

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, NEW DELHI
BENCH- III

In The Matter Of Dream Procon Pvt Ltd

Priyanshi Arora

...Financial Creditor

Versus

Dream Procon Pvt Ltd

...Corporate Debtor

IN THE MATTER OF

IA No. 3231/2020

In

IB-1771(ND)/2018

Application u/section
60(5)of the IBC, 2016.

Ravi Sharma

...Applicant

Versus

Nilesh Sharma

(RP for Dream Procon Pvt Ltd)

...Respondent

Order Delivered on 22nd of March 2021

Coram:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI. NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For Applicant: Mr. Sumesh Dhawan, Mr. Vatsal Kak, Ms. Ankita Bajpai,
Mr. Jasvin Dham, Ms. Geetika Sharma,
Ms. Apoorva Choudhary (Advocates)

For RP: Mr. Milan Singh Negi, Ms. Ashu Kansal (Advocates).

ORDER

Per: CH.MOHD SHARIEF TARIQ

1. Under consideration is IA No. 3231/2020 filed by the Applicant viz., *Mr. Ravi Sharma* (hereinafter referred as "Applicant") under section 60(5) of Insolvency and Bankruptcy Code, 2016 for seeking directions to the Resolution Professional viz., *Mr. Nilesh Sharma* (hereinafter referred as "Resolution Professional/Respondent") to restore the admission of the claim of the Applicant submitted to the Interim Resolution Professional viz., Mr. Manish Gupta (hereinafter referred as "IRP") in Form CA as a Financial Creditor in a class of the Corporate Debtor viz., *Dream Procon Pvt Ltd.*

Factual Matrix

2. The financial creditor viz., Ms. Priyanshi Arora (hereinafter referred as "Financial Creditor") had filed an application under section 7 of IBC R/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) and vide Order dated 06.09.2019, CIRP was initiated, moratorium declared and IRP viz., Mr. Manish Gupta was appointed.

3. The Public announcement was done on 17.10.2019 for calling of claims by the creditors of the Corporate Debtor. The Applicant submitted its claim to the IRP for an amount of Rs. 18, 89, 16,726/- in Form CA as a financial creditor in class of the Corporate Debtor. The IRP admitted the claim of the Applicant on 06.12.2019 after updating the list of the Financial Creditors in a Class. The Applicant was invited to vote in the 2nd CoC Meeting vide E-mail dated 24.12.2019. This Authority vide Order dated 16.10.2020 appointed Mr. Nilesh Sharma as the Resolution Professional.

Submissions of the Applicant

4. It is stated that the Applicant had purchased 13 units in the Victory Ace Project of the Corporate Debtor for an amount of Rs. 11,38,30350/- (Rupees Eleven Crore Thirty-Eight Lacs Thirty Thousand Three Hundred and Fifty Only) paid in advance partly in cash and through Cheque. An allotment Letter dated 09.11.2013 was issued acknowledging the full payment and a confirmation regarding the

monthly return of Rs. 11,34,533/- payable on quarterly basis within 10 days after end of every quarter till the handover of physical possession of the flats. The Corporate Debtor issued Post Dated Cheques towards return for 36 months and in case of delay of possession of the completed flats beyond 36 months additional Post-Dated Cheques would be issued towards return for additional months until the date of final possession and handover of flats. Pursuant to the issuance of the Letter 13 (Thirteen) Builder Buyer Agreement were also executed. It was agreed that the Project shall be completed within 30 months from the approval of sanction map or execution of allotment or further with an extended period of 3-6 months and in case of delay in construction of the said units the Corporate Debtor would pay a sum at the rate of Rs. 5/- per sq. ft. of super area per month towards delayed period to the Allottees. The Corporate Debtor further issued 90 Cheques for a sum of Rs. 1,00,000/- each totalling to Rs. 90,00,000/- towards part payment of the monthly interest and on presentation before the bank only 66 cheques of Rs. 1,00,000/- totalling to Rs. 66,00,000/- were encashed and 24 cheques got dishonoured.

