

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH,
COURT-IV**

I.A.3852/ND/2023

IN

C.P. No. IB-919/ND/2020

**(Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the NCLT Rules, 2016)**

IN THE MATTER OF:

AMAN CHHABRA & Another

... FINANCIAL CREDITOR

VERSUS

**TRESCO HOMES PVT. L TD
(FORMALY MASCOT SOHO HOMES PVT. LTD)**

... CORPORATE DEBTOR

ALSO, IN THE MATTER OF

BEENA NIGAM & ORS.

... Applicants

VERSUS

**Gyan Chandra Misra
(Resolution Professional)**

...Respondent No. 1

**Mr. Sandeep Chandna
(Authorised Representative of Financial Creditor in Class)**

...Respondent No. 2

Order Pronounced on: 12.06.2024

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. M.P Sahay, Mr. Awanitika, Mr. Sachin
Kharb, Mr. Tushar Sharma, Adv.
For the RP : Sr. Adv. Mr. P. Nagesh, Mr. Abhishek Anand, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The instant application has been filed under Section 60(5) of the Code, 2016 read with Rule 11 of the NCLT Rules, 2016 is being filed through Mrs. Beena Nigam (hereinafter referred as Applicant) who is authorised representative on behalf of shop Allottees of commercial spaces at the Mascot Soho Homes Plot No GH-4B/1 Sector 16 Greater Noida West, U.P. seeking the following prayers from this Tribunal :-

- a. Direct the Resolution Applicant to treat commercial shop owner at par with flat Unit holder in tern of cost escalation
 - b. Direct the Resolution Applicant that any escalation in price should be in proportionate to the escalation for the flat buyers
- Or
- c. Reject the Resolution Plan approved by the CoC
 - d. Pass such other/further order(s) as this Hon'ble Tribunal may deem fit and proper.

2. Briefly stated, the facts of this case leading to filing of this present interlocutory application, as averred by the applicant are as follows:-

- a) The applicant submits that Corporate Insolvency Resolution Process against Mascot Soho Homes Pvt Ltd ('Corporate Debtor') was admitted vide order dated 12.01.2022 under section 7 of the insolvency and

bankruptcy Code, 2016 a petition filed by Aman Chhabra and Nidhi Chhabra ('Financial Creditor') The Corporate Debtor was developing a housing project in Greater Noida, Uttar Pradesh, known as M/s Tresco Homes Private Limited (previously M/s Mascot Homes Private Limited).

- b) The Applicant submits that earlier Mr. Gopal Lal Baser was proposed to be the Interim Resolution Professional, but subsequently due to some reason on 04.02.2021 withdrew his consent – Form 2 and the consent of Mr. Gyan Chandra Misra was placed on record and accordingly Mr. Gyan Chandra Misra as IRP was Allowed.
- c) The Applicant has submitted that the IRP pursuant to the public announcement dated 09.02.2022, 286 claims were received by the IRP out of which 230 claims were admitted upon verification. Further as per updated list of creditors dated 18.11.2022, Total 414 creditors are there as Financial Creditor in class. It is submitted that the Claims of homebuyers received and verified to a sum of Rs. 79,37,56,000.66/- (Rupees Seventy-Nine Crores Thirty-Seven Lakh Fifty-Six Thousand and Sixty-Six Paise Only) which comprises of Flat allottee and Shop allottees in the Corporate Debtor. It is pertinent to mention herein that only 18 numbers of allottees are shop allottees comprising of 4.34 % in the CoC.
- d) The Applicant has submitted form G was published by the Resolution Professional vide dated 19.09.2022. Pursuant to the Form-G M/s Hynite Farma Private Limited submitted the Final Resolution Plan on 17.01.2023. That there was a huge discrimination done between the

flat allottees and shop allottees by the Resolution Applicant. The proposed escalation for shop buyers is hugely disproportionate at Rs. 4500/- per sq. ft. against a very nominal of Rs. 175/- per sq. ft. for flat buyers.

- e) Accordingly, Applicants has requested the Resolution Professional and Authorised representative to conduct a meeting with the Resolution Applicant which was never answered by the Authorised Representative. The Applicants through Several e-mail had requested Resolution Professional to discuss grievances of Commercial Shop Allottees for differential treatment from Homebuyers and the issue related to price escalation and creation of a group among the Class of Financial Creditors.
- f) The Applicant has submitted that the Authorised Representative of the Financial Creditor has not represented the interest of the commercial shop buyers therefore the Applicant vide email dated 10.01.2023 has requested the Respondents to appoint a separate authorised person representing the interest of the commercial shop buyers.
- g) The Applicant has further Submitted that the Resolution Applicant final Resolution plan had been submitted before CoC and the same has been approved in CoC meeting by 88.30% of vote.

3. Submissions of the Ld. Counsel appearing for the Respondent

- a) The Respondent has submitted that the Coc of the Corporate Debtor consist of Real Estate Allottees and Financial Creditors. The Real estate

Allottees of the Corporate Debtor consist of Homebuyers and a small number of commercial Space buyers.

