

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IA(IBC)/1141(CHE)/2021

In

CP/938/IB/2018

(filed under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules 2016)

K. Amutha,
No. 19, 1 Cross Street,
Bharathi Nagar,
Ambattur, Chennai-600 053.

Applicant

Vs.

**Resolution Professional of
M/s. Ambojini Property Developers Private Limited,**
Mr. Anil Kumar Khicha
6, First Floor, Golden Enclave - 184,
Poonamallee High Court (Opp. Taylors Road Signal) Kilpauk,
Chennai - 600 010.

... Respondent

Order Pronounced on 04th April 2024

CORAM

**SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Present:

For Resolution Professional : Mr.E.Omprakash, Sr. Advocate
Priyanka Verma, Advocate,
Mr.Anil Kumar Kicha,(RP in person)

For Applicants : Mr.Amritha Sathyahith, Advocate in

ORDER

(Physical Hearing)

This Application has been filed under Section 60(5) of
Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules,

2016 by one K.Amutha against the Resolution Professional of the Corporate Debtor seeking reliefs as follows,

"To direct the Respondent to admit the entire claim of the Applicant, being a sum of Rs. 35,20,000/- (Rupees Thirty Five Lakhs and Twenty Thousand only), inclusive of interest of Rs. 15,20,000/- (Rupees Fifteen Lakhs and twenty Thousand only);"

2. It is stated that the Applicant had booked a 2 BHK apartment bearing No.B in Block, measuring 1163 Sq.Ft. in the project named Sai Peace & Prosperity in Taramani (hereinafter referred to as 'Project') promoted by the Corporate Debtor.

3. It is stated that as per the booking form furnished by the Corporate Debtor the Applicant is required to pay Rs.20,00,000/- as advance to the Corporate Debtor. It is stated that the Applicant paid Rs.2,50,000/- through cheque and remaining Rs.17,50,000/- in cash as booking advance. The receipts of the said transactions is attached in this application.

4. Since there was no progress in the construction project the Applicant made requests to refund the advance paid by her. Despite several requests the Corporate Debtor refused to refund the advance. However, the Corporate Debtor and the parent company of the Corporate Debtor viz. Real Value Promoters Private Limited (for brevity Real Value Promoters) continued to provide

commitments to construct and handover the apartment to the Applicant.

5. Meanwhile the Corporate Debtor was admitted to CIRP vide order dated 10.09.2019 and Dr.L.Natarajan was appointed as Interim Resolution Professional (IRP). Subsequently, the applicant had submitted claim with the IRP for a sum of Rs.35,20,000/-. Since she has not received any reply from the IRP she enquired the members of the Sai Pease & Prosperity Apartment Owner's Association (Association formed by the homebuyers of the project for brevity 'Association') and learned that the IRP has been replaced by Mr. Anil Kumar Kicha/ Respondent herein.

6. It is stated that the Applicant came to understand that several members of the Association had filed claims before the Respondent and were waiting for the confirmation. The Applicant was under the *bona fide* belief that her claim would also be considered and admitted by the Respondent.

7. It is further stated that on 05.01.2021 the applicant learned that in the list of admitted claims published by Respondent her claim was admitted only to the extent of Rs.3,77,178/-. Thereafter vide 08.07.2021 the Applicant had explained the details of her total claim of Rs.20,00,000/- to the Respondent and contended that the admission of claim only to the extent of Rs.3,77,178/- is *ex facie*

illegal and invalid. Since the Applicant had not received any reply from the Respondent filed this application.

8. In the reply the Resolution Professional stated that there is no entry in the books of the Corporate Debtor that it has received cash payment from the Applicant for the purchase of residential units from the Project. It is further stated that some of the homebuyers made payments to the account of Real Value Promoters for the project being developed by the Corporate Debtor.

