

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.816-817 of 2023

[Arising out of Order dated 29.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in IA. No. 1575 of 2022 and IA. No. 979 of 2023 in Company Petition (IB) No. 1147 (MB) of 2020]

IN THE MATTER OF:

Mr. Suhrahmanya Shinde,
Erstwhile/Suspended Director of
M/s. Anudan Properties Pvt. Ltd.
S/o Sh. P.K. Shinde
R/o B-13/14, Om Satyapnsha CHS,
Thane, Mumbai - 400604

....Appellant

Vs.

1. Mr. Jayesh Sanghrajka
Reg. No: IBBI/IPA-001/IP-P00216/2017-2018/10416,
AFA No. AAI/10416/02/091023/104574
At: 405-407, Hind Rajasthan Building, D. S.
Phalke Road, Dadar East,
Mumbai - 400014.

2. KGK Realty (India) Pvt Ltd
Registered Address: 3rd Floor, KGK Tower II,
Dattapada Road, Rajendra Nagar,
Borivali (East), Mumbai-400066

3. Committee of Creditors,
Registered Address: 3rd Floor Building R-2,
Rajmudra CHS, Ramchandra Nagar No.2,
Kamgar Hospital Road, Thane – 400604.

....Respondents

Present:

For Appellant: Mr. Anil Kr. Mishra, Mr. Manish Kr. Shekhari and Ms. Anisha Mahajan, Advocates.

For Respondents: Mr. Dhaval Deshpande and Mr. Amir Arsiwala, Advocates for R-1.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Ashish Parwani, Mr. Chintan Gandhi, Mr. Rajeev Nair, Ms. Gitika Makhija, Mr. Himanshu Kaushal, Mr. Anurag Anand and Mr. Dikshat Mehra, Advocates for R-2.

Mr. Abihjeet Sinha, Mr. Debamalya Benerjee, Mr. Shioaj Salelkar, Mr. Rohan Sharma, Mr. Kartik Bhatnagar, Mr. Nicholas Choudhary and Mr. Anmol, Advocates for LICHFL.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Suspended Director of the Corporate Debtor has been filed challenging the two orders dated 29.03.2023 passed in I.A. No. 979/MB/2023 filed by the Resolution Professional for extension of CIRP period and the order on I.A. No. 1575/MB/2022 filed by the Resolution Professional for approval of the Resolution Plan. Appellant aggrieved by the above two orders has filed these Appeals. Brief facts of the case necessary to be noticed for deciding these Appeals are:

- (i) CIRP process against the Corporate Debtor – M/s. Anudan Properties Pvt. Ltd. commenced vide order dated 15.03.2021 passed by the Adjudicating Authority (National Company Law Tribunal),

Mumbai Bench on an application filed under Section 7 by LICHFL Trustee Company Pvt. Ltd.

- (ii) The Adjudicating Authority has granted exclusion in period of CIRP twice. On 27.01.2022, exclusion was allowed for period of 90 which was to end on 24.04.2022.
- (iii) The Resolution Professional has issued Form G on several occasions. In pursuance of 13th CoC meeting, decision was taken to issue fresh advertisement in Form G, which was published on 28.01.2022.
- (iv) In response to Form G, 4 Prospective Resolution Applicants submitted their Expression of Interest, who were included in the final list of Prospective Resolution Applicants. Out of these four, only three Prospective Resolution Applicants submitted their Resolution Plans viz. (1) KGK Realty (India) Private Limited; (2) Ashdan Properties Private Limited and NNP Buildcon Private Limited; and (3) Aanya Real Estate Private Limited.
- (v) Resolution Plans were opened and considered by the CoC in its 16th meeting. In 17th CoC meeting held on 24.04.2022, plans were discussed and put to vote. The Resolution Plan submitted by KGK Realty (India) Private Limited was approved with 76.35% vote share.
- (vi) The Resolution Professional filed an application being I.A. No. 1575/MB/2022 for approval of the Resolution Plan.

(vii) Another application being I.A. No. 979/MB/2023 was filed by the Resolution Professional for extension of CIRP period from 24.04.2022 to 26.05.2022.

(viii) The Adjudicating Authority by order dated 29.03.2023 allowed I.A. No. 979/MB/2023 granting extension of the period from 24.04.2022 to 26.05.2022 and further by order of the same date approved the Resolution Plan submitted by KGK Realty (India) Private Limited.

