

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

IA (IB)/373(KB) /2023

In CP No. 2084/(KB) /2019

*Application under Section 60(5) of the IBC, 2016 read with Rule 11 of
the National Company Law Tribunal Rules, 2016;*

In the Matter of:

Avaani Oxford Owners Association

....Financial Creditor

Vs.

Oxford Facilities Management

....Corporate Debtor

And

In the mater of:

Bhaskar Biswas, Suspended Directors of Oxford Facilities Management

.....Applicant

Vs.

1. Avaani Oxford Owners Association

2. Oxford Facilities Management

*3. Sneh Maheswari, IRP appointed in respect of Oxford Facilities
Management*

...Respondents

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Date of Pronouncement of order: 03.04.2024

Coram:

Smt Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Joy Saha, Sr. Adv.] For the Financial Creditor

Mr. Avishek Guha, Adv.]

Mr. Arunika Dutta, Adv.]

Mr. K. De Sarkar, Adv.]

*Mr. Arik Banerjee, Adv.] For the Liquidator Ms. Sneha Maheswari,
Adv*

Mr. Mainak Bose, Adv.] For the Suspended Board of Directors

Mr. A. Mitra, Adv.]

Mr. Dhilon Sengupta, Adv.]

Mr. Abhijit Nayak, Adv.]

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Heard the Ld. Sr. Counsel / Counsel for the parties at length.
3. This application has been preferred by one Bhaskar Biswas to seek the following reliefs:
 - a. Directions be passed on the Respondent No. 3, the Liquidator to verify and settle the claims of the Financial Creditor in terms of Section 35 of the Code;
 - b. No disbursement be made prior to verification and settlement of the claims of Financial Creditor;
 - c. Alternatively, this Tribunal be pleased to decide upon the claim of the Financial Creditor;
 - d. Ad-interim orders in terms of prayers above;
4. The Applicant claims that it is one of the Directors of the Suspended Board of Oxford Facilities Management, Corporate Debtor.

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- 5. That by an order dated 13.03.2020, the Corporate Debtor was admitted into CIRP. An appeal was preferred by the Suspended Board against the order and the same was dismissed by the Hon'ble NCLAT. Further, by an order dated 09.11.2022, the Hon'ble Apex Court dismissed the Civil Appeal preferred by the Suspended Board.*
- 6. That by an order dated 30.12.2022, this Tribunal was pleased to pass an order of Liquidation of Corporate Debtor and appointed Sneh Maheswari as the Liquidator. That it is the duty of the Liquidator as prescribed under Section 35 of the Code to verify and settle the claims of Creditors and thereof distribute the proceeds out of Liquidation process, but the same has not been done till date.*
- 7. On 16.01.2023, the Applicant preferred an detailed representation before the Liquidator with a request to verify and settle its claims stating that there is only one member in the CoC which is the Financial Creditor.*
- 8. Ld. Counsel appearing for the Applicant would submit at hearing that the claim raised by the Financial Creditor is far in excess of actual amount due to the Financial Creditor.*

9. The Financial Creditor is only entitled to a sum of Rs. 2.07 Crores which is in the form of interest free deposit with the bank.

10. That the Financial Creditor is not entitled to any interest that has accrued on the said principal amount, in view of the development agreement concerning the project, Article 7.1 whereof which is an agreement of sale with the flat buyers records the following:

“The Purchaser acknowledges that in as much as there are a cluster of building which are to be constructed erected and completed and / or to form part of the Residential Area the services are to be upgraded from time to time including capital costs which may have to be incurred for the purpose of repairs and / or replacement of the various equipments and / or installations in the said Residential Complex and the Purchaser shall keeping deposit with the Seller at or before taking over possession of the said Flat a sum of Rs. 25/- (Rupees twenty five) per sq. ft. (hereinafter referred to as the SINKING FUND) which amount shall not bear any interest and shall be transferred to such Maintenance Company / Syndicate and / or Holding Organization as the case may be.”

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11. *It is brought to our notice that on 18.10.2023 and 16.08.2023, two orders were passed by this Tribunal in IA 1495 of 2023 when this Bench directed release of three Fixed Deposits in favour of the Liquidator along with accrued interests, within 7 days from the date of receipt of the order, to form part of the Liquidation estate.*
12. *The order dated 18.10.2023, records that a sum of Rs. 3.70 Crores approximately, is outstanding as on 25.01.2023 in respect of the FDs which were collected towards sinking fund and maintenance deposit.*
13. *Ld. Counsel would also submit that under Section 53(1)(h), the Suspended Board has a claim over the said interest component whereas principal amount can be distributed to the various Stakeholders over which the Financial Creditor cannot have any claim. The principal amount being 2,22,50,000.00, the balance amount should be paid to the Applicant forthwith.*
14. *However, the claim of the Applicant has been resisted by the Liquidator on the ground that the prayers in the application are frivolous, vexatious and not maintainable.*

15. We have heard the Ld. Counsels and considered their rival contentions and perused the records. No statutory provision or precedents have been brought to the fore to justify the Applicant's claim over the interest that has accrued on the principal sum, the principal whereof is admittedly the property of the Financial Creditor.

16. We would note that it was the flat owners who were required to pay a sum of Rs. 25 Per Square Foot for the total super build up area forming part of their flat on account of Sinking Fund to the developers. Apart from that each and every flat owner was required to pay maintenance charge at the rate of Rs. 2/- square foot per month on the total super built up area for a period of one year for meeting common expenses which amounts to Rs. 24/- per square foot per annum as per Clause 6.5 (vii) of sale agreement. That apart, the flat owners were also required to pay Rs. 25 per Square Feet on the total area of the flat of the respective flat owners as per clause 6.5 (iv) of the sale agreement.

17. We would further note that as of now there are 399 number of flat owners who have deposited a sum of Rs. 1,71,00,000/- nearly on account of Sinking Fund and a sum of Rs.

1,64,00,000/- nearly on account of Maintenance Charge with the developer. Only after depositing the entire maintenance charge and sinking fund charge as per terms of the agreement for sale, deed of conveyance with respective flat owners were entered into with the developer and the maintenance company i.e. the corporate debtor.

18. A letter dated 1st February, 2016 shows that the Financial Creditor replied to the letter of the corporate debtor to release the balance fund of Rs. 13.64 lakhs out of sinking fund, stating that Rs. 34.86 lakhs has already been released out of the approved sum of Rs. 48.50 lakhs on account of capital expenditure. The said letter dated 1st February, 2016 and the letter dated February 01, 2016 shows that request has been made to release the fund from the sinking fund for capital expenses and records shows approval of capital expenses was made by the financial creditor for maintenance of the project from the sinking fund itself, which is created as per Clause 6.5(v) of the sale agreement.

19. Thus out of the fund deposited by 399 flat owners, a sinking fund and a fund for maintenance charge was created. It is thus the flat owners' money which was utilized for making the capital expenses like installation of CCTV, water purifying plant,

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installation of electricity meters as well as other maintenance of the project. Any further deduction of claim on any account will be unfair. Hence, we hold that the entire fund being the balance of sinking fund and maintenance deposit will go to flat owners and other Stakeholders in accordance with Section 53 of the Code.

20. With the above directions, this IA (IB)/373(KB)/2023 stands disposed of.

21. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

22. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

*D. Arvind
Member (Technical)*

*Bidisha Banerjee,
Member (Judicial)*

Signed on this the 03rd day of April, 2024

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M. Jana (P.S.)