

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- V)

I.A. 130/2024

IN

COMPANY PETITION No. (IB)-755/PB/2018

An application under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF:

GANGA RAM AGARWAL

Resolution Professional of

M/ s Pal Infrastructure & Developers Pvt. Ltd.

Address: E-1 OA, Kailash Colony New Delhi- 110048

... APPLICANT

AND IN THE MATTER OF:

S.C.S.L BUILDWELL PVT. LTD.

...FINANCIAL CREDITOR

VERSUS

M/s PAL INFRASTRUCTURE & DEVELOPERS PVT. LTD.

....CORPORATE DEBTOR

Order Pronounced on: 25.04.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

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

I.A. 130/2024

IN

C.P. No. (IB)-755/PB/2018

Order Pronounced on: 25.04.2024

PRESENT

For the Applicant : Mr. Amar Vivek, Mr. Abhinav Tyagi, Advs
For The Respondent :

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The present application has been filed by Ganga Ram Agarwal, the Resolution Professional of M/ s Pal Infrastructure & Developers Pvt. Ltd (for brevity "Applicant") under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (for brevity "IBC/Code") for seeking the following reliefs:
 - a) Allow the present application
 - b) Allow the segregation of The 'Pal Green' project located at Sector 78, Faridabad, from the rest of the projects of the Corporate Debtor and allow separate Resolution Process to be conducted for this project independent of the rest of the projects of the Corporate Debtor in strict adherence to the Term sheet approved by the CoC members on 28.03.2022.
2. Briefly stated, the facts of this case leading to filing of this present interlocutory application, averred by the applicant are as follows:-
 - I. Applicant submitted that vide order dated 05.09.2019 this Tribunal passed an order admitting application bearing CP (IB) No. 755/PB/2018 filed by S.C.S.L Buildwell Pvt. Ltd. ("Financial Creditor") under Section 7 of the IBC thereby initiating the CIRP against the Pal Infrastructure and Developers Private Limited ("Corporate Debtor") and vide Order dated 26.06.2020 the Applicant i.e Mr. Ganga Ram Agarwal appointed as the Resolution Professional ("RP") in relation to the CIRP of the Corporate Debtor.
 - II. Applicant submitted that prior to the onset of CIRP the Corporate Debtor had initiated four group housing projects in (i) Sector 78 Faridabad

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namely "Pal Greens" (ii) Sector 95 Gurugram namely "Pal City Park", (iii) 70A Gurugram namely "Pal Aquapolis", and (iv) Sector 89 namely "Pal Gardens" respectively.

- III.** Applicant further submitted that the project "Pal Green" was to be developed on land located at Sector 78, Faridabad for which Triveni Infrastructure Development Company Ltd. ("Land Owner Company/TIDCO") along with its associate companies had purchased lands in Sector-78, Faridabad. While "Pal Green" was to be developed by the Corporate Debtor, a project titled "Triveni Galaxy" was also to be set up and developed by the Landowner Company at Sector 78, Faridabad.
- IV.** Applicant submitted that the Corporate Debtor and the Land Owner Company enter into an agreement dated 09.04.2008 where they mutually agreed that a consideration of Rs. 27,71,50,000/- (Rupees Twenty-Seven Crore Seventy-One Lakh and Fifty Thousand only) shall be paid by the Corporate Debtor to Owner Company for grant, convey and transfer of rights for development, construction and sale of Floor Space Index "FSI" rights etc. and the same is recorded in clause 5 of the said agreement.
- V.** Applicant further submitted that while the construction of Pal Greens was in progress, an Application bearing Company Petition No. 39/2009 seeking winding up of TIDCO was preferred before the Hon'ble High Court, New Delhi. That the Hon'ble High Court of Delhi vide its order dated 17.10.2012 initiated the proceeding for winding up of TIDCO and a Official Liquidator was appointed in terms of the Companies Act, 2013. Applicant further submitted that as the TIDCO was being wound up in terms of the provisions of the Companies Act, 2013 the assets of the Corporate Debtor was in the possession and control of the Official Liquidator of TIDCO.