2. Learned counsel appearing for the Appellant challenging the orders contends that there is no justification for allowing the exclusion ex-post facto and 24.04.2022 was last date for period of CIRP. It is further submitted that the Resolution Applicant KGK Realty (India) Private Limited, whose plan has been allowed does not fulfil the minimum eligibility criteria to submit the Resolution Plan. Hence, acceptance of the Resolution Plan of KGK Realty (India) Private Limited was wholly uncalled for. It is further submitted that the Appellant also had filed an application seeking direction to submit Resolution Plan was never considered.

3. Learned counsel appearing for the Resolution Professional, Committee of Creditors as well as Resolution Applicant has opposed the submission of learned counsel for the Appellant and submitted that there is no error in the order of the Adjudicating Authority approving the Resolution Plan. The Resolution Applicant was fully eligible to submit the plan whose name was included in the list of eligible Prospective Resolution Applicants which was not challenged by anyone. The Appellant was not eligible to submit the

Resolution Plan and it has not submitted a Resolution Plan. The Resolution Applicant fulfils the eligibility criteria.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. Coming to order dated 29.03.2023 by which the Adjudicating Authority has extended the period of CIRP from 24.04.2022 to 26.05.2022 i.e. 32 days, it is suffice to mention that on 24.04.2022 in the 17th CoC meeting of CoC plans were already discussed and were to be voted upon and application has to be filed before the Adjudicating Authority for approval. 26.05.2022 is that date when the application was filed by the Resolution Professional for approval of the Resolution Plan. 24.04.2022 being last date for CIRP, on which date plans were already discussed, exclusion of 32 days lapsed between 17th CoC meeting and filing of application by Resolution Professional has rightly been allowed by the Adjudicating Authority.

6. The Adjudicating Authority has rightly noticed that the CIRP in the present case commenced during the COVID period and Adjudicating Authority also noticed that the application for approval of the plan is pending consideration before the Adjudicating Authority which may result in resolution of the Corporate Debtor, case has been made out for exclusion of the period from 24.04.2022 to 26.05.2022. We do not find any error in the order passed by the Adjudicating Authority granting exclusion of period from 24.04.2022 to 26.05.2022. There is no infirmity in the order dated 29.03.2022 which may warrant interference by this Appellate Tribunal.

7. Now coming to the challenge of the Appellant to the approval of the Resolution Plan. The principal submission advanced by the Appellant is that the Resolution Applicant is not eligible to submit the Resolution Plan. In the Affidavit filed by the Appellant to bring Additional Document on record, copy of Form G has been filed as Annexure-1. Form G, Annexure A provides for Eligibility Criteria. Eligibility Criteria as provided in Form G is as follows:

“I. Eligibility Criteria Under Section 25 (2) (h)

- i. The PRA should have successfully completed Real Estate Projects as a Real Estate Developer with Occupation Certificate, at least 10 Lakhs Sq.ft of saleable area preferably in Mumbai Metropolitan Region ("Eligible Project").*
- ii. The PRA being an Individual/ AOP/ Company/ Body Corporate/ Joint Venture/ Consortium/ SPV/ Investment Company/ Fls / PE Investors /ARC should have minimum net worth (at individual or group level) of INR 50 Cr. (Rupees Fifty Crores only) as per latest audited Financial Statements.”*

8. In pursuance of the publication of Form G, Expression of Interest was shown by the KGK Realty (India) Private Limited and three others. The Resolution Professional published the list of Prospective Resolution Applicants which included the name of KGK Realty (India) Private Limited. The CoC treating the Resolution Applicant to be eligible proceeded to consider and discuss the Resolution Plans. At no point of time, the eligibility of the

Resolution Applicant was questioned in any proceeding. The learned counsel for the Resolution Applicant has submitted that the eligibility criteria is fully fulfilled by the KGK Realty (India) Private Limited. Learned counsel for the Resolution Applicant has referred to the Resolution Plan dated 22.04.2022 submitted by KGK Realty (India) Private Limited where in Para 3.1.2 experience of the Resolution Applicant in real estate operations has been detailed. Para 3.1.2 is as follows:

“3.1.2. Experience of Resolution Applicant in Real Estate Operations:

Resolution Applicant is a real estate foray of more than a century old KGK Group, comprising of Resolution Applicant and its group entities, which has a lasting legacy in the field of real estate and construction. Established in 2010, KGK Realty's business is to build world-class properties across the spectrum, namely, commercial, residential, and industrial sectors. KGK Realty considers sustainable development as the keystone of its business strategy and seeks to achieve sustainable and profitable growth across all its projects.

KGK Group is one of the reputed group companies in the world that is a Diamond Trade Corporations (DTC) sight holder. It has big presence in business-to-business segment with its manufacturing facility and marketing set-ups spread across 13 (thirteen) countries.

