

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

ITEM No. 03
(IB)-477(PB)/2017

IN THE MATTER OF:

Au Small Finance Bank Ltd
Vs

.... Petitioner/Applicant

Prabhu Shanti Real Estate Pvt Ltd

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016 (CIRP).

Order delivered on 12.09.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (JUDICIAL)

SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE AND VC)

PRESENT:

For Applicant / RP : Mr. Abhishek Parmar, Adv. for RP with Devendra
Umrao - Resolution Professional
Mr. Ashish Aggarwal, Mr. Gurcharan Singh Advs.
For the Sus. BOD : Mr. Abhishek Anand, Mr. Supriyo Banerjee, Advs.

ORDER

CA-1028/2018 and CA-840/2019

Ld. Counsel appearing for the Applicant / RP submitted that he is not prepared with the submissions to be put forth in the matter and prayed for an adjournment.

At his request, the hearing is deferred to **18.10.2023**.

IA-5107/2021

The relief sought in the application is as follows:

- “(a) Quash the forensic audit report submitted by Respondent No. 2 in the above- captioned matter.*
- b) Direct Respondent no.1 i.e. the Resolution Professional to get conduct a fresh forensic audit of the Corporate Debtor after obtaining bank account statements and account ledgers of related parties of the Corporate Debtor.*

(c) Pass any other order which this may court may deem fit and necessary in the facts and circumstances of the case.”

In view of the contents of Para 5 and 6 of the application, Ld. Counsel for the RP/Respondent has no objection to the prayer made in the application i.e. for issuance of the direction to conduct a fresh Forensic Audit qua the Corporate Debtor. Para 5 and 6 of the application reads as follows:

“5. That now that the applicant has gained knowledge about the fact that the forensic auditors i.e. the Respondent No. 2 while conducting the said forensic audit have not taken into consideration the statement of Accounts bearing A/c no 03252000001101 with HDFC Bank (for the financial years 2012-2018) of the Corporate Debtor. It would be pertinent to mention that, the Chairman and Managing Director of the Corporate Debtor, Sh. Joginder Singh Lather is the authorized signatory of the said account and has been operating this account since the opening of the said account with the bank.

6. That transactions of more than 100 crores have been done by Mr. Joginder Singh Lather from the said account with various related and unrelated parties, but to the utter surprise of the Applicant herein, the forensic auditors have miserably failed to consider any such doubtful transaction in the forensic audit report submitted by the Respondent No. 2 to the Resolution professional and the members of the committee of creditors. Copy of Statment of accounts and tally ledger data of A/c no 03252000001101 with HDFC Bank of the Corporate Debtor is annexed herewith and marked as Annexure A-2.”

In view of the aforementioned, the RP is directed to conduct the fresh Forensic Audit qua the Corporate Debtor, particularly with reference to the contents of Para 5 and 6 above.

The fees/expenses of the Forensic Auditor would be paid by the Applicant i.e. Bijender Singh Lather. The RP would ensure that the Forensic Audit Report is available within 3 weeks. In the event of non-payment of fees/expenses qua the fresh Forensic Audit to take place, the applicant would be liable to action in accordance with law.

In view of the above, the application is **allowed** and stands disposed of.

IA-705/2022

The relief sought in the application is as follows:

***(a)** Direct Resolution Professional, to furnish the stock register or list/inventory of the materials and assets, of which the Corporate Debtor was an occupier, before the Hon'ble Adjudicating Authority which was released to HRHK Builders Private Limited by the Resolution Professional in contravention of section 14 (1)(d) and section 28(1)(f) of the Insolvency and Bankruptcy Code 2016.*

***(b)** DIRECT Resolution Professional, to restore the assets and property of the Corporate Debtor, which has been illegally released to HRHK BUILDERS PRIVATE LIMITED, in contravention of section 14 (1)(d) and section 28(1)(1) of the Insolvency and Bankruptcy Code 2016.*

***(c)** Pass orders for initiation of disciplinary proceedings under section 220 of the Insolvency and Bankruptcy Code 2016, against the Resolution Professional by the Insolvency and Bankruptcy Board of India for gross professional misconduct.*

***(d)** Pass any other order which this may court may deem fit and necessary in the facts and circumstances of the case.”*

As can be seen from the aforementioned, the issue espoused in the application is that the RP had released the assets belonging to the Corporate Debtor illegally in contravention of Section

14(1)(d) and Section 28(1)(f) of the IBC, 2016. It is also the plea espoused in the application that the RP could not take control and custody of the assets and properties of the Corporate Debtor properly.

The application is disposed of with a direction to get the record qua the assets and the properties referred to in the captioned application being audited by the auditor directed to be appointed in IA-5107/2021.

The RP would also ensure that the in-depth examination and scrutiny of the record and book of accounts of the Corporate Debtor is done and it is ensured that the duty incumbent upon the IRP/RP in terms of the provisions of Section 17, 18, 19(1) and 25 of the IBC, 2016 is discharged effectively.

The RP should also invoke the provisions of Regulation 30 of the IBBI CIRP Regulations, 2016 if the need arises. The RP would ensure that the assets belonging to the Corporate Debtor are collated and protected for inspection.

The report regarding the assets/properties of the Corporate Debtor duly collated by RP be filed before this Adjudicating Authority in the form of a status report within 2 weeks.

Accordingly, IA-705/2022 stands **disposed of** in the above terms.

IA-4282/2023

The relief sought in the application is as follows:

- (a)** Allow the present application;*
- (b)** Exclude the period of Corporate Insolvency Resolution Process by a period of 1292 days from 15.11.2019 to 30.05.2023 on account of CoC being functus officio, as approved by CoC in ninth meeting of creditors with 93.33% voting.*

(c) Exclude the period from 01.06.2023 till disposal of the present application; and”

(d) Extend the period Corporate Insolvency Resolution Process by a period of 90 days from the date of disposal of present application as resolved and approved by CoC in ninth meeting of creditors with 93.33% voting; or

(e) Pass such other or further order(s) as may be deemed fit and proper in light of the facts and circumstances of the instant case.

In view of the averments made in Para 7 to 21 of the IA, the period of 1292 days shall be excluded to complete the CIRP, and prayer (b) (c) and (d) are allowed. The RP would have a further 90 days time from the date of this order to conclude the CIRP Process.

IA-4282/2023 is **allowed** and disposed of.

IA-4430/2023

The relief sought in the application is as follows:

“a. direct the Resolution Professional to admit the Claims of the Applicants as stated in para 1 of the present Application;

b. pass such order or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.”

Ld. Counsel for the RP submitted that he has verified the books of accounts of the Corporate Debtor and is satisfied that the names of the Applicants in the captioned IA are reflected in the books of accounts as Homebuyers. Having submitted the same, the Ld. Counsel for the RP assured that the claim of the applicants in the application would be verified on merit and would be considered for admission.

In view of the statement made by the Ld. Counsel for the RP, the application stands **disposed of**.

It is made clear that the RP would be cautious that no spurious claim is admitted at any cost.

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(AVINASH KUMAR SRIVASTAVA)
MEMBER (TECHNICAL)

-sd-

(ASHOK KUMAR BHARDWAJ)
MEMBER (JUDICIAL)

Dipak - 12.09.2023