

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

COURT – IV

20. IA-5094(MB)2023, IA-4316(MB)2023,  
IA-5775(MB)2023, IA-5776(MB)2023,  
IA-5774(MB)2023, IA-5768(MB)2023,  
IA-5082(MB)2023 IN C.P. (IB)/1389(MB)2020

CORAM:

MS. ANU JAGMOHAN SINGH  
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI  
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON 27.03.2024

NAME OF THE PARTIES: Tejendrakumar Patel  
Vs.  
Vikas Procon Private Limited

SECTION: 9, 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

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**ORDER**

1. None present for the Applicant in IA-5094(MB)2023 and IA-4316(MB)2023. Mr. Ashish Verma, Ld. Counsel for the Applicant in IA-5774, 5775, 5776, 5082 and 5786 of 2023 present through VC. Mr. Akshay Petkar i/b Adv. Pratik Pnadey, Ld. Counsel for the Respondent/RP present in all IAs.
2. **IA-5094(MB)2023 & IA-4316(MB)2023** : None present for the Applicant in both the IAs. The Applicants are directed to appear before this Bench through Counsel or Personally on the next date of hearing and argue their application, failing which the IA will be dismissed for non-prosecution on that day.
3. List **IA-5094(MB)2023 & IA-4316(MB)2023** for further consideration on **05.04.2024**.

**IA-5775(MB)2023**

4. This is an application filed by the Applicant, Mr. Avnish Arunkumar Somani against the Resolution Professional seeking following reliefs:

- a) *That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to admit the claim of Rs.1,68,53,884/- against the Corporate Debtor;*
- b) *That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to pay the claim of Rs.1,68,53,884/- out of CIRP of the Corporate Debtor to the Applicant;*
- c) *That this Hon'ble Tribunal be pleased to set aside the wrongful rejection of the claim of Rs.1,68,53,884/- of the Applicant by the Ld. Resolution Professional.*

5. Ld. Counsel for the Applicant submits that the Applicant purchased a shop in the commercial project Vikas Textile HUB developed by the Corporate Debtor. It is submitted that on 15.05.2017, the Applicant had made a payment of Rs.10,51,000/-; on 16.05.2017 Applicant paid the amount of Rs.35,00,000/-, and on 22.05.2017 Applicant made a payment of Rs.36,07,000/-. It is submitted that the total amount due from the CD is Rs.1,68,53,884/- which includes interest of Rs.86,95,884/- @18%. It is further submitted that as per the demand of the Corporate Debtor, all of these payments were made in cash, and thus, the entire consideration amount towards the purchase of Shop No.G-37 was made for the total sum of Rs.81,58,000/-. The Applicant states that the amount being removed from day to day business operation of the Applicant for the purchase of the said property is reflected in the books of account of the Applicant. It was mandatory on the part of the Corporate Debtor to execute the Agreement of Sale in favour of the Applicant within 6 months of receipt of the payment. However, on the contrary, the Corporate Debtor failed to adhere to the promises and assurances made. Further, the Applicant vide several means and correspondences tried to contact the Corporate Debtor requesting to execute the Agreement for sale but the Corporate Debtor neither executed the agreement of sale nor

refunded the said received amount through cash. The matter stood thus, the Corporate Debtor admitted into CIRP on 19.04.2023.

The Applicant stated that the RP has rejected his claim without considering his payments on the ground that there is no proof of payments received by the Corporate Debtor. Those are not showed in the books of Corporate Debtor. Therefore, against his rejection claim amount the instant IA filed for seeking the above reliefs.

6. Ld. Counsel for the RP submits that the abovementioned transactions are stated to be done through cash. However, no such transactions are recorded in the books of the Corporate Debtor.
7. Heard Ld. Counsel for both the parties and perused the material available on record.
8. This Bench observes that the Applicant has himself admitted that the all transactions/payments are made through cash to the Corporate Debtor and there is no agreement of sale nor was the Applicant handed over the possession of the said property by the Corporate Debtor. The transactions/payments are also not reflected in the books of the Corporate Debtor. The Applicant failed to produce the valid documents/records/receipts substantiating the transactions. The alleged letter of guarantee which the applicant relies upon is an unsigned document having no evidentiary value. The Applicant has also not produced any documentary evidence/agreement to substantiate his claim for accrual of interest. This Bench feels that the RP has rightly rejected the claim submitted by the Applicant. Hence, this Bench is not inclined to interfere into the rejection order passed by the RP. In view of the above discussion, IA-5775(MB)2023 is **dismissed**.