- VI.** It is submitted by the Applicant that the Hon'ble High Court of Delhi vide its order dated 14.02.2013 issued direction to the Official Liquidator appointed under Companies Act, to sell projects "Triveni Galaxy" situated in sector 78, Faridabad ("Pal Greens") in public auction by the Company Court.
- VII.** Further the Applicant submitted that due to the inadvertent reason, the ex-management of the Corporate Debtor was unable to carry out its financial obligation. This resulted in delay over the completion of projects and halted the progress of the projects by the Corporate Debtor, which led to the initiation of CIRP of the Corporate Debtor by this Tribunal vide Order dated 05.09.2019.
- VIII.** Applicant submitted that the Applicant has sent a letter dated 24.08.2020 to the Land Owner Company and a letter dated 10.09.2020 to the official liquidator of the Owner Company along with the other claimant advising them to file their claim, if any, with the Resolution Professional of the Corporate Debtor for the expeditious conclusion of CIRP. As a result, the Applicant received around 9 expression of Interest ("EOIs") as on 03.11.2020 and subsequently a list of provisional prospective resolution applicants ("PRAs") was issued on 13.11.2020. Thereafter, upon addressing to the objections of the PRAs the final list of 8 prospective PRAs was issued on 26.11.2020. Thereafter the Applicant issued Request for Resolution Plan ("RFRP") to all the eligible PRAs on 19.11.2020 and kept 18.12.2020 as the last date for submission of the resolution plan by PRAs.
- IX.** Applicant further submitted that in consideration of timely revival of the Corporate Debtor, the Applicant filed (04) applications bearing No. 5133, 5134, 5473 and 5233 of 2020, wherein the Applicant sought directions upon the landowners of group housing projects in Sector 95 Gurugram

namely “Pal City Park”, sector 70A Gurugram namely “Aquapolis, Riviera” Sector 78 Faridabad namely “Pal Greens” and in Sector 89 namely “Pal Gardens” to file their claim and become part of the Corporate Insolvency Resolution Process.

- X.** Applicant further submitted that the landowners of Sector 95, Gurugram filed a counter application numbered as I.A 5285/2020 and Ivn.P-14/2020 before this Tribunal, wherein the Tribunal on dated 15.12.2020 directed the Applicant to refrain from proceeding with processing the Resolution Plan.
- XI.** Applicant submitted that Applicant filed a Writ petition bearing W.P.(C) 2709/2021 before the Hon'ble High Court of Delhi against the TIDCO praying for issue of writ of Mandamus directing the Owner Company to not include land situated at Sector-78 Faridabad, Haryana (i.e project “Pal Greens”) in the auction sale or Liquidation Estate of TISCO and hand over the peaceful possession of the said land wherein the Hon'ble Delhi High Court vide order dated 01.03.2021 was pleased to direct the Owner Company to not create any third party interest on the said land.
- XII.** Applicant submitted that the Hon'ble High Court on Order dated 22.08.2023, while hearing Co. Appl. 734-35/2022 directed the Official Liquidator of the TIDCO to place the valuation report of the said land i.e., 37 acres situated at Sector-78 Faridabad, Haryana (i.e project “Pal Greens”) as well as 37 acres land minus Zion Promoters and Developers Private Limited, without any direction in respect to the exclusion of land on which the construction was being carried out by the Corporate Debtor. Therefore, the Applicant herein preferred an Application bearing CMP No. 713/2023 in the Hon'ble High Court of Delhi with prayer to not be included the land situated at Sector-78, Faridabad, Haryana (i.e project “Pal Greens”) in the valuation report. Wherein the Hon'ble High Court on

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dated 10.10.2023 was pleased to record that in terms of the Agreement a consideration of Rs. 27,71,50,000/- was to be paid by Corporate Debtor to Owner Company.

- XIII.** Applicant submitted that the Hon'ble High Court of Delhi on Order dated 10.10.2023 in W.P. (C) 2709/2021 which was listed as Co. Pet. 39/2009 has directed the Applicant herein to proceed with the CIRP Process of the Corporate Debtor. However, this Tribunal has placed a stay on the processing the Resolution Plans of Pal Infrastructure and Developers Pvt Ltd vide its order dated 15.12.2020, therefore Applicant herein cannot proceed in terms of the direction of the Hon'ble High Court.
- XIV.** Further, the Applicant submitted that the construction and the nature of agreements in all the projects are distinct. Therefore while the fate of the projects of the Corporate Debtor is in uncertainty, a method vide which possible resolution can be obtained is being placed before this Bench is that the Applicant herein is to conduct Project wise CIRP of the Corporate Debtor.

