

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 16**  
**(IB)-654(PB)/2019**

**IN THE MATTER OF:**

Mr. Vishal Fabrics & Ors.

.... Petitioner/Applicant

Vs.

M/s. Avj Developers (India) Pvt. Ltd.

.... Respondent

**Order u/S. 7 of the Insolvency & Bankruptcy Code, 2016 (CIRP)**

**Order delivered on 29.04.2024**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR**  
**HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA**  
**HON'BLE MEMBER (TECHNICAL)**

**HYBRID HEARING (PHYSICAL & VC)**

**PRESENT:**

For the RP

: Adv. Mani Gupta, Adv. Aman Chaudhary, Adv. Sonali Jain, Adv. Sreemantini Mukherjee

For the Applicant

: Adv. Sumesh Dhawan, Adv. Ankita Bajpai in IA-5886/2021

Mr. Shyam Kishan Saraf, AR in person in IA-2404/2022

Adv. Shivam Kumar in IA-1789/2023 & IA-3939/2023

Adv. Aditya Kumar Choudhary, adv. Sandeep Pandey, Adv. Gurmehar Vaan Singh in IA-6388/2023

Adv. Harshit Ratra, Adv. Priyana Gupta in IA-126/2024

Proxy Adv. Ranjit Kumar for Adv. Gulshan Kr Sachdev in IA-6672/2023

Adv. Kush Gupta in IA-3637/2023

Adv. Amrendra Kumar Singh in IA-4594/2021 and IA-5095/2021

Adv. Sougat Sinha in IA-1006/2023

Adv. Aditya Madaan, Adv. Rahul Kapoor in IA-5727/2021 and IA-5854/2021

Adv. Shashank Agarwal in IA-5461/2021, 4523/2021, 2406/2022 and 4416/2022

For the Respondent

: Adv. Anil Dutt, Adv. Anupam Chaudhary, Adv. Lavi Agarwal in IA-5846/2023

Adv. Abhishek Singh in IA-6210/2023 & IA-6213/2023

For IIFL Finance Ltd. : Adv. Abhirup Dasgupta, Adv. Ishaan Duggal, Adv. Ruchi Goyal  
For the SRA : Adv. Ambuj Tiwari with Mr. Vinay Jain, SRA  
For GNIDA : Adv. U. N. Singh in IA-940/2021 & IA-6135/2022

### **ORDER**

#### **IA-940/2021, IA-5385/2021 & New IA-2024/2024**

1. IA-940/2021 has been filed on behalf of Greater NOIDA with the following prayer:

- (a) *Call for the record of the case.;*
- (b) *Pass appropriate orders against the impugned orders/decision/action of the Resolution Professional for converting and considering the applicant/GNIDA as Operational Creditor and not informing for participating in a meeting of committee of creditors and necessary orders/directions be issued for upholding and continuing the applicant/GNIDA as 'Financial Creditor' and for participation in a meeting of committee of creditors.*
- (c) *Quash and set aside the all actions/ decisions/plan taken by the Resolution Professional and Committee of Creditors against the applicant/ GNIDA and allow the applicant to participate in all the proceedings as Financial Creditor.*
- (d) *In exercise of the powers under Section 98, 204 and 208 and all other applicable provisions of the IBC, 2016, direct replacement of the present Resolution Professional Mr. Anil Tayal and direct further action against the said Resolution Professional for his misconduct in not informing and allowing to participate in COC and allegedly converting and considering the status of the applicant GNIDA from financial creditor to operational creditor, without adjudication, reasons and justification, resulting in financial loss to a Govt. Authority GNIDA and dealing with the owner of the land to its detriment and resulting in unlawful financial gain to the corporate debtor and other creditor at the expenses of the applicant.*
- (e) *Any other relief or order(s) which this Hon'ble Tribunal may deems fit and proper be also passed in favour of the applicant/ GNIDA.*

2. Heard Mr. U. N. Singh, Ld. Counsel for GNIDA, who appeared physically as well as heard Ms. Mani Gupta, Ld. Counsel for the RP, who also appeared physically.

