non-Applicant

Order delivered 6th November, 2020

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Mr. NARENDRA KUMAR BHOLA, MEMBER (TECHNICAL)

For Applicant: Mr. Vaibhav Tyagi (Advocate)

For RP: Mr. P. Nagesh, Mr. Milan Negi (Advocates)

ORDER

(Through Video Conferencing)

1. The Counsel for the Applicant is present. The Ld. Counsel for the RP is present. Heard the final submissions made by the Ld. Counsels on behalf of the rival parties.

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2. The challenge under the Application is with regard to the reduction of the claim of the Applicant from Rs. 5.20 Crores (Rupees Five Crores Twenty Lakhs) to Rs. 30 Lakhs (Rupees Thirty Lakhs). The Counsel for the Applicant submitted that the claim of the Applicant is based on the Letter(s) of Allotment/MoUs dated 07.06.2017, 01.10.2017, 01.7.2018 and 01.10.2018 (Two MoUs). In other words, five MoUs were entered into between the Applicant and the CD.

3. In relation to MOU dated 01.10.2017, two units were allotted and one more unit was allotted in relation to the MoU dated 01.10.2018 to the Applicant as one set of arrangement. The second set of arrangement is with regard to MoUs dated 07.06.2017 and 01.07.2018 where under four units were allotted by the CD to the applicant. The third set of arrangement is with regard to MoU dated 01.10.2018 where under three units were allotted in favour of the Applicant by the CD. In total ten units were allotted to the applicant as collateral security against principal sum, which was to be paid by the CD to the applicant.

4. Based on these letter(s) of allotment/MoUs, the claim to the tune of Rs.5.20 Crores (Rupees Five Crore Twenty Lakhs) were filed on 28th Oct, 2019 by the applicant before the IRP and the claim was admitted by the IRP on 6th Nov.2019, but at that point of time the IRP had no advantage of having record of the CD. However, when the RP has been appointed, the claim was reviewed based on the available record of the CD and restricted to Rs.30 Lakhs only (Rupees Thirty Lakhs Only), which reflects from stake holders list dated 07.09.2020.

5. It reflects from the record of the CD that on 06.06.2017, an amount of Rs.5.00 lakhs (Rupees Five Lakhs) and on 26.09.2017 an amount of Rs.25.00

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Lakhs (Rupees Twenty-Five Lakhs) were paid by the Applicant to the CD. The CD issued cheques to the Applicant with the stipulation that if the principal amount is not paid within one year then the cheques would be presented. As per the submissions of the Counsel for the Applicant, the cheques were presented and dishonored. The counsel for the applicant has pleaded that as per the Allotment Letter(s)/MoUs the amount(s) towards Consultancy and liaisoning services rendered by the applicant to the CD and its group companies was adjusted. In short, the counsel for the applicant heavily relied upon the Allotment Letter(s)/MoUs and cheques issued to prove the claim amounting to Rs 5.20 Crores (Rupees Five Crore Twenty Lakhs).

6. The Counsel for the IRP submitted that on 21.03.2020 a communication was sent to the Applicant for seeking clarifications and providing the documentary evidence to verify his claim, to which a reply has been received on 27.03.2020 whereby it has been stated that towards the Consultancy and liaisoning services, the invoices were raised and the original invoice were given to the CD. However, no record was produced in order to establish the fact about any agreement between the Applicant and the CD with regard to the Consultancy and liaisoning services. It is further brought to our notice by the Counsel for the RP that when invoices are raised payments towards Service Tax is to be made and duplicates are retained. But applicant failed to provide the duplicate and proof of payment of Service Tax. It is further submitted by the counsel for the RP that the invoices are stated to have been raised at the instance of the Petitioner and he cannot deny the existence of the duplicate invoices and the payment of Service Tax.

7. During the course of hearing, this Authority has raised the query as to whether the Petitioner is a proprietor of any firm through which the services of Consultancy and liaisoning were provided to the CD and its group companies.

The answer given by the Ld. Counsel for the Petitioner was in negative, he stated that the Applicant is an individual.

8. It is noted that the verification of claim carried out by the RP about the claim of the Applicant on the basis of the record of the CD is correct, as the payment made by the Applicant to the CD is Rs.30 Lakhs only (Rupees Thirty Lakhs Only), which is mentioned in preceding paragraphs. The Allotment Letter(s)/MOUs, and cheques under which 10 units seem to have been allotted to the Applicant have no basis at all. One cannot imagine that there can be a claim of Rs 5.20 Crores (Rupees Five Crore Twenty Lakhs) in lieu of the amount of Rs.30 Lakhs (Rupees Thirty Lakhs) advanced by the Petitioner to the CD. It is further noted that the allotment letter(s)/MOUs provide for 27% interest per annum on the principal sum for which there does not appear any agreement. The whole process of these Allotment Letter(s)/MOUs appears to be fraud and such transactions have no legal backing, as no admissible documentary evidence is placed on record to prove the transactions. Even, there is no record of duplicate invoices and payment of Service Tax. Therefore, the Application is devoid of merits and is **rejected**.

9. The order is dictated and pronounced through virtual hearings.

-*8d-*

NARENDRA KUMAR BHOLA
MEMBER (Technical)

-*2d-*

CH. MOHD SHARIEF TARIQ
MEMBER (Judicial)