

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 105
(IB)-297(PB)/2018
IA-4464/2020 & IA-4563/2020

IN THE MATTER OF:

Gurpreet Singh Chadha & 8 Ors. Petitioner/Applicant
v.
Sh. Pramod Kumar Sharma,
Resolution Professional & Anr. Respondent

IN THE MATTER OF:

Col. Sanjeev Dalal (Retd.) Petitioner/Applicant
v.
M/s. International Recreation and
Amusement Ltd. Respondent

Order Under Section 7 of Insolvency & Bankruptcy Code (CIRP)

Order dictated on 30.03.2021
Order delivered on 31.05.2021

CORAM:

SH. B.S.V. PRAKASH KUMAR
HON. ACTG. PRESIDENT

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

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| For the RP | Mr. Abhishek Anand, Mr. Rahul Adlakha, Advs. |
| | Mr. Nilatpal Shyam, Adv. |
| | Mr. Mohd. Nazim Khan, PCS |
| For the Applicant | Mr. Siddharth Banthia, Adv. Ms Pallavi Kumar, advocate for Applicant in IA 2087/2019 |
| For the Resolution Applicant | Mr. Virender Ganda, Sr. Adv. with Mr. Nilotpal Shyam, Mr. Vishal Ganda, Mr. Saransh Kothari, Advs. |

ORDER

(Heard and Dictated in Open Court)

IA-4464/2020 & IA-4563/2020

On hearing these applications and the response from the
Resolution Professional counsel and the Resolution Applicant



counsel, it is revealed to us that RP has not been served with the copy till date, as to Resolution Applicant is concerned, the Resolution Applicant counsel says he has been appearing on behalf of Resolution Applicant for the last two years, but copy of the application has not been served upon him. Without even looking into as to whether primary requirement of service of notice is complied with, one Surender Kaur and Ors. filed an appeal before Hon'ble NCLAT stating that this bench was not taking up the matter.

2. Now, the predicament is, if we proceed as stated in the order of Honourable NCLAT, other side will not get an opportunity to make their submissions, they say, these are all factual aspects unless these allegations are verified, they will not be in a position to place proper response to these applications i.e IA-4464/2020 & IA-4563/2020.

3. In this company there are 1217 real estate allottees out of them only nine have come before this bench saying that this resolution applicant filed plan with forged documents, but the person whose signature is purported to have been forged is not before us, he is not a complainant, he is not an aggrieved person.

4. Without looking into all these things, today this applicant counsel namely Mr. Siddharth Banthia has insisted upon this bench to hear these applications, now predicament before us is as to whether to proceed with these applications or to give a chance to the answering respondents to respond.

5. However, the resolution applicant counsel has stated that he has put in Rs. 20 Crore as performance guarantee about two years before, ever since his money is pending, after two years,



these nine real estate allottees out of 1217 real estate allottees filed this application on 14.10.2020 against the plan has approved on 09.05.2019 asking us to examine as to whether or not the plan is with requisite approval?

6. However, the RP counsel has referred the judgement passed by the Hon'ble Supreme Court of India in between the *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors. (Civil Appeal No. 3395 of 2020)* to say that:

“That being the position, and the authorized representative having voted in accordance with the instructions given to him from the class of financial creditors i.e., home buyers, every individual falling in this class remains bound by his vote and any association or home buyers of JIL cannot be acceded the locus to stand differently and to project its/his own viewpoint or grievance by way of objections or by way of appeal. All such objections and appeals are required to be rejected on this ground alone.”

7. To which the applicant counsel has stated in the case of *Jaypee supra*, this issue has come up after the plan has been approved, therefore that ratio is not applicable to this case.

8. For the sake of completeness, it is essential to record the facts of the applications. It appears that the resolution applicant entered into JV called HGAS-APEX JV constituting one Indian Company and one Dubai Company (M/s. Parklane Investments & Securities Limited) wherein the allegation of this applicant is that this JV obtained an audit report from Cyprus. When these

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applicants inquired about the audit report given by the auditor mentioned in the resolution application, they having come to know that no such auditor firm is in existence and the person who is stated to have given that report having categorically mentioned that no such report has been given to the Resolution Applicants, the Resolution Applicant's plan shall not be considered because fraud vitiates everything.

