

NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 14

IA 229/2024 IA 893/2020 IA 53/2023 in C.P. (IB)/4733(MB)2018

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 12.02.2024

NAME OF THE PARTIES: **ICICI PRUDENTIAL REAL ESTATE AIF**
V/S SUNSHINE HOUSING AND
INFRASTRUCTURE PRIVATE LIMITED

Section 60(5) & 7 of the Insolvency and Bankruptcy Code, 2016

ORDER

IA 53/2023 in C.P. (IB)/4733(MB)2018

- 1) Mr. Rohan Rajadhyaksha, Ld. Counsel for the Applicant and Mr. Rohit Gupta, Ld. Counsel for the Respondent are present.
- 2) Heard Ld. Counsel for the Parties extensively for a considerable time.
- 3) The present Interlocutory Application has been filed by the Applicant, Monitoring Committee of Sunshine Housing and Infrastructure Private Limited against the Successful Resolution Applicant, Nandi Vardhan Infrastructure Limited, seeking the following reliefs:

a. to pass appropriate directions under Regulation 39(9) of the IBBI

(Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 against the Respondent to implement the approved Resolution Plan in timely manner with respect to payment of the outstanding CIRP costs and Rs. 5,00,00,000/- payable to the Secured Financial Creditor;

b. Punish and fine the Officers and the Persons in the Management and control of the Respondent in the manner as specified u/s 74(3) of the IBC, 2016

4) The present Interlocutory Application has been filed u/s 74(3) of the Insolvency and Bankruptcy Code, 2016 as the Respondent who is the Successful Resolution Applicant of the Corporate Debtor has wilfully failed to implement the Resolution Plan submitted by them. Record reveals that the Resolution Plan of Nandi Vardhan was approved by this Bench *vide* order dt. 11.02.2022. Thereafter, the Resolution Professional has handed over the charge and management of the Corporate Debtor which has been confirmed and acknowledged in the Letter dt. 02.04.2022, addressed by the Resolution Professional to the Respondent.

5) It is submitted that the Respondent herein has miserably failed to implement the Resolution Plan in timely manner; because, as per the Resolution Plan, the Respondent herein was required to upfront infuse a sum of Rs. 4,00,00,000/- out of which CIRP cost was required to be paid at actuals. However, it is submitted that, till date, the Respondent has paid Rs.

2,00,00,000/- to the slum dwellers directly towards the outstanding rent and Rs. 1,11,00,000/- has been paid to the Employees.

- 6) As per Resolution Professional who has also certified CIRP cost is of Rs. 2,78,06,398/- and Respondent herein has made part payment of the CIRP cost of Rs. 40,00,000/-. Balance amount of Rs. 2,38,06,398/-, which has been contributed by the CoC members during the CIRP period has not yet been repaid by the Respondent.
- 7) It is submitted that in spite of specific terms in the Resolution with regard to be paid 1st in priority, the Respondent has wilfully disobeyed the terms of the Plan and intentionally breached in making payment of the CIRP cost.
- 8) One of the terms of the Resolution Plan was that the Respondent herein was required to pay Rs. 5,00,00,000/- to the Secured Financial Creditor within Six Months from the NCLT Approval Date or receipt of Commencement Certificate of the First Sale Building, whichever is earlier.
- 9) Accordingly, the Secured Financial Creditor addressed a Letter to the Respondent thereby calling upon the Respondent to make payment of Rs. 5 Crores; however, the Respondent did not pay any heed. Thereafter, the Secured Financial Creditor, addressed an E-mail to all the Members of the Monitoring Committee thereby highlighting the conduct of the Respondent for non-abiding with the terms of the Resolution Plan, upon which, the Respondent *vide* E-mail dt. 17.11.2022, responded wherein No Resolution or time lines w.r.t. the payment of the outstanding CIRP Cost and

outstanding amount of Rs. 5 Crore to the Secured Financial Creditor as required under the Resolution Plan, were provided.

10) Hence, this Application filed against the Respondent, Successful Resolution Applicant, for non-implementation of the Resolution Plan.

11) Ld. Counsel for the Resolution Professional took us through Clause 3 in the Part 2 of the approved Resolution Plan, which reads as under:

*“3. This Resolution Plan Contemplates a total resolution amount of Rs. 20,00,00,000/- (Rupees Twenty Crore Only) (“**RA Contributions**” or “**Total Cash Payment**”) as follows:*

- i. An amount of Rs. 400,00,000/- (Rupees Four Crores Only) (“**Upfront Cash**”) shall be contributed by the Resolution Applicant on Transfer Date (defined hereinafter) in the form of working capital loans to the Corporate Debtor and shall be utilised as per paragraph 4 below;*
- ii. An amount of Rs. 16,00,00,000/- (Rupees Sixteen Crore only) shall be contributed by the Resolution Applicant as additional working capital loans to the Corporate Debtor, on a need basis to enable completion of the Galaxy Project, within a period of Maximum 1 (one) year from the Trigger Date. The additional working capital loans will enable the Corporate Debtor to improve its overall operations;*

4. The Upfront Cash shall be contributed by the Resolution Applicant in the form of working capital loans to the Corporate Debtor and shall be utilized for payment of Outstanding CIRP Costs, full payment of Workmen and Employees Dues and balance, if any, towards arrears of rentals to slum dwellers. The Upfront Cash shall be contributed by the Resolution Applicant on the Transfer Date (which date shall be on or before the Trigger Date)”.

as well as Clause 3.6.1 of detailed terms and conditions of the approved Resolution Plan, which reads as under:

“3.6.1 The Resolution Applicant proposes to (i) pay an amount of Rs. 5 (five) Crore shall be paid in priority to the Secured Financial Creditors within 6 (six) months from the NCLT Approval Date or receipt of the commencement certificate of the first sale building, whichever is earlier and (ii) allocate/allot to the Secured Financial Creditors of the Corporate Debtor as per the Distribution Waterfall as set out in Paragraph 4.5 of this Resolution Plan or as agreed otherwise by the Committee of Creditors”.