9. This is an application filed by the Applicant against the Resolution Professional seeking following reliefs:

- a) That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to admit the claim of Rs.28,26,093/- against the Corporate Debtor;*
- b) That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to pay the claim of Rs.28,26,093/- out of CIRP of the Corporate Debtor to the Applicant;*
- c) That this Hon'ble Tribunal be pleased to set aside the wrongful rejection of the claim of Rs.28,26,093/- of the Applicant by the Ld. Resolution Professional.*

10. Ld. Counsel for the Applicant submits that the Applicant purchased a shop in the commercial project Vikas Textile HUB developed by the Corporate Debtor. Ld. Counsel for the Applicant submits that on 28.03.2017, 20.06.2017, 01.03.2018, 15.01.2018, 16.01.2018, 18.01.2018 & 20.01.2018 the Applicant had paid in total an amount of Rs.14,00,000/-. Out of Rs.14,00,000/- the Applicants paid through bank transaction Rs.5,00,000/-. It is submitted that the total amount due from the CD is Rs.28,26,093/- which includes interest of Rs.14,26,093/- @18%. It was mandatory on the part of the Corporate Debtor to execute the Agreement of Sale in favour of the Applicant within 6 months of receipt of the payment. However, on the contrary, the Corporate Debtor failed to adhere to the promises and assurances made. Further, the Applicant vide several means and correspondences tried to contact the Corporate Debtor requesting to execute the Agreement for sale but the Corporate Debtor neither executed the agreement of sale nor refunded the said received amount through cash. However, as the Corporate Debtor failed to fulfil

the promises, the applicants lost trust in the Corporate Debtor and filed a Police Complaint on 03.11.2020. It is further submitted that despite executing a Letter of Guarantee and receiving the entire payment of consideration amount in 2017, the Corporate Debtor has failed to execute the Agreement for Sale of the Said property, neither has handed over the possession of the said property to the Applicant.

The Applicant stated that the RP has rejected his claim without considering his payments on the ground that there is no proof of payments received by the Corporate Debtor. Those are not showed in the books of Corporate Debtor. Therefore, against his rejection of the claim amount the instant IA filed for seeking the above reliefs.

11. Ld. Counsel for the RP submits that the above mentioned transactions the Applicant paid only Five lakhs through bank. The other transactions not reflecting in the books of the accounts of the Corporate Debtor.
12. Heard Ld. Counsel for both the parties and perused the material available on record.
13. This Bench observes that the Applicant has himself admitted that the transactions/payments of Rs.9,00,000/- were through cash and Rs.5,00,000/- through bank to the Corporate Debtor and there is no agreement of sale nor was the Applicant handed over the possession of the said property by the Corporate Debtor. The transactions/payments are also not reflected in the books of the Corporate Debtor. The Applicant failed to produce the valid documents/records/receipts substantiating the transactions. The alleged letter of guarantee which the applicant relies upon is an unsigned document having no evidentiary value. The Applicant has also not produced any documentary evidence/agreement to substantiate his claim for accrual of interest. This Bench feels that the RP has rightly accepted claim part of the claim (paid through banking

channels) and rejected the balance amount. Hence, this Bench is not inclined to interfere into the rejection order passed by the RP. In view of the above discussion, IA-5776(MB)2023 is **dismissed**.

