

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**Item No.101**

**(IB)-1718(PB)/2018**

**IA-4683/2021, IA-769/2022, IA-4578/2022, IA-699/2023,  
IA-1700/2023, IA-2218/2023, IA-3031/2023, IA-3198/2023,  
IA-1872/2023, IA-1874/2023, IA-1875/2023, IA-4333/2023,  
IA-4517/2023, IA-5139/2023, IA-5405/2023, IA-46/2024,  
IA-2401/2024, IA-5365/2023**

**IN THE MATTER OF:**

**Shiv Dayal Sharma & Ors.**

**... Applicant/Petitioner**

**Versus**

**Three C Projects Pvt. Ltd.**

**... Respondent**

**Under Section: 7 of IBC, 2016 (CIRP)**

**Order delivered on 19.07.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ  
HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH  
HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant**

**:** Adv. Chetna Bisht in IA-699/2023, Adv. Shashi B Prasad in IA-4578/2022, Adv. Priya in I.A. No. 3198/2023, Mr. Tanweer Alam party in person, Adv. Mahjabeen Tanweer in IA 5139/2023, Sr. Adv. P Nagesh, Senior Advocate along with Adv. Akshay Sharma, Adv. Swarlipi Deb Roy in IA-769/2022 Sr. Adv. P Nagesh, along with Mr. Sonam Sharma, Ms. Riddhi Jain and Mr. Yash Srivastava, Advocates in IA 4683/21 and I.A. No. 5365 of 2023, Adv. Hari Mohana in IA-2218/2023, IA-3031/2023

**For the RP**

**:** Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Ishan Dhingra, Adv. Ajit Kumar

**For the NOIDA**

**:** Adv. Rachit Mittal, Adv. Parish Mishra, Adv. Adarsh Srivastava

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-769/2022:** The prayer made in the captioned application reads thus:

1. *“Direct the Non- Applicant Resolution Professional to remove the office of the corporate debtor from the unit of the applicant, the possession of which was already handed over*

- to her prior to the date of commencement of CIRP to enable the applicant to take further steps for fit-out;*
- 2. Direct the Resolution Professional to rectify the records of the Corporate Debtor in terms of consideration and payments made by the applicant as per documents issued by the Corporate Debtor and is in possession of the RP;*
  - 3. Direct the Resolution Professional to remove the name of the applicant from the list of defaulter and/ or outstanding receivable from the customers of Corporate Debtor;*
  - 4. Pass any other order as this Hon'ble Court may deem fit and proper in the interest of justice."*

Admittedly, the price of the unit allotted to the Applicant was fixed at Rs. 49,50,720.00/-. Reliance has been placed by both the parties on the ledger enclosed with the letter dated 26.12.2019, in terms of which an amount of Rs. 40,00,000/- is shown to have been adjusted (the amount was paid to the group company of the Corporate Debtor i.e. Three C Universal Developers Pvt Ltd., which has common director with the Corporate Debtor, thus the adjustment was made). The ledger further reflects that the total amount of installments due till 26.12.2019 was Rs. 55,58,562/- and after adjustment of the amount of Rs. 40,00,000/-, the applicant is liable to pay an amount of Rs. 16,09,405.28/- with interest i.e. an amount of Rs. 4,58,465.19/-. Mr. P. Nagesh, Ld. Sr. Counsel appearing for the Applicant placed reliance upon letter dated 12.08.2019, placed on record at page 37 of the application to espouse that there was an understanding between the Corporate Debtor and the Applicant that no amount was due and payable by the Applicant and she had permission to carry out fit-out/ interior and furnishing works in the apartment allotted to her.

Mr. P. Nagesh could also make a reference to the receipt available at page 31 of the application to espouse that the Applicant had further paid an amount Rs. 8,00,000/- to Three C Universal Developers Pvt Ltd. i.e. the Group company of the Corporate Debtor.

Mr. Abhishek Anand, Ld. Counsel appearing for the RP disputed the receipt of Rs. 8,00,000/- mentioned above and submitted that the ledger did not reflect the amount of Rs. 8,00,000/-.