9. Then the Resolution Professional counsel has stated that the RP in 8thCoC meeting held on 20.04.2019, an agenda was placed before the CoC to hold due diligence over the resolution application given by the resolution applicant, upon such placement, CoC rejected the said agenda item. After it being rejected one and half years before, now these nine applicants filed these applications seeking reliefs as follows:-

“IA-4464/2020

1. Allow the present application and take on record the admitted documents as referred hereinabove as Annexure-I (Colly)
2. Pass any other order or further orders as this Hon'ble Tribunal may deem fit in the interest of justice.

IA-4563/2020

1. Present application may be allowed and on account of playing and perjury with over 1000 investors, the purported Resolution Plan filed by M/s. Parklane Investment and Securities Limited & Hari Global Apex (JV) ought to be rejected;



2. In the interest of all the creditors, the entire CIRP Process should be recommenced with fresh appointment of Interim Resolution Professional/Resolution Professional.
3. Appropriate action may be taken against Resolution Professional in accordance with the provisions prescribed under Insolvency and Bankruptcy Code, 2016 read with all its regulations;
4. Performance Bank Guarantee of Rs. 20 (twenty) Crore as filed by the Resolution Applicant M/s. Parklane Investment and Securities Limited & Hari Global Apex (JV) in compliance of Regulation 39(c) of Insolvency and Bankruptcy Board of India (Insolvency) (Resolution Process for Corporate Persons) Regulations, 2016 should be forfeited for filing fraudulent documents on oath before this Hon'ble Tribunal
5. No amount should be released towards the fees of Resolution Professional or of his team whom he has engaged for carrying out due diligence of the subject Resolution Plan
6. Hefty penalty or punishment should be imposed both on Resolution Professional and Resolution Applicant for making false statement on oath and wasting time of Committee of Creditors and of this Hon'ble Tribunal.
7. IBBI may be informed about the unlawful conduct of Resolution Professional



8. Pass any other order or further orders as this Hon'ble Tribunal may deem fit in the interest of justice."

10. This Bench cannot deal with the reliefs such as fraud to invalidate the plan placed before the CoC without even looking at the answer of the Respondents, especially on an application filed by a minuscule of members of the CoC on the allegation of forgery.

11. When anybody makes this kind of serious allegation of forgery and perjury, such person, whose signature is alleged to have been forged, has to come before this Bench proving his identity and thereafter stating his signature has been forged. But today the said person is not before us, the evidence holding out by these applicants is an email alleged to have come from that person. Nobody knows whether this email come from him or not? And whenever any allegation is made against any person, it has to come along with an affidavit. No such affidavit is present before this Bench.

12. If this kind of frivolous allegations are taken into consideration and start discovering the fact, it will become like roving and fishing enquiry, which is not permissible under law. Moreover forgery is an act criminal in nature. If at all any forgery allegation is made, it shall be put it to strict proof to prove that such forgery has been committed. As per rule, home buyers are expected to place their grievances through authorized agent. Moreover the Hon'ble Supreme Court by looking at multiple applications coming from these allottees and homebuyers before Adjudicating Authority impending the CIR Process, it has categorically held that this kind of independent applications from

the allottees shall be deprecated. In any event, if really this audit report is forged, they should have brought it to the notice of the RP, they should have put it to the notice of the Resolution Applicant but nothing has been done. They have straightaway filed this application without even putting this allegation to the notice of the Respondents, which is a prerequisite before proceeding against anybody. That has not been done.

13. In view of these reasons, we are of the view that these applications are frivolous in nature therefore; they are hereby dismissed as misconceived.

14. On the request made by Counsel for Resolution Professional, all other applications be listed for hearing on **04.05.2021**.

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(B.S.V. PRAKASH KUMAR)
ACTG. PRESIDENT

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(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)