

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, NEW DELHI,
BENCH III**

I.A. No. 1822/2021
in
IB-1348(ND)/2019

In the matter of:

M/s Nisus Finance & Investment Managers LLP. & Anr.

...Financial Creditor

Versus

M/s Earthcon Universal Infratech Pvt. Ltd.

...Corporate Debtor

In the matter of:

Mukesh Sharma and Ors

... Intervenors/ Applicant

Order delivered on 1st July, 2021

Coram:

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER
(TECHNICAL)**

Applicant

Mr. Rakesh Mittal & Mr. Ajay Harshana
(Advocates)

RP

Mr. Rishabh Jain (Advocate)

ORDER

Per: NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

1. The present application has been filed by the 31 Home buyers in the project of Earthcon Universal Infratech



Pvt. Ltd. (Corporate Debtor) through authorized representatives under section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC") seeking following reliefs:

- a. Pass an order to postpone the voting on proposed Resolution Plan/CoC meeting till the time the claims of the applicants are considered by the RP;
- b. Direct the RP to amend the admitted amount of claim and include pre-EMI interest paid by the applicants till 8th January 2020 as a part of principal amount;
- c. Direct the RP to correct the Information Memorandum and roll out to RA's for the affected claims/Units resolution Plan and to create a separate class of Subvention Buyers so that their claim can be addressed effectively;
- d. Appoint an authorized representative within subvention buyers' group to represent the subvention buyers' agenda in CoC meetings in view of complexities and limited/lesser time for IP appointment as AR for subvention buyers;



e. Direct RP to consider the claim of the buyers who had submitted an affidavit for cancellation but neither refund was made nor tripartite agreement was cancelled hence revoke the unit cancellation and add the claim as all other home buyers claim under subvention scheme.

2. The facts that led to the filing of the present application are as follows:

a. It is submitted that the Corporate Debtor had sold residential units under subvention Scheme to the Applicants at escalated price (10%-15%) on total price wherein it was contractually guaranteed by the Corporate Debtor that the pre-EMI until possession was to be borne by Corporate Debtor, however, the corporate debtor failed to pay the pre-EMIs to the Bank and neither compensated affected buyers under the said scheme and did not offer the possession of the Units booked by the applicants. Hence, Financial Institutions (Bank) started deducting the pre-EMIs from the Bank Account and those who could not afford, were threatened to pay



and failing which the flat is declared as Non-Performing Assets.

- b. It is further submitted that few applicants have given offer of cancellation and refund and signed the affidavit but the refund was never given and these buyers are still forced to pay EMIs and their units are cancelled too by Corporate Debtor in the CRM database. Due to gross deficiency of IRP in his service, Mr. Gaurav Katiyar was appointed as Resolution Professional of the Corporate Debtor by CoC. After discussion with the representatives of the Applicants, RP accepted that the matter and nature of subvention buyers claims, was complex and hence suggested a way out as collating the claim wherein the pre-EMI paid till 8th January, 2020, to be considered as principal amount and to be clubbed with the principal amount paid by subvention scheme buyers and rest of the claim beyond 8th January 2020 was to be accepted as contingent claim. Accordingly, applicants submitted their claims with all documentary evidence with the RP.



c. It is averred that after doing all exercise and saving the RP's resources and time, the applicants were not allowed direct entry in Information Memorandum (IM) by RP and also failed to amend the list of claims for Real Estate Allottees. The applicants, being subvention scheme home buyers, are having the apprehensions that their grievances are not being addressed and neither being recognized in any of the CoC meetings. Furthermore, their request to form a separate class of subvention buyers within the class of home buyers was also not heard by AR and RP. Moreover, after detailed discussion with RA, it was confirmed that RA does not have subject matter expert information regarding subvention buyers and hence, must be failing to effectively put across subvention buyers' grievances in any of the CoC meetings. Therefore, prayed that relief sought by the applicants may be granted keeping in view the facts and circumstances as mentioned above.

3. The RP has filed its reply to the application under consideration and submitted that the main grievance of



applicants is non-payment of “pre-EMI interest” by the PRAs. It is stated by the RP that applicants have failed to get any “pre-EMI interest” under subvention scheme in the Resolution Plan during negotiations on Resolution Plan between the RA, CoC members and the applicants themselves. It is further submitted that RA is offering the flats to the real estate allottees of the Corporate Debtor, therefore the applicants would be requiring to pay after deducting the payments made by the applicants in the Statement of Accounts (SOA). Hence, the claims collated and interest collated by the RP shall be of little significance as RA is satisfying the allottees claim with development and handover flats in accordance with approved resolution plan. Furthermore, 11 applicants have claimed more principal amount in form CA than as appearing their statement of accounts, therefore, the RP reserves the right to reconcile the SoAs of these applicants with the actual principal payment made by them to the corporate debtor. Moreover, the representatives of the applicants pressed the demand of “pre-EMI interest”



during CoC meeting on 02.04.2021 and 16.04.2021, one PRA denied their demand on the spot and other PRA denied their demand by way of amendment in the Resolution Plan. Hence, applicants were allowed to made representation before the PRAs and their queries were duly answered by the PRAs.