- b) The Respondent has submitted that the erstwhile IRP of the CD appointed an Authorized Representative for all allottee of the project being developed by the CD. Further, in course of CIRP, total 5 CoC meetings were conducted and the Applicant had never raised any objection on Appointment of Authorized Representative nor any proposal were received from the Applicant for a separate Authorized Representative.
- c) The Respondent has submitted the decision of the CoC regarding the approval of the Resolution Plan is binding on the Applicants as they are Financial Creditor in Class. Further, there is no distinction between Home Buyers and Commercial Buyers and are same under the definition of 'Allotees' as provided in the RERA and therefore, RP cannot interfere with the CoC's commercial decision-making process. The commercial wisdom of the CoC cannot be under the microscope unless the plan does not conform to Section 30(2)(b) of the Code.

4. We have heard Ld. Counsel for both the parties and perused the averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have been examined.
5. We are conscious that the **Hon'ble Supreme Court in "Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019"** has laid down that there can be difference

in payment of the different category of creditors. In Para 88 of the judgment following has been held:

“88. By reading paragraph 77 (of Swiss Ribbons) de hors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Paragraph 76 clearly refers to the UNCITRAL Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in paragraph 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, paragraph 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors’ rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors.

So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.”

6. It has been submitted by the Respondent that shop allottees can vote for or against the Resolution Plan only as a class and if there are some Shop Allottees pitted against the Resolution Plan, who are otherwise in minority, have absolutely no locus to oppose the Plan in the capacity of dissatisfied Shop Allottees. It has been submitted that the Applicant cannot be allowed to challenge the majority decision. Reliance has been placed on judgment of Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Vs. NBCC (India) Limited and others (2022) 1 SCC 401** which is as follows:

“164.3. In the face of clear language of sub-section (3A) of Section 25A of the Code, read with the law declared by this Court in Pioneer Urban (supra), the suggestion on behalf of the dissatisfied homebuyers that the said provision was only intended to iron out the logistical issues and technical difficulties is required to be rejected altogether. The said provision, as held by this Court, is to iron out the creases that might have been felt in the proper working of Section 25A; and it is made explicit that

the allottees, even if not a homogeneous group, they could vote only either to approve the resolution plan or to disapprove the same. Divergence of the views within their own class may exist but, when coming to the vote in the Committee of Creditors, their vote would be that of a class.

164.4. Having regard to the scheme of IBC and the law declared by this Court, it is more than clear that once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority of those who vote, as also all others within that class, are bound by that decision. There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. It is obvious that if this finality and binding force is not provided to the vote cast by the authorised representative over the resolution plan in accordance with the majority decision of the class he is authorised to represent, a plan of resolution involving large number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation, which is not the prime target of the Code. In the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the provisions relating to voting on the resolution plan and binding nature of the vote of authorised representative on the entire class of the financial creditor/s he represents.

7. Further, we are of the considered view that in so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B

Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”

8. Also, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019**, vide its judgement dated 15.11.2019 has observed as follows:

"38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."

9. Voting and approval of CoC cannot be set at naught on the basis of any purported dissatisfaction of a miniscule minority of a shop allottees who are treated as Financial Creditors and such minority has to sail along-with the view of majority in terms of the scheme of IBC. Under the Code, the commercial wisdom of the CoC has been given paramount status and any judicial intervention on equitable grounds or any grounds beyond those contemplated under Section 30 and 31 of the IBC is impermissible.
10. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and therefore, this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of creditors.
11. Thus, we are of the considered view that the applicant fails to raise any substantial arguments and accordingly, the instant application i.e., **IA/3852/ND/2023 being devoid of merits, stands dismissed** with no orders to costs.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

Item No. 412

IA/2701/ND/2024 IA/2005/ND/2024 IA/733/ND/2024
IA/407/ND/2024 IA/4787/ND/2023 IA/4701/ND/2023
IA/4593/ND/2023 IA/3431/ND/2023 IA/2897/ND/2023
IA/4136/ND/2023 IA/1309/ND/2023 IA/5032/ND/2023
IA/6219/ND/2023 in IB/919/ND/2020

IN THE MATTER OF:

Aman Chhabra	...	Applicant
Versus		
Mascot Soho Homes PvtLtd	...	Respondent

Under Section 7 (IBC)

Order delivered on 12.06.2024

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	: Adv. Harshit Goyal in IA No 2005/2024, Adv. AnuRuddha Singh in IA/407/2024, UN Singh Adv. for applicant-GNIDA in IA 4136/2023, Adv. Prashant Kumar for applicant in IA No. 4847/2023, Adv. Umesh Chauhan in IA/2701/ND/2024 Proxy Counsel Adv Ranjit Kumar for Gulshan Kr. Sachdev in IA/6219/23 for Kotak Mahindra Bank
For the RP	: Adv. Abhishek Anand for Resolution Professional
For the Respondent	: Adv. Shree Prakash Sinha, Adv Rishabh Kumar for Respondent 1 & 8 in IA. 3431/ND/2023

HYBRID HEARING (PHYSICAL & VC)

ORDER

Due to paucity of time, the matter is adjourned to **19.07.2024**.

-SD-

DR. SANJEEV RANJAN
MEMBER (TECHNICAL)