A perusal of the ledger as on 26.12.2019 indicates that the amount shown as adjusted are Rs. 10,00,000/- plus Rs. 10,00,000/- plus 20,00,000/- and no amount of Rs. 8,00,000/- is reflected, thus there is no record therein about the payment of Rs. 8,00,000/- as alleged by the Applicant. Similarly, when the price of the unit has been shown as Rs. 49,50,720/- , we are unable to understand as to how in the ledger, the instalment shown as due as on 26.12.2019 is Rs. 55,58,562/-. Thus, there is an anomaly in calculation. In this wake, the application is disposed of with the direction that the RP would make correct and proper calculation of the amount payable by the Applicant, with reference to the price of the unit allotted to the Applicant i.e. 49,50,720/- as well as the amount already paid by the Applicant.

The balance amount, if any, calculated with reference to the price of the flat as Rs. 49,50,720/- would be payable by the Applicant at the time of handing over the possession of the flat, which should be handed over within two weeks after making the calculation. **The application stands disposed of** with these directions.

**IA-4683/2021**: The prayer made in the captioned application reads thus:

*“It is therefore most respectfully prayed that this Hon'ble Tribunal may be kindly be pleased to:*

*a. Pass an order directing the Respondent No.1 to forthwith admit/ collate the claim of the Applicant in its entirety.*

*b. Pass an order directing the Respondent No.1 to handover possession of the above mentioned units to the Applicant, upon receiving the balance amount of INR 24,81,375/-*

*c. Pass any other order in the interest of justice.”*

Mr. Abhishek Anand, Ld. Counsel appearing for the RP undertake to re-examine the record of RP and arrive at a fresh conclusion/decision within two weeks. It goes without saying that, the decision taken would be communicated to the Applicant. **The application stands disposed of.**

It is made clear that the Applicant would not be entitled to stake any claim qua the amount paid by her to Three C Projects Pvt Ltd. and shown as

adjusted and the ledger maintained by the Corporate Debtor qua the Applicant.

**IA-5365/2023**: In the wake order passed in IA-4683/2021, **the IA is disposed of.**

**IA-4578/2022**: Ld. Counsel appearing for the Applicant relied upon an agreement as also on certain credit notes/receipts to espouse that the Corporate Debtor had taken responsibility to pay the amount of Rs. 89,30,298/- to Three C Shelters Private Limited as consideration for a dwelling unit and further amount of Rs. 48, 60, 100/- to Three C Homes Pvt. Ltd. Mr. Abhishek Anand, Ld. Counsel appearing for the RP submitted that the copy of the agreement placed on record is not signed and the credit notes relied upon by the Applicant do not form the part of the books of accounts/record of the Corporate Debtor. In his submission the financial statement/ledger/balance-sheet maintained by the Corporate Debtor qua the Applicant reflect the liability for Rs. 30 lacs and not for the amount paid by the Applicant to Three C Homes Private Limited and Three Shelters Private Limited (ibid). Ex-facie we are of the view that the Corporate Debtor cannot be held liable for such claim, which is not reflected in the books of accounts/record of the Corporate Debtor. However, the Ld. Counsel appearing for the Applicant seeks an opportunity to produce certain additional documents to buttress his plea that the Corporate Debtor had taken and accepted the liability for the claim of the Applicant against two group companies i.e. Three C Homes Private Limited and Three C Shelters Private Limited. He may do so within one week. Since all the three companies are part of the same group of companies having common director and the Ld. Counsel for the Applicant could draw our attention to para 4 of the reply filed on behalf of the Three C Homes Private Limited, the RP is also directed to place on record the relevant excerpt from books of accounts/documents qua the Corporate Debtor to indicate the transaction between the three Companies.

List on 26.07.2024.

**IA-699/2023**: The prayer made in the captioned application reads thus:

- a. Allow the present application and direct the Respondent(s), to pay the outstanding amount of **Rs. 10,59,73,121/- (Rupees Ten Crore Fifty Nine Lakh Seventy Three Thousand One Hundred and Twenty One Only)** to the Applicant due on account of construction service provided by the Applicant to the Respondents in pursuance to the Guaranteed Maximum Price Construction Agreement; and/or
- b. Direct the Respondent(s) to pay the interest @18% p.a. for the delay caused by the Respondent(s) in the payment of the outstanding amount of **Rs. 10,59,73,121/- (Rupees Ten Crore Fifty Nine Lakh Seventy Three Thousand One Hundred and Twenty One Only)** till the date of payment.”