ANALYSIS AND FINDINGS:

- 3.** We have heard the Learned Counsel for all parties and have reviewed the assertions made in the application and replies filed by the parties. The relevant documents attached to the respective submissions have been thoroughly examined. It is noted that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated via an order dated 08.06.2020, under Section 7 of the Insolvency and Bankruptcy Code, 2016.
- 4.** It is observed that the Applicant has requested the segregation of the 'Pal Green' project from the other projects of the Corporate Debtor, and to allow a separate resolution process to be conducted for this project independently of the rest. This

process is also referred to as conducting project-wise CIRP. The Applicant conducted the 18th Meeting of the Committee of Creditors (CoC) on 25.10.2023, during which the resolution was duly approved with a voting percentage of 85.39% by the CoC, in accordance with the Term sheet approved by the CoC members on 28.03.2022.

5. That prior to the onset of CIRP, the Corporate Debtor had initiated four group housing projects in (i) Sector 95 Gurugram namely “Pal City Park”, (ii) sector 70A Gurugram namely “PAL Aquapolis”, (iii) Sector 78 Faridabad namely Pal Greens and (iv) Sector 89 namely Pal Gardens respectively.
6. That the Project “Pal Green” was to be developed on land located at Sector 78, Faridabad for which Triveni Infrastructure Development Company Ltd. ("Land Owner Company/TIDCO") along with its associate companies had purchased lands in Sector-78, Faridabad.
7. It is noted that in respect of the other project, the large number of Applications related to using of Landowner and legality of including and assets of Corporate Debtor are pending before this Adjudicating Authority are being heard time to time, due to which further progress for resolution not taking place.
8. As respect of the project (i.e “Pal Greens”) Hon’ble High Court of Delhi in their Order dated 10.10.2023 in W.P(C) 2709/2021 stated as below;

53. The interests of a large number of Allottees who have paid the money to purchase homes in the 'PAL GREENS' project have been jeopardized considerably. This is a case where two companies i.e TIDCO as also Pal Infrastructure are in financial difficulties. Thus, in the opinion of this Court, the land of TIDCO in Sector-78 Faridabad over which Pal Infrastructure claims rights ought to be segregated.

54. Since NCLT is now dealing with the resolution process of Pal Infrastructure, it is directed that the said resolution process shall continue.

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55. *If the Official Liquidator proceeds to value the property in Sector-78, Faridabad, for the time being, the land to the extent of 4,30,000 sq. ft. (FSI) shall not be included in the valuation or sale. Depending upon the further developments in the resolution process which takes place before the NCLT, either in the form of resolution or in the form of liquidation, further orders would be passed in respect of this parcel of land by this Court.*

60. *The RP is free to proceed with the resolution process. The land over which Pal claims rights shall however not be disposed of or sold by the RP or by anyone, without permission of this Court. The RP shall continue to appear regularly before this Court and continue to appraise the Court on the development in the NCLT in respect of Pal Infrastructure.*

9. In this juncture it is important to refer the the Judgement of Hon'ble National Company Law Tribunal in the case of "**Flat Buyers Association Winter Hills - 77, Gurgaon Vs. Vs Umang Realtech Pvt. Ltd through IRP & Ors. (Company Appeal (AT) (Insolvency) No. 926 of 2019)**" considering the interests of the stakeholders while allowing Project-wise insolvency held that:

"The asset of the company (Corporate Debtor - real estate) of that particular project is to be maximized for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate Insolvency Resolution Process should be project basis, as per approved plan by the Competent Authority."

10. Further the Hon'ble Supreme Court authenticated the concept of "Project-wise Resolution Plan" in the case of **Indiabulls Asset Reconstruction Company Limited v. Ram Kishore Arora and Ors [AIR 2023 SC 2273]**. While interpreting the objectives of the IBC, the Hon'ble Supreme Court opined that the intent of the IBC is "Resolution" and to restore the "Corporate debtor" to functioning status in

order to protect the interests of all stakeholders. Consequently, the approach to adopt a "Project-wise resolution plan" is in line with the objectives of the IBC.