5. The Applicant was in receipt of the email dated 28.05.2020 from the Office of the Resolution Professional requesting the homebuyers [COC Members] to make voluntary contribution for carrying on the CIR Process and keeping the Corporate Debtor as a going concern. The Applicant received email dated 24.04.2020 from the Office from the Resolution Professional wherein updated list of Financial Creditors (Home Buyers) as on 20.04.2020 was attached and the claims submitted by the Applicant was under review. The Resolution Professional without even seeking any clarification from the Applicant accepted the claim amount only to the extent of Rs. 3,85,03,259/-

6. The Applicant has referred to Regulation 13 of CIRP Regulations, which provides for verification of claims; Regulation 14, which provides for determination of amount of claim/revising the amount of claim on coming across additional information and submitted that the claim filed by the Applicant before the IRP was admitted unconditionally and any power to review is allowed if the claim admitted, is a contingent claim. Further, the IRP or Resolution Professional is duty bound to verify the claims submitted by the creditors and the code does not empower the Resolution Professional to adjudicate on the claims admitted without any conditions.

7. It is submitted that the Resolution Professional could not have re-examined the admitted claims therefore, there was no question of providing any clarification or reasoning for the claim by the Applicant. Further, the Resolution Professional failed to elaborate regarding the provision under which the claim of the Applicant was reduced from Rs. 18,89,16,726 to 3,85,03,259/-.

Reply by Resolution Professional

8. The Resolution Professional viz., Mr. Nilesh Sharma has filed counter affidavit and submitted that the IRP had admitted the claim of the Applicant without any proper records for verification of the claim and without an intention to prejudice the interest of the Applicant, the claim of the applicant for Flat No. D1-1201 was admitted. Further, the list of flat numbers does not provide that the Flat Nos. C1-701, D1 - 801 and D1-1201 were allotted to the Applicant. It is further submitted that post appointment of the Resolution Professional it was realized that the books of account (tally data) and customer Relationship Management data (CRM data) was not available with the IRP therefore, the claims verified was subject to correction. The Resolution Professional collated and verified the same and updated the list of creditors as on 20.04.2020 and the list mentioned the admission was subject to revision. The Resolution Professional verified claims and revised in terms of Regulation 14 (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

9. It is stated that during the process of verification, based on additional information, the Resolution Professional learnt that a large number of flats were agreed to be sold by the Corporate Debtor/its Promoters to more than one buyer and in effect, same flat was sold to two homebuyers on different dates or was even sold to third homebuyer. Therefore, in the interest of homebuyers/financial creditors it was necessary for the Resolution Professional to look in to the fact and verify/revise the claims and thereafter update the list of creditors dated 19.06.2020 based upon the information received up to 17.06.2020.

10. Reference has been made to Regulation 14(2) of the CIRP Regulations, which provides for revision of admitted claims in case any additional information is received. It is further stated that the sub-regulation (2) is divided into two parts and on careful reading of the sub-regulation it is made clear that the revision can be carried out independently and for this reason the word including in the beginning of the second part of the sub-regulation (2) denotes that the estimates if any made under sub-regulation (1) are to be revised along with the claims admitted by the Resolution Professional. Therefore, the Resolution Professional is within his set of rights and duties to revise the admitted claims based on the additional information received by him from the tally and CRM data.

11. Further, it is submitted that the Applicant is recognised as financial creditor under the explanation provided in Serial No. (i) of the explanation to clause (f) of Sub-section (8) of Section 5 of IBC, 2016 which provides that any amount raised from an Allottee under a real estate project shall be deemed to be an amount having the commercial effect of borrowing and therefore, the amounts raised under the Project Victory Ace, by the Corporate Debtor from the applicant finds place in the definition of financial debt. It is averred that the amount raised as per Section 5(8) (f) of IBC, 2016 would include only those amounts which are actually paid/disbursed to the Corporate Debtor and is reflected in the Books of Account of the Corporate Debtor or are duly substantiated by legal and valid documents/instruments. But any other amount neither mentioned nor recorded in the books of accounts cannot be eligible to be treated as a financial debt in terms of Section 5 (8) of IBC, 2016 and ought to be rejected.

12. It is further, submitted by the resolution professional that the amount of Rs. 11, 38, 30,350/- claimed to have been paid by the Applicant partly through cheque and partly in cash as stated under para 3 of the application is not substantiated with any valid documentary evidence. Even, the applicant failed to demonstrate the exact amount paid by through any particular mode.

