

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

IA (IBC)/59/KOB/2024

IN

CP(IB)/1/KOB/2021

*(Under Section 60(5) of IBC, 2016 read with Rule 11
of NCLT Rules, 2016)*

***In the matter of* NUCLEUS PREMIUM
PROPERTIES PVT LTD**

MEMO OF PARTIES:

STATE TAX OFFICER,

Taxpayer Services Circle, Edappally, State Goods
and Services Taxes Department, Civil Station,
Kakkanad, Ernakulum 682030.

... Applicant

-Vs-

DILEEP K P,

Resolution Professional of Nucleus Premium
Properties Pvt Ltd., Veluthedath House,
Ponnuruni, Vyttila P.O, Ernakulam 682019.

... Respondent No.1

M/s. BUILDWELL,

Represented by its Managing Partner Sajikumar
K.P, 50/1112-D5-A, 3rd Floor, Muhammed Haji
Building, Edappally, Ernakulam 682024.

... Respondent No.2

Order delivered on: 19.04.2024

Coram:

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Shri. Shyam Babu Gautam

TMT. (Retd.) Justice T Krishna Valli

Appearances:

For the Applicant : Mr. Arun Chandy, Government Pleader

For the Respondents : Mr. N R Krishnan Unni, PCS (R1)

Mr. Ahaan Mohan, Advocate (R1)

Mr. Vinod P V, Advocate (R2)

Mr. Dileep K P (RP)

ORDER

Per Coram

1. This Application is filed under Section 60(5) of IBC, 2016 by State GST Authority against the Resolution professional and Successful resolution applicant to reject the resolution plan dated 20.07.2023 submitted by R2 and approved by the COC.
2. Nucleus Premium Properties Pvt Ltd. (CD) was admitted to CIRP on 18.11.2021 and further into liquidation on 17.03.2023. Thereafter Hon'ble NCLAT revived CIRP and the resolution plan submitted by R2 was approved by COC. The applicant state that this resolution plan is in violation of section 30(2) of IBC as does not address the payment of statutory dues payable to applicant against their claim and further violates the laws for time being in force. The applicant relies on **State Tax Officer v. Rainbow Papers Limited 2022 SCC** to press that the plan which ignore statutory demand is liable to be rejected and that the applicant is in the shoes of secured creditor. The applicant state that as per the plan, the liquidation value of CD

is shown as NIL which is false as the plan will further enhance value of CD on account of cancellation of allotment of apartment to homebuyers. It is stated that the plan is made to defeat the claims of applicant and statutory authorities.

3. The respondent No.1, RP stated that the impugned resolution plan was approved by COC with 100% vote and by this Tribunal vide order dated 09.02.2024. It is stated the plan was not made available to the applicant and wonders how it came into his possession. It is stated that the claim submitted by the applicant is in Form B is a claim form in respect of operational creditor and it was classified as such in the information memorandum as early as in 2022 and the applicant did not object to it till date of this belated application. The RP further relies on **Ghanshyam Mishra case** of Hon'ble Supreme court to state that the applicant's debt is in nature of operational debt. Further it is stated that the approval of resolution plan by Tribunal needs to compliance with statutory provisions including amounts payable as per section 53 waterfall only and not consider in equity. It is stated that in IA/325/KOB/2023, plan was approved by this Tribunal on 09.02.2024 and applicant is misusing the provision under section 60(5) IBC instead of preferring an appeal. Applicant relies on **Mr. Harish Raghavji Patel v Sharpoonji Pallonji Finance Private Limited & Anr, Hon'ble NCLAT** to state that inherent powers can be exercised only when no other statutory provisions is absent and not to bypass prescribed procedure. It is stated that the plan was made in concurrence with statutory provisions and as amount

payable under plan to operational creditors comes to zero after other priorities, applicant was put under this category. Further it is stated that applicant has not provided any basis for raising a claim that liquidation value be altered on account of any cancellation of flat allotment.

4. Heard the submissions and perused the documents on record. Before traversing to any merits in this application, it is imperative to note that the resolution plan in respect of the CD was already passed by this Tribunal in IA/325/KOB/2023 on 09.02.2024. This application challenging the plan on grounds of not providing any amounts to the applicant GST authority and alleging that the provision of section 30(2) is violated, was filed on 23.01.2024 when the orders in IA/325/KOB/2023 was already reserved by this Tribunal on 19.01.2024. Further this plan had been reverted for reconsideration by this Tribunal for strict compliance of section 30 IBC and regulations before approval of the same. Hence, this application is undeniably belated. It is a settled position in law that once plan is approved by AA, the successful resolution applicant gets a clean chit and no more claims can be entertained. Hence, instead of pursuing a statutory remedy in appeal, preferring this application under section 60(5) IBC is an ill-conceived exercise. This Tribunal is left with no choice but to dismiss this application without going into any of its merits.
5. Therefore, **IA (IBC)/59/KOB/2024**, is, dismissed and disposed of accordingly.

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In re Nucleus Premium Properties Pvt Ltd.

6. The Registry is directed to send e-mail copies of the order forthwith to all the parties inclusive of the Counsel.
7. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.
8. File be consigned to records.

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this, the 19th day of April, 2024.

Rohit/LRA