- 11.** Furthermore, the Supreme Court also opined that if the CIRP is initiated against the entire entity, it may not lead to any conclusion. Instead, like many other cases, the resolution of the Corporate Debtor will be stalled.
- 12.** Furthermore, on February 15, 2024, the IBBI notified the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2024 ("Amendment"). The Amendment intends to streamline and bridge in the gaps faced in the CIRP of real estate companies under the Insolvency and Bankruptcy Code, 2016 ("IBC"). The Amendment follows the Judgment of the Supreme Court of India in *Indiabulls Asset Reconstruction Company Limited v. Ram Kishore Arora and Ors* [AIR 2023 SC 2273].
- 13.** Some key aspects of the Amendment include:
 - (i) Mandating the resolution professional of the debtor company to open separate bank CIRP accounts for each real estate project to ensure transparency.
 - (ii) Making provisions for inviting resolution plans for individual real estate projects.
 - (iii) Mandating that the Resolution Professional for the real estate project(s) shall be required to take approval on all costs from the CoC including costs to run the operations of the debtor company during CIRP.
 - (iv) Mandating that the CoC holds a meeting every 30 days to ensure that the CoC is apprised of the progress of the CIRP at all stages.

(v) Mandating that the CoC approves of the valuation methodology proposed to be employed.

14. These amendments also provide enabling provision for Resolution Professional (RP) and Committee of Creditors (CoC) to invite resolution plans separately for a real estate project or group of real estate projects of the corporate debtor.

15. It is pertinent to mention here that the Applicant herein conducted the 18th Meeting of CoC on 25.10.2023. Vide the said meeting, the members of the CoC was apprised of the fact that there were no application concerning land dispute of Pal Green Project pending in this Tribunal and the "Pal Green" project be segregated from the rest of the projects of the Corporate Debtor. Accordingly, the following resolutions were tabled before the CoC:

"RESOLVED THAT, the 'Pal Green' Project located at Sector 78, Faridabad, be segregated from the rest of the projects of the Corporate Debtor and separate Resolution Process be conducted of this project independently from the rest of the projects of the Corporate Debtor in strict adherence to the Term sheet approved by the CoC members on 28.03.2022.

FURTHER RESOLVED THAT approval of the Hon'ble NCLT be sought for the segregating of the 'Pal Green' Project situated at Sector 78, Faridabad, from the rest of the projects of the Corporate Debtor and to conduct the separate Resolution process of this project independently from the rest of the projects of the Corporate Debtor.

FURTHER RESOLVED THAT the Resolution Professional is hereby authorised to file the appropriate application in NCLT for the same."

16. That the said Resolution was allowed with a voting percentage of 85.39%. A copy of the minutes of the 18th Meeting of CoC is attached as Annexure A-IO with the present Application.

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- 17.** It is observed that the refrain Order in Application I.A 5285/2020 and Ivn.P-14/2020 against the Corporate Debtor are pending before this Adjudicating Authority, whereas on other side the Hon'ble High Court on dated 10.10.2023 in W.P. (C) 2709/2021 has directed to continue the CIRP against the Corporate Debtor.
- 18.** In view of the above, it would be appropriate for this project, "Pal Greens," to be segregated from the other projects of the Corporate Debtor, namely (i) Sector 95 Gurugram, known as "Pal City Park," (ii) 70A Gurugram, known as "Pal Aquapolis," and (iii) Sector 89, known as "Pal Gardens." The RP is also directed to take suitable steps in this regard. Furthermore, the RP must act to prevent adverse effects on other interested parties and direct all necessary steps to be taken for this purpose. Therefore, the CIRP against the remaining projects of the Corporate Debtor will be dealt with in separate proceedings.
- 19.** Accordingly, the present Application i.e., IA/130/2024 in IB-755/PB/2018 stands allowed and disposed off.
- 20.** Let copy of the order be served to the parties concerned.

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

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Division Bench)

Item No.-514

(IB)-755(PB)/2018

New IA/1877/2024, IA/1379/2024, IA/1380/2024, CA/1356/2020,
IA/2633/2020, IA/3068/2020, IA/4620/2020, IA/5134/2020, IA/5144/2020,
IA/5233/2020, IA/5285/2020, IA/5473/2020, Ivn. P/14/2020, IA/272/2021,
IA/2729/2021, IA/4391/2021, IA/4809/2021, IA/926/2022, IA/2264/2022,
IA/2733/2022, IA/3117/2022, IA/4137/2022, Ivn. P/22/2022, Ivn.
P/31/2022, Ivn. P/03/2023, IA/4790/2023, IA/6533/2023, IA/6537/2023

IN THE MATTER OF:

S.C.S.L. Buildwell Pvt. Ltd.