KGK Realty is the flagship group company for real estate project development and successfully completed many residential, commercial, hospitality and industrial projects in Jaipur, Navi Mumbai cumulating to approximately 60,00,000 (sixty lakh) square feet of area as per the details given below:

Sr. No.	Project Name	Location	Description/ Construction area Details	Occupation Certificate ("OC") Status/ Remarks.
1.	<i>Solitaire Industrial and Residential Park</i>	<i>Baglu, Jaipur</i>	<ul style="list-style-type: none"> Developed over 325 (three hundred and twenty five) Acres Completed In 2017 	<p>Developed by KGK Realty.</p> <p>OC obtained in 2017.</p>
2.	<i>Unimont Empire and Coral</i>	<i>Navi Mumbai</i>	<ul style="list-style-type: none"> 1,86,000 (one lakh and eighty six thousand) square feet of high-rise residential units and shops. Completed in 2017-19. 	<p>Developed by KGK Realty.</p> <p>OC obtained in 2017-19.</p>
3.	<i>The Oasis</i>	<i>Jaipur</i>	<ul style="list-style-type: none"> 61,680 (sixty one thousand six hundred and eighty) square feet of high-rise residential project. Completed in 2017. 	<p>Developed by KGK Realty.</p> <p>OC obtained in 2017.</p>

4.	<i>RSM Crystal, Diamond, Atena, Niyati, Pearl</i>	<i>Navi Mumbai</i>	<ul style="list-style-type: none">• <i>1,58,000 (one lakh and fifty eight thousand) square feet of residential projects.</i>• <i>Completed between 2015- 18.</i>	<i>Developed by KGK Realty. OC obtained in 2015-18.</i>
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9. We have noted that eligibility under Form G is that the Prospective Resolution Applicant should have successfully completed Real Estate Projects as a Real Estate Developer with Occupation Certificate, at least 10 Lakhs Sq.ft of saleable area preferably in Mumbai Metropolitan Region. From the details of experience as given by KGK Realty (India) Private Limited, it is clear that Real Estate Projects as a Real Estate Developer with Occupation Certificate has been completed by the Resolution Applicant for approx. 60 Lakhs Sq.ft, as was noted in the experience given by the KGK Realty (India) Private Limited. It is true that 10 Lakhs Sq.ft of saleable area is not in Mumbai Metropolitan Region whereas there are cases of two projects given by the Resolution Applicant in the Mumbai Metropolitan Area. The eligibility criteria indicate that at least 10 Lakhs Sq.ft of saleable area is required which should be preferably in Mumbai Metropolitan Region. The use of word 'preferably' clearly indicate that if Applicant has 10 Lakhs Sq.ft of saleable area, it is eligible but preference has to be given to those who have that area in Mumbai Metropolitan Region.

10. We, thus, are of the view that KGK Realty (India) Private Limited did not lack minimum eligibility to submit the Resolution Plan. KGK Realty (India) Private Limited was treated to be eligible and plan was accepted, deliberated and approved by the CoC. We are satisfied that the KGK Realty (India) Private Limited is not ineligible to submit the Resolution Plan and submission of the Appellant that it does not fulfil eligibility criteria cannot be accepted.

11. Insofar as submission of the Appellant that Appellant itself intended to submit its Resolution Plan, the Adjudicating Authority has in the order dated 29.03.2023 has held that application submitted by the Suspended Director to submit the plan was rejected. Similar prayers were made by filing I.A. No. 75/2023, which was dismissed by the Adjudicating Authority on 09.01.2023. The said fact has been noticed in Para 4.4 of the order, which is to the following effect:

“4.4 The ex-director of the Corporate Debtor Mr. Subramanian P. Shinde has filed another additional affidavit dated 10.09.2022 seeking indulgence of the Adjudicating Authority to allow the Corporate Debtor to file the resolution plan submitting that Corporate Debtor is holding MSME registration prior to 2020. However, the similar prayer made vide IA 75/2023 was dismissed by us vide order dated 09.01.2023 noting that the suspended board has filed application after expiry of eight months from the approval of the plan and was also not found eligible by RP on earlier occasion.”

12. The Committee of Creditors in its commercial wisdom has approved the Resolution Plan submitted by KGK Realty (India) Private Limited with vote share of 76.35%. We see no reason to interfere with the decision of Adjudicating Authority approving the Resolution Plan. No grounds have been made out to interfere with the impugned order. Both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

18th August, 2023

Archana