**IA-5774(MB)2023**

14. This is an application filed by the Applicant against the Resolution Professional seeking following reliefs:

- a) *That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to admit the claim of Rs.32,07,474/- against the Corporate Debtor;*
- b) *That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to pay the claim of Rs.32,07,474/- out of CIRP of the Corporate Debtor to the Applicant;*
- c) *That this Hon'ble Tribunal be pleased to set aside the wrongful rejection of the claim of Rs.32,07,474/- of the Applicant by the Ld. Resolution Professional.*

15. Ld. Counsel for the Applicant submits that the Applicant purchased a shop in the commercial project Vikas Textile HUB developed by the Corporate Debtor. Ld. Counsel for the Applicant submits that on 09.03.2017, 20.06.2017, 20.07.2018, 22.01.2018, 25.01.2018 and 20.03.2018 the Applicant had paid in total an amount of Rs.16,00,000/-. Out of Rs.16,00,000/- the Applicants paid Rs.1,50,000/- through bank transaction. It is submitted that the total amount due from the CD is Rs.32,07,474/- which includes interest of Rs.16,07,474/-. It was mandatory on the part of the Corporate Debtor to execute the Agreement of Sale in favour of the Applicant within 6 months of receipt of the payment. However, on the contrary, the Corporate Debtor failed to adhere to the promises and assurances made. Further, the Applicant vide several means and correspondences tried to contact the Corporate Debtor requesting to

execute the Agreement for sale but the Corporate Debtor neither executed the agreement of sale nor refunded the said received amount through cash.

The Applicant stated that the RP has rejected his claim without considering his payments on the ground that there is no proof of payments received by the Corporate Debtor. Those are not showed in the books of Corporate Debtor. Therefore, against his rejection of the claim amount the instant IA filed for seeking the above reliefs.

16. Ld. Counsel for the RP submits that the above mentioned transactions the Applicant paid only Rs.1,50,000/- through bank. The other transactions not reflecting in the books of the accounts of the Corporate Debtor.
17. Heard Ld. Counsel for both the parties and perused the material available on record.
18. This Bench observes that the Applicant has himself admitted that the transactions/payments are made Rs.14,50,000/- through cash and Rs.1,50,000/- through bank to the Corporate Debtor and there is no agreement of sale nor was the Applicant handed over the possession of the said property by the Corporate Debtor. The transactions/payments are also not reflected in the books of the Corporate Debtor. The Applicant failed to produce the valid documents/records/receipts substantiating the transactions. The alleged letter of guarantee which the applicant relies upon is an unsigned document having no evidentiary value. The Applicant has also not produced any documentary evidence/agreement to substantiate his claim for accrual of interest. This Bench feels that the RP has rightly accepted claim partly and rejected the balance amount. Hence, this Bench is not inclined to interfere into the rejection order

passed by the RP. In view of the above discussion, IA-5774(MB)2023 is **dismissed**.

**IA-5768(MB)2023**

19. This is an application filed by the Applicant against the Resolution Professional seeking following reliefs:

- a) *That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to admit the claim of Rs.25,88,899/- against the Corporate Debtor;*
- b) *That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to pay the claim of Rs.25,88,899/- out of CIRP of the Corporate Debtor to the Applicant;*
- c) *That this Hon'ble Tribunal be pleased to set aside the wrongful rejection of the claim of Rs.25,88,899/- of the Applicant by the Ld. Resolution Professional.*

20. Ld. Counsel for the Applicant submits that the Applicant purchased a shop in the commercial project Vikas Textile HUB developed by the Corporate Debtor. Ld. Counsel for the Applicant submits that on 24.07.2017 paid Rs.7,00,000/- through Via Cheque No.090821, On 15.01.2018 paid Rs.5,00,000/- through via Cheque No.092118 and Rs.1,00,000/- Via through Cheque No.092184 the Applicant had paid in total an amount of Rs.13,00,000/- through Cheques. It is submitted that the total amount due from the CD is Rs.25,88,899/- which includes interest of Rs.12,88,899/- @18%. It was mandatory on the part of the Corporate Debtor to execute the Agreement of Sale in favour of the Applicant within 6 months of receipt of the payment. However, on the contrary, the Corporate Debtor failed to adhere to the promises and assurances made. Further, the Applicant vide several means and correspondences tried to contact the Corporate Debtor requesting to



execute the Agreement for sale but the Corporate Debtor neither executed the agreement of sale nor refunded the said received amount through Cheques.

The Applicant stated that the RP has rejected the interest amount on the said payments. Therefore, against his rejection of the interest claim amount the instant IA filed for seeking the above reliefs.

