



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

IA (I.B.C) No. 3693/MB/2024

in

CP (IB) No. 1046/MB/2023

*[Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of the National
Company Law Tribunal Rules, 2016]*

1. MR. DINESH CHAPLOT

Address: 203/204, Shanti Niketan, S. M. Marg
Near Kurla Police Station, Kurla (West), Mumbai-400070
Maharashtra.

2. MR. HARSH KISHOR SAWLA

Address: A/2901, RA Residences
Junction of Dr. Babasaheb Ambedkar Road & MMGS Marg
Dadar (East), Mumbai-400014, Maharashtra.

...Applicants

V/s

**MR. DINESH KUMAR DEORA,
RESOLUTION PROFESSIONAL OF
M/S SNEHANJALI AND S.B. DEVELOPERS PRIVATE LIMITED**

Address: B-202, ABT Apartment, Rani Sati Marg
Near Navjivan School, Malad (East)
Mumbai-400097, Maharashtra.

...Respondent

IN THE MATTER OF:

MR. SANTOSH ANANDA SHETTY AND ORS

...Financial Creditor

V/s

**M/S SNEHANJALI AND S.B. DEVELOPERS
PRIVATE LIMITED**

...Corporate Debtor

Pronounced:14.08.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)



Appearances: Hybrid

Applicant: Adv. Rohit Gupta a/w Adv. Tejas Agarwal, Adv. Aman Agarwal,
Adv. Anant Ratnaparkhi and Adv. Kavish Arora i/b IC Legal

Respondent: Adv. Shyam Kapadia, Adv. Yash Dhruva, Adv. Niyati Merchant
i/b MDP Legal

ORDER

IA (I.B.C) No. 3693/MB/2024

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This IA (I.B.C) No. 3693/MB/2024 has been filed on 30.06.2024 by Mr. Dinesh Chaplot and Mr. Harsh Kishor Sawla, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of the National Company Law Tribunal Rules, 2016, to quash Form G dated 05.05.2024, relating to invitation for Expression of Interest (EOI), on the ground that the Respondent/Resolution Professional (RP) of M/S Snehanjali and S.B. Developers Private Limited, the Corporate Debtor (CD), barred the Applicant No. 1, who was one of the past developers of the housing project, along with Applicant No. 2 and other homebuyers, from submitting EOIs.

1.2 The Applicants also pray that in the alternative, they may be allowed to submit EOIs holding that the criteria in Form G is illegal. We admitted the CD into Corporate Insolvency Resolution Process (CIRP) in C.P. (IB) No. 1046/MB/2023 under Section 7 of the IBC for default of amount



exceeding One Crore Rupees *vide* order dated 07.03.2024. Mr. Dinesh Kumar Deora was appointed as the IRP and later his appointment as RP was confirmed for conducting CIRP. On the interim prayer by these Applicants, we, on 07.08.2024, by an ad interim stay directed the RP not to open the EOI until further orders.

1.3 The Applicants, who are in the real estate business and related to the CD, had purchased seven flats from the CD in August, 2016. The Applicant No. 1 was the erstwhile partner of the partnership firm 'SB Developers' till the year 2016. Later, on 14.01.2019, the said partnership firm was converted into a private company, viz., 'Snehanjali and S.B. Developers Private Limited', which is the CD in CP 1046(MB)/2023.

2. CONTENTIONS OF APPLICANT

2.1 In August 2016, the Applicants purchased seven flats from SB Developers and entered into an agreement for sale dated 10.08.2016 as well as supplementary agreement dated 11.08.2016, containing various terms and conditions. The date of possession as earlier decided was 31.03.2020, which was later changed to 31.03.2022. However, the CD failed to deliver possession of the flats to the Applicants on the above date.

2.2 The Applicants submitted that, post initiation of CIRP in respect of the CD, the public announcement was made by the RP on 09.03.2024, pursuant to which they submitted their claims before the RP in



March/April 2024 and communicated for the same by emails to the Respondent/RP.

2.3 The Respondent/RP issued Form G for inviting EOI inviting Prospective Resolution Applicants (PRAs) on 05.05.2024. The last date for submission of EOI was 20.05.2024. However, for determining eligibility to submit the EOI, the Respondent/RP put one of the conditions as follows:

“(II) The existing homebuyers and past developers associated with the Corporate Debtor as well as their related/connected entities are not eligible”.

Initially, the Applicants did not submit their EOI as they were under the impression that such a condition was legal. However, the Applicants now feel that the restriction imposed by the Respondent/RP in Form G lacks legal basis as neither Regulation 36A nor Regulation 36B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) prevent homebuyers or past developers of a CD from submitting resolution plan or an EOI. The last date for the PRAs to submit EOIs was 20.05.2024, and, therefore, it is necessary to prevent the Respondent/RP from issuing Request for Resolution Plan (RFRP).

2.4 The Applicants contend that inclusion of the additional clause in Form G barring the Respondent from submitting EOI is not in consonance with



Section 25(2)(h) of the IBC and that the Respondent did not have the power to introduce any such ineligibility criteria in the Form G.

2.5 The first meeting of the Committee of Creditors (COC) was held on 02.04.2024, in which Mr. Manish Dawda, the Authorised Representative (AR) of the home buyers of the CD was also present. It is the case of the Applicants that in the meeting of the CoC itself, the Respondent/RP decided to keep the Applicants out of CIRP. It is further alleged by the Applicants that in order to avoid them, their claim assessment and verification process were delayed, in addition to barring them from submitting EOIs.