.....Applicant

Vs.

Pal Infrastructure & Developers Pvt. Ltd.

.....Respondent

SECTION

U/s 7 of (IBC) CIRP

Order delivered on 25.04.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

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

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Applicant : Mr. Ashish Mohan, Mr. Nitesh Jain, Mr. Deepak
Agarwal, Ms. Shankari Mishra, Advs. in IA/2729/2021
Ms. Riya Thomas in IA/4391/2021, IA/4137/2022,
IA/6533/2023 & IA/6537/2023
Mr. Aditya Madaan, Mr. Aishwarya Adlakha, Advs. in
IA/272/2021
Mr. Harshit Singh Sisodia, Adv. in New IA/1877/2024
Mr. Venket Rao, Ms. Ankita Saikia, Mr. Gunjan
Kumar, Adv. in IA/2733/2022

For the Respondent : Mr. Kanwal Chaudhary, Mr. Himanshu Singhal, Advs.
for R 3 in IA/1379/2024 & IA/1380/2024
Mr. Ashish Mohan, Mr. Nitesh Jain, Mr. Deepak
Agarwal, Ms. Shankari Mishra, Advs. for R 2 in
IA/1379/2024 & IA/1380/2024
Mr. Ashish Mohan, Mr. Nitesh Jain, Mr. Deepak

Agarwal, Ms. Shankari Mishra, Adv. for R 1 in
IA/5134/2020
For the Land Owner : Mr. Parag Maini, Mr. Raghav Chadha, Adv. in
IA/5473/2020 & Ivn. P/03/2023
Mr. Ashish Mohan, Mr. Nitesh Jain, Mr. Deepak
Agarwal, Adv. in IA/2729/2021 & IA/5134/2020
For the RP : Mr. Ganga Ram Agarwal, RP with Mr. Amar Vivek,
Ms. Damini Srestha, Ms. Ritika Gaur, Adv.

ORDER

New IA/1877/2024:-

This is an application filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 seeking certain direction to the Resolution Professional for accepting their claim. Heard the submission made by Ld. Counsel on behalf of the Applicant. Ld. Counsel on behalf of the Resolution Professional is present and accepts notice for filing their reply to this application. Ld. Counsel on behalf of the Applicant is directed to provide a copy of this application to the Ld. Counsel for the Resolution Professional. List this application on **06.06.2024**.

IA/1379/2024 & IA/1380/2024:-

Ld. Counsel on behalf of the Applicant is present. Ld. Counsel on behalf of the Resolution Professional is present and sought a week days time for filing their reply. Ld. Counsel for the Respondent No. 3 is present and submitted that they have filed their reply yesterday, however, the same is not reflected on the e-portal of the Tribunal. Ld. Counsel on behalf of the Respondent No. 2 is also present and submitted that they have filed their reply, however, the same is not reflected on the e-portal of the Tribunal. Ld. Counsels on behalf of Respondent Nos. 2 and 3 may approach the Registry and cure the defects, if any, so that it is reflected on the e-portal of the Tribunal. List both the applications on **06.06.2024**.

IA/2729/2021:-

Heard the submission made by Ld. Counsel on behalf of the Respondent and also Ld. Counsel on behalf of the Applicant in part. For continuation of the arguments list this application on **06.06.2024 at 11:45am.**

In the mean time, parties to the application may file an affidavit indicating whether any construction activities took place on the land in question of the application after 17.06.2009, and if so by whom such construction was carried out.

**CA/1356/2020, IA/2633/2020, IA/3068/2020, IA/4620/2020,
IA/5134/2020, IA/5144/2020, IA/5233/2020, IA/5285/2020,
IA/5473/2020, Ivn. P/14/2020, IA/272/2021, IA/4391/2021,
IA/4809/2021, IA/926/2022, IA/2264/2022, IA/2733/2022,
IA/3117/2022, IA/4137/2022, Ivn. P/22/2022, Ivn. P/31/2022, Ivn.
P/03/2023, IA/4790/2023, IA/6533/2023, IA/6537/2023:-**

List all these applications on **06.06.2024.**

**Sd/-
(Dr. SANJEEV RANJAN)
MEMBER (T)**

**Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)**