21. Ld. Counsel for the RP submits that the above-mentioned transactions the Applicant paid only Rs.13,00,000/- through bank and that no documents has been produced to substantiate the applicability/accrual of interest on the principal amount. The Applicant is not entitled for interest on those payments. Hence, the claim of interest is rejected.
22. Heard Ld. Counsel for both the parties and perused the material available on record.
23. This Bench observes that the Applicant has made transactions of Rs.13,00,000/- through Cheques to the Corporate Debtor and the same has been acknowledged and admitted by the RP. The alleged letter of guarantee which the applicant relies upon is an unsigned document having no evidentiary value. The Applicant has not produced any documentary evidence/agreement to substantiate his claim for accrual of interest. In view of the absence of documents, this Bench is of the view that the though the RP has accepted the principal amount, he has rightly rejected the interest portion of the claim amount. Hence, this Bench is not inclined to interfere into the rejection order passed by the RP. In view of the above discussion, IA-5768(MB)2023 is **dismissed**.

#### **IA-5082(MB)2023**

24. This is an application filed by the Applicant against the Resolution Professional seeking following reliefs:

- a) *That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to admit the claim of Rs.1,67,17,232/- against the Corporate Debtor;*
- b) *That this Hon'ble Tribunal be pleased to direct the Ld. Resolution Professional, i.e. the Respondent to pay the claim of Rs.1,67,17,232/- out of CIRP of the Corporate Debtor to the Applicant;*
- c) *That this Hon'ble Tribunal be pleased to set aside the wrongful rejection of the claim of Rs.1,67,17,232/- of the Applicant by the Ld. Resolution Professional.*

25. Ld. Counsel for the Applicant submits that the Applicant purchased a shop in the commercial project Vikas Textile HUB developed by the Corporate Debtor. It is submitted that the Applicant paid through Cash of Rs.81,59,000/-. It is submitted that the total amount due from the CD is Rs.1,67,17,232/- which includes interest of Rs.85,58,232/-. It is further submitted that as per the demand of the Corporate Debtor, all of these payments were made in cash, and thus, the entire consideration amount towards the purchase of Shop No.G-31 was made for the total sum of Rs. 81,59,000/-. The Applicant states that the amount being removed from day to day business operation of the Applicant for the purchase of the said property is reflected in the books of account of the Applicant. It was mandatory on the part of the Corporate Debtor to execute the Agreement of Sale in favour of the Applicant within 6 months of receipt of the payment. However, on the contrary, the Corporate Debtor failed to adhere to the promises and assurances made. Further, the Applicant vide several means and correspondences tried to contact the Corporate Debtor requesting to execute the Agreement for sale but the Corporate Debtor neither executed the agreement of sale nor refunded the said received amount through cash. The matter stood thus, the Corporate Debtor admitted into CIRP on 19.04.2023.

26. The Applicant stated that the RP has rejected his claim without considering his payments on the ground that there is no proof of payments received by the Corporate Debtor. Those are not showed in the books of Corporate Debtor. Therefore, against his rejection order of the claim amount the instant IA filed for seeking the above reliefs.
27. Ld. Counsel for the RP submits that the abovementioned transactions are stated to be done through cash. However, no such transactions are recorded in the books of the Corporate Debtor.
28. Heard Ld. Counsel for both the parties and perused the material available on record.
29. This Bench observes that the Applicant has himself admitted that the all transactions/payments are made through cash to the Corporate Debtor and there is no agreement of sale nor was the Applicant handed over the possession of the said property by the Corporate Debtor. The transactions/payments are also not reflected in the books of the Corporate Debtor. The Applicant failed to produce the valid documents/records/receipts substantiating the transactions. The alleged letter of guarantee which the applicant relies upon is an unsigned document having no evidentiary value. The Applicant has also not produced any documentary evidence/agreement to substantiate his claim for accrual of interest. This Bench feels that the RP has rightly rejected the claim submitted by the Applicant. Hence, this Bench is not inclined to interfere into the rejection order passed by the RP. In view of the above discussion, IA-5082(MB)2023 is **dismissed**.

Sd/-  
ANU JAGMOHAN SINGH  
Member (Technical)

Sd/-  
KISHORE VEMULAPALLI  
Member (Judicial)