- 12)** On perusal of the aforementioned condition, we find that though the amount of Rs. 4 Crore was to be paid upfront as working capital loan for payment of outstanding CIRP cost, full payment of workmen, employees, dues and balance, if any, towards arrears of rentals to slum dwellers, The Successful Resolution Applicant has only paid Rs. 2,00,00,000/- to the slum dwellers directly towards the outstanding rent and Rs. 1,11,00,000/- has

been paid to the Employees, besides other payment of Rs. 40 Lakhs for meeting out CIRP Cost. Further, the amount of Rs. 5 Crores was required to be paid to the Financial Creditor by earlier of 6 months from the NCLT approval date or receipt of commencement certificate of the first sale building, and this payment fell due on 29.06.2022. The amount of working capital loan of Rs. 16 Crores was to be contributed on a need basis to enable the completion of galaxy project.

- 13) It is the case of the Successful Resolution Applicant that the Slum Rehabilitation Authority *vide* its order dt. 26.06.2023, terminated the LoI in favour of the Corporate Debtor. Accordingly, the substratum of the Corporate Debtor has been lost. The Resolution Professional drew our attention to the order dt. 26.06.2023, which specifically records the finding at page 12 thereof *that the period of around 14 months has expired but till date Respondent No. 1 (Corporate Debtor) has not paid the outstanding rent as per said order.* This order further record that *Respondent No. 1 has not complied with the directions of NCLT within stipulated period and M/s Nandivardhan has filed Writ Petition (L) No. 38186/2022 in the Hon'ble Bombay High Court seeking direction against the Authority for issuance of revise LOI and which is at admissible stage and there no interim or restrained order passed.* Finally, the Slum Rehabilitation Authority has concluded at page 14 of the Order that *there is gross delay and non-performance on the Part of Respondent No. 1 in implementation of subject*

SR Scheme. The delay occurred cannot be justified by any stretch of imagination. On careful consideration of above facts and circumstances this Authority has come to conclusion that there is inordinate delay and non-performance on the Part of Respondent No. 1 in implementation of subject SR Scheme and they are liable to be terminated as Developer.

- 14)** The above findings are Categorical attributing delay in payment of rent to the Slum Dwellers in the prescribed time. Further, the due date for payment of Rs. 5 Crores to the Financial Creditors has already expired and SRA has failed to deposit the same, we are not persuaded by the Argument of the SRA that said payment was not paid in view of delay on the part of Slum Rehabilitation Authority to grant commencement certificate to proceed further in the Development of the project. We find that the payment of Rs. 5 Crores was to be made at the expire of Six Months de hors the receipt of commence of certificate of first sale building. Further, there is no restraint order so far passed by the Hon'ble Bombay High Court This clearly demonstrates that there has been failure on the part of SRA to implement the Resolution Plan which calls for initiation of appropriate proceedings in terms of Section 74 against the SRA because, such failure has occurred on account of conscious delay on the part of SRA to payment the money in terms of approved Resolution Plan on the pretext of occurrence of delay in issuance of commencement Certificate by Slum Rehabilitation Authority. It is noteworthy that the Resol7Ution Plan does not mandate issuance of such

sale certificate within period of Six Months from the plan approval date. Accordingly, we direct IBBI to take appropriate action and proceedings so as to make liable the Successful Resolution Applicant for its failure in implement of Plan at this juncture.

- 15) We find that the LoI in favour of the Corporate Debtor stands terminated *vide* order dt. 26.06.2023, which is subject matter of challenge. Since, we have concluded that there is failure in implementation of the Plan at this juncture, we direct the Applicant to convene a meeting of erstwhile Committee of Creditors to propose further course of action in view of the fact that the substratum of the Corporate Debtor has been lost and if the order dt. 26.06.2023 passed by the Slum Rehabilitation Authority is not challenged before the Appropriate Forum by the Creditors also it may seriously prejudice their interest. After, the decision of the erstwhile CoC, the Applicant shall inform this Tribunal if an appropriate order is required to be passed to take the Insolvency Resolution Forwards.
- 16) Since, we have reached a conclusion that the SRA has failed to implement the Plan, we do not consider it appropriate to issue directions to the SRA for payment of Rs. 5 Crores at this juncture. However, the future orders in this decision shall be dependent on the decision of the erstwhile CoC in their meeting directed to be held in terms of preceding para.
- 17) With the aforesaid observations and directions, IA 53/2023, is disposed of.

IA 893/2020

- 1) Mr. Rohit Gupta, Ld. Counsel for the Applicant is present. None present for the Respondent, when the matter is called out.
- 2) Counsel informed that the issue involved in the present Application is duly subject to the outcome of Interlocutory Application bearing IA No. 893 of 2020.
- 3) Stand over to 05.03.2024, for further consideration and hearing.

IA 229/2024

- 1) None present for either side, when the matter is called out.
- 2) The present Interlocutory Application is Avoidance Application. In that view of the matter, erstwhile Committee of Creditors is directed to inform this Tribunal whether they want to prosecute this Application further or otherwise.
- 3) Stand over to 05.03.2024, for further consideration and hearing.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**