3. The grievances of Mr. U. N. Singh, Ld. Counsel for GNIDA is that the proceedings of the CoC is in gross violation of the rights of GNIDA; and accordingly, the above stated reliefs are sought for.
4. He is also not clear as to how much is the claim admitted as against his claim dated 08.11.2019 for Rs. 82 Crores approximately. No decision has been communicated to the GNIDA on the admission of the claim nor is the GNIDA allowed to participate in the CoC.
5. It is the further grievance of GNIDA in the rejoinder that they have to be treated as a secured creditor. This plea of GNIDA is now justified by the decision of the Hon'ble Supreme Court in the matter of Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni and Another in Civil Appeal Nos. 7590-7591 of 2023 dated 12.02.2024, more particularly Para-54 and 55, which read as follows:

*“54. In our view the resolution plan did not meet the requirements of Section 30(2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016 for the following reasons:*

- a. The resolution plan disclosed that the appellant did not submit its claim, when the unrebutted case of the appellant had been that it had submitted its claim with proof on 30.01.2020 for a sum of Rs. 43,40,31,951/- No doubt, the record indicates that the appellant was advised to submit its claim in Form B (meant for operational creditor) in place of Form C (meant of financial creditor). But, assuming the appellant did not heed the advice, once the claim was submitted with proof, it could not have been overlooked merely because it was in a different Form. As already discussed above, in our view the Form in which a claim is to be submitted is directory. What is necessary is that the claim must have support from proof. Here, the resolution plan fails not only in acknowledging the claim made but also in mentioning the correct figure of the amount due and payable. According to the resolution plan, the amount outstanding was Rs. 13,47,40,819/- whereas, according to the appellant, the amount due and for which claim was made was Rs. 43,40,31,951/- This omission or error, as the case may be, in our view, materially affected the resolution plan as it was a vital information on which there ought to have been application of mind. Withholding the information adversely affected the interest of the appellant because,*

*firstly, it affected its right of being served notice of the meeting of the COC, available under Section 24 (3) (c) of the IBC to an operational creditor with aggregate dues of not less than ten percent of the debt and, secondly, in the proposed plan, outlay for the appellant got reduced, being a percentage of the dues payable. In our view, for the reasons above, the resolution plan stood vitiated. However, neither NCLT nor NCLAT addressed itself on the aforesaid aspects which render their orders vulnerable and amenable to judicial review.*

- b. The resolution plan did not specifically place the appellant in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, a charge was created on the assets of the CD. As per Regulation 37 of the CIRP Regulations 2016, a resolution plan must provide for the measures, as may be necessary, for insolvency resolution of the CD for maximization of value of its assets, including, but not limited to, satisfaction or modification of any security interest. Further, as per Explanation 1, distribution under clause (b) of sub-section (2) of Section 30 must be fair and equitable to each class of creditors. Non-placement of the appellant in the class of secured creditors did affect its interest. However, neither NCLT nor NCLAT noticed this anomaly in the plan, which vitiates their order.*
- c. Under Regulation 38 (3) of the CIRP Regulations, 2016, a resolution plan must, inter alia, demonstrate that (a) it is feasible and viable; and (b) it has provisions for approvals required and the time-line for the same. In the instant case, the plan conceived utilisation of land owned by the appellant. Ordinarily, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the COC. However, where the plan envisages use of land not owned by the CD but by a third party, such as the appellant, which is a statutory body, bound by its own rules and regulations having statutory flavour, there has to be a closer examination of the plan's feasibility. Here, on the part of the CD there were defaults in payment of instalments which, allegedly, resulted in raising of demand and issuance of pre-cancellation notice. In these circumstances, whether the resolution plan envisages necessary approvals of the statutory authority is an important aspect on which feasibility of the plan depends. Unfortunately, the order of*

*approval does not envisage such approvals. But neither NCLT nor NCLAT dealt with those aspects.*

**Relief**

*55. As we have found that neither NCLT nor NCLAT while deciding the application/appeal of the appellant took note of the fact that,- (a) the appellant had not been served notice of the meeting of the COC; (b) the entire proceedings up to the stage of approval of the resolution plan were ex parte to the appellant; (c) the appellant had submitted its claim, and was a secured creditor by operation of law, yet the resolution plan projected the appellant as one who did not submit its claim; and (d) the resolution plan did not meet all the parameters laid down in sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016, we are of the considered view that the appeals of the appellant are entitled to be allowed and are accordingly allowed. The impugned order dated 24.11.2022 is set aside. The order dated 04.08.2020 passed by the NCLT approving the resolution plan is set aside. The resolution plan shall be sent back to the COC for re-submission after satisfying the parameters set out by the Code as expounded above. There shall be no order as to costs.”*