9. It is stated that the erstwhile managements of the Corporate Debtor and Real Value Promoters instructed the home buyers to make cash payments for the apartments booked by them but these transactions are not reflected in the books of the Corporate Debtor. However, the RP had preferred an application under Section 66 of IBC, 2016 to secure the interest of the Corporate Debtor.

10. It is stated that the erstwhile promoter of the Corporate Debtor had provided an Affidavit along with a list of homebuyers which provides the details of some homebuyers who paid in cash under the instruction of the erstwhile management. It is stated that affidavit was filed by the promoters in Hon'ble Bombay High Court in an Arbitration Petition which is still pending.

11. It is stated that Applicant name is not found in that affidavit. The RP had enquired about the further details of the amount paid

in cash. But the Applicant had not provided any clarifications in respect of her claim form dated 03.10.2019.

12. It is argued by the RP that he has only limited powers in verification of claims and in support of his argument he relied on the Judgement of Hon'ble Supreme Court in **Swiss Ribbons Vs. Union of India** (2019 SCC Online SC 73) wherein it was held as under

"58. It is clear from a reading of the Code as well as Regulations that the Resolution Professional has no adjudicatory powers. Section 18 of the Code lays down the duties of the Interim Resolution Professional.

...

59. Under the CIRP Regulations, the resolution professional has to vet and verify claims made..."

13. RP further submitted that a Resolution Plan approved by the 95% of the CoC is filed before this Tribunal for approval at this stage entertaining this application will be prejudicial to the interest of the other stakeholders.

14. Heard the Ld. Counsels of both the parties and perused the documents on record.

15. It is seen from the booking form that the Applicant viz. K.Amutha had booked an apartment in the Project costing Rs.82,23,072/-. In the booking form, it is recorded that the Applicant had paid Rs.20 lakh as booking advance. The extract of the booking form is reproduced below,

Cost & Payment Details : Block No.: 2 Floor.: 14 Apartment No.: "B"

a) Area of the Apartment	1163 Sq.ft.	226
b) Rate per Sq.ft	(6868-275) <i>Ms</i>	₹ 6593/-
c) Basic cost of the apartment		₹ 76,67,659
d) Common expenses	<i>07/05/13</i>	₹ 3,50,000
e) Clubhouse development charges		₹ -
f) UDSDL registration cost (approx.) and legal charges		₹ 1,61,800
g) Infrastructure fee		₹ 43,613
h) Car parking charges		₹ AS APPLICABLE
i) Service tax (approx.)		₹ AS APPLICABLE
j) Sales tax (approx.)		₹ AS APPLICABLE
k) Preferential location charges (PLC)		₹ -
l) Total apartment cost* (c+d+e+f+g+h+i+j+k)		₹ 82,23,072

* Any other Government levies as applicable.
 * Corpus fund of Rs.50,000/- and Maintenance charges @ Rs.2.50/ per sqft per month for 1 year to be paid during possession.

V. Sridhar
7/1/13

P&P - Payment Schedule

STAGE	DESCRIPTION	AMOUNT
First	On Booking	15%
Second	On Agreement	15%
Third	On Foundation	20%
Fourth	1st Floor Roof Level	5%
Fifth	3rd Floor Roof Level	5%
Sixth	5th Floor Roof Level	5%
Seventh	7th Floor Roof Level	5%
Eighth	9th Floor Roof Level	5%
Ninth	11th Floor Roof Level	5%
Tenth	13th Floor Roof Level	5%
Eleventh	15th Floor Roof Level	5%
Twelfth	17th Floor Roof Level	5%
Thirteenth	Brick work & Plastering	3%
Fourteenth	On Possession	2%
Total		100%

Source of Funding: a) Own b) Housing loan(Financial Institution /Bank) *If. Req. in future* c) Others

Terms & Conditions:
 • In case of cancellation Rs 25,000/- from booking amount with necessary taxes as applicable will be deducted and balance will be released against resale of the apartment / within 6month time.
 • In case of own fund, the UDSDL registration will be done only against the receipt of 75% of the total cost of the apartment.
 • It is the sole responsibility of the Purchaser(s) to get the loan payments from the bank on time.