4. The applicants have also filed the written submissions and reiterated all the contention as mentioned in the application under consideration and further stated that the RP through his counsel has misled this Hon'ble Court during virtual hearing by stating that voting is neither taking place nor will. However, CoC voting took place from 05.05.2021 to 07.05.2021. It is submitted that RP had neglected applicants queries who could not afford to pay pre-EMI's, RERA order for full refund by CD to Home Buyers etc. and now their units are at risk as Banks have secured an occupancy order from respective forums. Hence, prayed that prayers in the application may be allowed.

5. The RP also filed written submissions and reiterated all the contentions as mentioned in the reply and further



stated while quoting judgment of Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta [2019] 111 taxmann.com 234 (SC) para no. 27, 30, 31, 38, 40 & 91** that the RP has no role in negotiation and RP is merely a facilitator of the process. Therefore, it is for Resolution Applicant to satisfy the debt of various creditors and it is for the CoC to approve the treatment of debt of various creditors in accordance with the well settled principles of IBC.

6. We have heard Counsel for the Applicants as also Counsel for the Respondents and perused the application/other material on record. The findings of the Tribunal on each of the prayers are as follows:

(i) With regard to prayer (a) of the application, as the Members of the CoC have already voted on resolution plan, the prayer has become infructuous at this stage of the matter.

(ii) With regard to prayer (b) it is evident from the material based before us that the applicants have been provided opportunity to meet Prospective



Resolution Applicants (PRAs) and place their demands. It is the purely commercial decision of the PRAs to suitably address the issue of applicants. As the Resolution Plan already approved by the CoC is yet to be filed with this Authority, the prayer made against this item is premature at this juncture.

(iii) With regard to prayer (c) & (d) in the application, these cannot be granted for the reason that the Insolvency & Bankruptcy Code does not envisage/recognize a sub-class of homebuyers within the Class of Homebuyers as Financial Creditors as prayed for by the Applicants against these points. Hence, these prayers are rejected.

(iv) With regard to prayer (e) of the application, we direct the Resolution Professional to consider the claim of the buyers who had submitted an affidavit for cancellation but to whom no refund was made, nor the tripartite agreement was cancelled, in respect of such buyers, the unit

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cancellation shall be revoked and they shall rank pari-passu in relation to all other Homebuyers in class in relation to all their claims, rights and obligations etc.

7. The IA is disposed of in terms of above orders.

- Sd.

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

- Sd.

(P.S.N. PRASAD)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.117
New IA-2663/2021 , New IA-2696/2021 & IA-1425/2021

in
IB-1348/(ND)/2019

IN THE MATTER OF:

Nisus Finance & Investment Managers LLP & Anr.
Vs.
Earthcon Universal Infratech. (P) Ltd

....FINANCIAL CREDITOR

....RESPONDENT

SECTION :
U/s. 7 IBC, 2016

Order delivered on 1st July, 2021

CORAM:

SHRI PSN PRASAD,
MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

PRESENT:

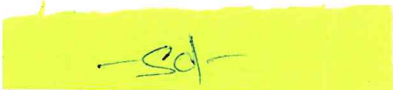
For the Applicant/OC : IA 1425/2021- Advocates for Applicants- Mr. Shikhil Suri, Ms.
Nikita Thapar, Ms. Komal Gupta


For the Respondent/CD :
For the Intervener :

ORDER

New IA-2663/2021 , New IA-2696/2021 & IA-1425/2021 :

Let these IAs be listed on 13.8.2021.


(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)


(P.S.N PRASAD)
MEMBER (JUDICIAL)

Surjit

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.117
IA-2452/2021 in
IB-1348/(ND)/2019

IN THE MATTER OF:

Nisus Finance & Investment Managers LLP & Anr.
Vs.
Earthcon Universal Infratech. (P) Ltd

....FINANCIAL CREDITOR

....RESPONDENT

SECTION :

U/s. 7 IBC, 2016

Order delivered on 1st July, 2021

CORAM:

SHRI PSN PRASAD,
MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

PRESENT:

For the Applicant/OC : Mr. Shikhil Suri, Ms. Nikita Thapar and Ms. Komal Gupta,
Advocates

For the Respondent/CD :

For the Intervener : Mr. Rishabh Jain, Advocate for RP

ORDER

IA-2452/2021 :

Heard the submissions made by the Counsel for the Applicant. The Non-Applicants are directed to file their reply before the next date of hearing i.e. 13.8.2021.

List on 13.8.2021.

- Sd -

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

- Sd -

(P.S.N PRASAD)
MEMBER (JUDICIAL)

Surjit

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.117
New IA-2430/2021 in
IB-1348/(ND)/2019

IN THE MATTER OF:

Nisus Finance & Investment Managers LLP & Anr.
Vs.

....FINANCIAL CREDITOR

Earthcon Universal Infratech. (P) Ltd

....RESPONDENT

SECTION :

U/s. 7 IBC, 2016

Order delivered on 1st July, 2021

CORAM:

SHRI PSN PRASAD,
MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

PRESENT:

For the Applicant/OC : Adv. Mr. Komal for applicants

For the Respondent/CD :

For the Intervener : Mr. Rishabh Jain, Advocate for RP

ORDER

New IA-2430/2021 :

Heard the submissions made by the Counsels. The Counsel for the Resolution Professional is directed to file reply within 4 weeks.

List on 13.8.2021.

- Sd -

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

- Sd -

(P.S.N PRASAD)
MEMBER (JUDICIAL)

Surjit