- 6.** Accordingly, since the CoC has not considered the claim of GNIDA as the Secured Creditor in terms of the order of the Hon'ble Supreme Court as above, the plan has to go back to the CoC for fresh consideration.
- 7.** We also note that the RP has filed New IA-2024/2024 on the same line pursuant to the order of the Hon'ble Supreme Court viz. for sending Resolution Plan back to the COC to cure shortcomings.
- 8.** Another issue which arises is that certain claims have not been properly collated by the then RP who has subsequently been removed by this Adjudicating Authority and suspended by IBBI, therefore, certain prejudice has been caused to many claimants including GNIDA.
- 9.** In view of the above IA-5385/2021 filed on behalf of erstwhile Resolution Professional seeking approval of the Resolution Plan, is rendered infructuous.
- 10.** All the issues be considered afresh by the RP and placed before the CoC so that all eligible persons can actively participate as the members of the CoC and take a decision on the plan to be considered afresh.
- 11.** While considering the issue afresh, the CoC shall keep it in mind the

observation of the Hon'ble Supreme Court as mentioned in Para-54 and 55 which is extracted above.

12. Accordingly, **IA-940/2021**, Plan **IA-5385/2021** and **New IA-2024/2024** stand **disposed of**.

**IA-2404/2022**

13. Prayer in this application reads as follows:

- 1) *To direct the Resolution Professional to consider the applicants as Financial Creditors (Real Estate Investors i.e. Allottee) u/s 5(8)(f) of the Code and hand over the possession of their respective residential flats;*
- 2) *To direct the Resolution Professional to calculate the assured return @26% p.a. as per the Memorandum of Understanding executed between the Corporate Debtor and the applicants;*
- 3) *To direct the Resolution Professional to provide Proper signed Valuation Reports of both the valuers as mentioned in IM;*
- 4) *To direct the Resolution Professional to provide the Inventory details of CD as on ICD (Insolvency Commencement date) i.e. 21.10.2019 as the same is missing in IM provided by RP;*
- 5) *To direct the Respondent to provide copy of the avoidance applications filed before this Hon'ble Tribunal;*
- 6) *To direct the Respondent to provide Amended Information Memorandum Version 5 and subsequent Information Memorandums;*
- 7) *To pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

14. Since the respective units / flats were stated to have been allotted to multiple buyers, an affidavit dated 01.03.2024 has been filed by the Suspended Director, Mr. Vinay Jain pursuant to our order, stating the first and valid buyer of the concerned units / flats. The claim of the Applicant will be considered by the RP afresh.

15. Accordingly, **IA-2404/2022** stands **disposed of**.

16. Other IAs being **IA-3637/2023**, **1789/2023**, **IA-3939/2023**, **IA-6388/2023**, **IA-126/2024**, **IA-402/2024** filed by homebuyers for directions to RP to consider claim/ transfer possession be considered afresh by the RP.

17. Other pending IAs are **IA-4416/2022, IA-5095/2021, IA-3874/2023, IA-3741/2021 & IA-568/2024, IA-4827/2021, IA-6135/2022, IA-4594/2021, IA-5586/2021, IA-3245/2021, IA-5461/2021, IA-4523/2021, IA-5727/2021, IA-5854/2021, IA-2899/2021, IA-3239/2021, IA-4696/2021, IA-2406/2022, IA-2386/2023, IA-2388/2023, IA-2390/2023, Cont-23/2023, IA-2597/2023, IA-2521/2023, IA-6672/2023, IA-5846/2023, IA-6210/2023, IA-6213/2023, IA-1006/2024, IA-1573/2024, IA-1715/2024, IA-1737/2024 & IA-1792/2024.**

List all these IAs **on 04.06.2024.**

**Sd/-  
(RAMALINGAM SUDHAKAR)  
PRESIDENT**

**Sd/-  
(AVINASH K. SRIVASTAVA)  
MEMBER (TECHNICAL)**

Shubham Pandya – 29.04.2024