Booking advance of 20 lakhs (Cash/ Cheque / DD/ BC) No. 25 lakhs Cheque 17.5 lakh Dated: 02/05/2013 drawn on AMBOJINI PROPERTY DEVELOPERS PVT. LTD., payable at CHENNAI
 I/We hereby agree to the payment terms as per the stages explained to me/us as mentioned above. The total cost of the flat is ₹ 82,23,072 (Rupees Eighty Two Lakhs Twenty Three Thousand Seven Hundred and Seventy Two only) will be paid by me/us.

I came to know about this project through Internet Newspaper Existing Customer Media Exhibition References Site Hoarding Others OLD STAFF - ARCHITECT

1. Name : Mobile: Email:
 2. Name : Mobile: Email:

SIGNATURE(S) 1 [Signature] 2 3

Place: CHENNAI Date: 02/05/2013

Apartment booked by: V. SRIDHAR Approved by: [Signature]



ISO 9001:2008
 RVP/SALES/BKF-02/PA/V2

16. At pages Nos.12 we see that the cheques for the amount of Rs.1,00,000/- and Rs.1,50,000/- have been drawn in the name of the Corporate Debtor. Further, the cash receipt for Rs.12,50,000/- and Rs.5,00,000/- dated 02.05.2013 and 06.05.2013 respectively in the name of Applicant is placed at pages 12-13 of this application.

17. It is seen that afore-described amount totaling Rs.20,00,000/- has been paid by the Applicant to the Corporate Debtor. All the Cheques and receipts were in the name of the Corporate Debtor. It is also noted that the transaction of the Applicant is not reflected in the books of the Corporate Debtor, and the name of the Applicant is not in the affidavit submitted by erstwhile management before the Hon'ble High Court of Bombay.

18. At this juncture, we may now turn to the relevant provisions. Regulation 8A of the IBBI (Insolvency Process of Corporate Persons) Regulation 2016 reads as follows

“Regulation 8A: Claims by creditors in a class:

(1) A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional in electronic form in Form CA of the 37[Schedule-I]

(2) The existence of debt due to a creditor in a class may be proved on the basis of-

(a) the records available with an information utility, if any; or

(b) other relevant documents, including any-

(i) agreement for sale;

(ii) letter of allotment;

*(iii) **receipt of payment made;** or*

(iv) such other document, evidencing existence of debt.

...”

The above provision prescribes that the existence of the debt may be proved on the basis of other relevant documents including receipt of payment made.

Regulation 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.

...”

Reading the above provision shows that the RP shall verify every claim, but there is no specific obligation upon the Resolution Professional to strictly compare the claim submitted by the claimants only with the books of the Corporate Debtor. If the Resolution Professional verifies the claims only based on the books of the Corporate Debtor and if the Corporate Debtor does not manage its books and records properly, it would be detrimental to the creditors like the Applicant. Due to improper maintenance of the records of the Corporate Debtor, the Applicant/homebuyer cannot be made to suffer. The Resolution Professional must verify the authenticity of the supporting documents that have been filed by the claimant in support of their claim by other means within the boundaries of law.

19. In view of the above findings and discussions we are convinced that the copy of the receipts and the cheques produced by the Applicant are *bona fide*. The Corporate Debtor had Received Rs.20,00,000/- (Twenty Lakh Only) from the Applicant as a booking advance. Accordingly, the Resolution Professional is directed to admit the claim of the Applicant with the applicable interest rate and include her in the respective class of creditors.

20. With the aforesaid directions this Application stands **allowed** and **disposed of**.

Sd/-

RAVICHANDRAN RAMASAMY

MEMBER (TECHNICAL)

Sd/-

JYOTI KUMAR TRIPATHI

MEMBER (JUDICIAL)