The insolvency resolution process cost has been defined in Regulation 31 (Chapter 9) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The regulation reads thus:

**“31. Insolvency resolution process costs.**

“Insolvency resolution process costs” under Section 5(13)(e) shall mean-

- (a) amounts due to suppliers of essential goods and services under Regulation 32;
  - [(aa) fee payable to authorised representative under [sub-regulation (8)] of regulation 16A;
  - (ab) out of pocket expenses of authorised representative for discharge of his functions under [section 25A];]
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);
  - [(ba) fee payable to the Board under regulation 31A;]
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.”

As can be seen from Regulation 34 of the aforementioned Regulations it is the Committee of Creditors which fix the expenses to be incurred on or by the Resolution Professional and the expenses shall constitute insolvency resolution process cost. In terms of the explanation to the regulation, the expenses include the fee to be paid to the Resolution Professional, fee to be paid to Insolvency Resolution Professional entity if any, and the fee to be paid

to the professionals and other expenses to be incurred by the Resolution Professional. The Regulation 34 reads thus:

**“34. Resolution professional costs.**

*The committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs.*

*[Explanation. - For the purposes of this regulation, “expenses” include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional.”*

In the present case it is not in dispute that the services of the Applicant were engaged by the RP, after approval of CoC to keep the Corporate Debtor as going concern. But the RP disputes that the claim made by the Applicant falls in the category of the expenses incurred by the Resolution Professional. Here it would be pertinent to note that in terms of the Regulation 33 of the aforementioned regulations, it is for the CoC to fix the expenses to be incurred by RP or by IRP and in the event of failure by the Applicant to do so, this Adjudicating Authority fix the expenses, which are borne by the RP, but are subsequently reimbursed by the CoC. These are the expenses, which are ratified by the committee, which are treated as insolvency resolution process cost. Nevertheless, regarding the insolvency resolution professional cost, it is the committee which fix the expenses. In the present case, not only that the RP had never put any expenses on construction before the CoC as CIRP cost, but in the present proceedings he is opposing the claim of the Applicant. In these circumstances, it is not open to this Adjudicating Authority to treat the claim of the Applicant raised in the application as CIRP cost. Nevertheless, the Ld. Counsel for the RP could draw our attention to Clause 20.6 of the agreement dated 30.01.2023 entered into between the RP and the Applicant as also to letter of award dated 20.01.2020 (Clause A) to espouse that in the event of their being any dispute between the RP (CD and the Applicant), the same would be referred to sole arbitrator.

With reference to the said clauses Mr. Abhishek Anand contended that it is open to Applicant to invoke the arbitration clause and the dispute would be settled in such process. Confronted with the plea, Ms. Chetna Bisht, Ld.

Counsel for the Applicant expressed her precipitation that the arbitration process would be hit by moratorium and it is not open to the Applicant to resort to such process. It is made clear that the moratorium applies in terms of the provisions of Section 14 of IBC, 2016 and with reference to the proceedings referred to in said section. The arbitration clause referred to by Mr. Abhishek Anand is regarding the dispute qua the determination of the CIRP cost. To the process involving determination of CIRP cost by resorting to any mechanism like appointment of Chartered Accountant, Auditor, Valuator or Arbitrator to determine the dispute, the moratorium would not apply. In the wake, it would be open to the Applicant to resort to the process agreed to by it with the RP in terms of the agreement entered into between them.

**With these observations, the application is disposed of.**

**IA-1700/2023, IA-2218/2023, IA-3031/2023, IA-3198/2023, IA-1872/2023, IA-1874/2023, IA-1875/2023, IA-4333/2023, IA-4517/2023, IA-5139/2023, IA-5405/2023, IA-46/2024, IA-2401/2024:**

As prayed by Mr. Abhishek Anand, Ld. Counsel for the RP, the hearing is deferred to 26.07.2024.

**Sd/-  
(SUBRATA KUMAR DASH)  
MEMBER (T)**

**Sd/-  
(ASHOK KUMAR BHARDWAJ)  
MEMBER (J)**