13. It is further submitted that the applicant is heavily relying upon the letter dated 09.11.2013 issued under the signature(s) of a suspended director of the Corporate

Debtor wherein confirmation of receiving full payment @ Rs. 4,150/- per sq. ft. has been given against the flats allotted in favour of the Applicant. However, on perusal of the said letter by the Resolution Professional, it revealed that the same is not an accounting receipt and hence not admissible for the purpose of verification of the claim. It also submitted that the account receipt is a numbered receipt based on which entries are made in the books of account of the Corporate Debtor and the amounts received by the Corporate Debtor under such accounting receipt can be identified and verified from the books and if the receipts are not numbered, the amounts claimed to have been paid by a party to the Corporate Debtor cannot be accounted for, hence such amounts need to be verified at the hands of the Resolution Professional for the purpose keeping the account straight.

14. The applicant has taken the plea of assured return, and interest at the requisite rate, and relied on the letter dated 09.11.2013 issued under the signature(s) of the suspended Director of the corporate Debtor and also placed on record certain cheques, issued by the Corporate Debtor, out of which Rs. 66, 00,000/- are stated to have been encashed. In this connection, the Resolution Professional while verifying the claim accounted the interest @ 8% p.a. as provided under Regulation 16A (7) of the CIRP Regulations therefore, once the requisite rate has been accounted for, no case of assured return would survive and the same has been admitted by the applicant in the Para 8 of the Application. The alleged amount of assured return, which otherwise is not substantiated by any instrument/agreement, purportedly promised to be paid by the Corporate Debtor cannot be construed as a proof of disbursal or payment of the total consideration by the Applicant to the Corporate Debtor for the purchase of said flats.

15. The Resolution Professional in support of his submissions has relied upon the Judgement of Hon'ble Supreme Court namely, *Swiss Ribbons Pvt Ltd. & Anr. Vs. Union of India & Ors.*, wherein the Apex Court has held that the Resolution Professional has the power to vet and verify the claims made and ultimately determine the amount of each claim.

16. We have heard the Ld. Counsels for both the sides, perused the pleadings and documents placed on record. The main issue before this Authority is *whether the Resolution Professional has rightly revised the claim of the Applicant to the tune of Rs. 3,85,03,259/-?*

17. In connection with the issue famed above, it is appropriate to first look into the duties of IRP/Resolution Professional in relation to claims as provided under Section 18 and 25 of IBC, 2016 and the relevant IBBI Regulations. The relevant extract of Section 18 is as under:

"18. Duties of interim resolution professional. – (1) The interim resolution professional shall perform the following duties, namely: —

*(a) *****

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15.

*(c) ****"*

Further, the Section 25 of IBC, 2016 inter alia states as under:-

"25 - Duties of resolution professional.

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: —

(e) Maintain an updated list of claims;"

(k) such other actions as may be specified by the Board."

18. In the above background, it is relevant to refer the Regulation 10, 13 and 14 of the CIRP Regulations, 2016 which are to be followed by the IRP/Resolution Professional while collating the claims, the extracts of Regulation 10, 13 and 14 are as under: -

"10. Substantiation of claims. - The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

13. Verification of claims. – (1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

14. Determination of amount of claim. (1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him. (2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision."

19. After going through the provisions of the Code and the IBBI Regulations, it is obligatory on the part of the IRP/Resolution Professional to collate, verify, and admit such claims of all the creditors, which are duly supported by appropriate evidence along with proper books of account of the Corporate Debtor. Therefore, the IRP/Resolution Professional can always ask for information/documents/evidence from the creditors necessary for the purpose of verification/substantiation of claims and even can revise the amount of claim, when he (RP) comes across additional information i.e., the books of account (tally data) and customer Relationship Management data (CRM data), warranting such revision, as is done in the case on hand.

20. In the present application, it is stated that the Cheques issued by the Corporate Debtor have been dishonoured; but no endorsement/receipt from the bank stating the reasons for the dishonour has been attached. Further, the Applicant himself has admitted that he has made payments partly in cash and partly by cheques. However, the letter of the suspended director being relied upon by the applicant is not an accounting receipt and hence not admissible in evidence for the purpose of verification of the claim.

21. Thus, Resolution Professional has rightly collated/revised the claim to Rs. 3,85,03,259/- after allowing interest of 8% on the admitted amount, which is correctly calculated and the same is not arbitrary in nature. Therefore, does not warrant the issuance of any direction by this Authority to the Resolution Professional, as prayed for by the applicant.

22. In view of above, the present IA-3231/2020 is **dismissed**.

23. Order is pronounced through video conferencing.

—Sd—
NARENDRA KUMAR BHOLA
Member (Technical)

—Sd—
CH. MOHD SHARIEF TARIQ
Member (Judicial)