2.6 Further, it is alleged that the Respondent/RP incorporated a suggestion from the AR that *“the management committee of the rehab society have also emailed him that the past builders such as Savla, Ahuja, etc., should be avoided.”* According to the Ld. Counsel for the Applicant, this was a mere suggestion which was got passed as a resolution in the minutes of the first CoC itself, whereas this item was not included in the agenda item for the first CoC meeting. It is alleged that the AR, who represents the homebuyers, did not consult the home buyers before taking and voting on such a decision, as he is the only person representing the home buyers in the CoC and that there is no other financial creditor in the CoC. Practically, it means the AR took the said decision himself, thus constituting 100% voting secured from his own decision, which was included as resolution by the RP in the minutes.



2.7 Moreover, the Form G published in the newspapers on 05.05.2024 was got uploaded by the Respondent on the IBBI's website only on 14.05.2024, while the last day of submitting EOI was 20.05.2024. Hence, according to the Applicants, there is also violation of Regulation 36A(3)(b) of the CIRP Regulations which mandates that clear fifteen days shall be available for submission of EOI, from the date of issue of detailed invitation under Form G.

2.8 It is also submitted by the Applicant that the EOI and resolution plans are to be considered by the CoC after submission thereof. Mere acceptance of the EOI or submissions of plan pursuant thereto cannot cause any harm, loss or prejudice to the Respondent. However, exclusion of the Applicants from CIRP, despite the settled law has caused irreparable harm, loss and prejudice to the Applicants, CD and all its stakeholders. Hence, the EOI is only to be set aside.

3. CONTENTIONS OF RESPONDENT

3.1 The Ld. Counsel for the Respondent/RP submits that the RP received various communications from the home buyers and re-settlers during the period between 07.03.2024, i.e., the date of admission of CD into CIRP and 02.04.2024, i.e., the date of first CoC meeting. The home buyers had apprehensions about involvement of past developers in the CIRP and hence they sought for their exclusion in the EOI process itself. The Respondent/RP placed on record copies of emails dated



01.04.2024 and 02.04.2024 and also a letter dated 01.04.2024 from the re-settlers (Rehab Society).

3.2 It is submitted that Mr. Manish Dawda was validly appointed as the AR for all the homebuyers of the CIRP *vide* order dated 19.04.2024 by this Tribunal. During the first CoC meeting dated 02.04.2024, it approved the resolution for disqualification criteria in the EOI process from PRAs after getting proper approval from the homebuyers.

3.3 The Respondent/RP further stated that in the second CoC meeting dated 29.04.2024, the resolution for additional eligibility criteria to be published in Form G was approved along with the resolution on disqualification as prescribed under Section 29A of IBC, 2016. In fact, the RP has duly published Form G in the newspapers on 05.05.2024 and immediately sought uploading of the same on IBBI's website; however, it was not uploaded until 14.05.2024. The last date of submission of EOI as per Form G was 20.05.2024 i.e., the date on which the fifteen day's period from the date of publication of Form G in the newspaper had expired and thus, Regulation 36A of the CIRP Regulations was compiled by the Respondent/RP.

3.4 The Respondent/RP further submitted that the eligibility criteria which disqualifies homebuyers and past developers of the aforesaid project was validly introduced as per the AR's suggestion, taking the complexity and scale of operations of the CD into consideration. It is further contended that such eligibility criteria can be introduced with the



approval of the CoC under Section 25(2)(h) of the IBC read with Regulation 36A(4)(a) of the CIRP Regulations and this cannot be limited by the ineligibility under Section 29A.

3.5 The AR has followed due process regarding voting in the COC meetings over approval of the said eligibility criteria. Since the AR was representing all the homebuyers, the 100% voting in favour of said eligibility criteria under Section 25(2)(h) of the IBC by the AR during the COC meeting cannot be dismissed as mere vote cast by one person.

3.6 The Ld. Counsel for the Respondent submits that the present application is filed by the Applicants with the sole motive of delaying the CIRP proceedings, resulting in grave prejudice to the homebuyers as well as re-settlers of the said project and the same was conveyed to the AR *vide* email dated 07.08.2024.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the Applicant and the Respondent.

4.2 It is the submission of the RP that the AR informed him in the first CoC meeting dated 02.04.2024, that certain homebuyers have raised some queries / suggestions regarding the project and wanted the past developers to be kept out of CIRP. The RP also received letter from Saptarshi Co-operative Housing Society Ltd., formed by the re-settlers (Rehab Society) by suggesting to him that, since Mr. Jayant Savla and



Mr. Kishore Savla, who were partners, with whom the Rehab Society had entered into development agreement and subsequently handed over the project to Ahujas (Directors of the suspended Board) before completing the construction; the abovesaid persons or their associated entities should not to be considered for the project. According to the RP, the decision to keep the past developers away from submitting EOI stems from the above suggestions from some of the homebuyers.

4.3 It is, therefore, relevant to consider the minutes of the first meeting of the CoC, which records under the heading 'C. ANY OTHER MATTERS', that *"...The AR stated that he has received queries/suggestions from many home buyers stating that the home buyers should not be given the project and avoided. The AR then tabled the queries and suggestions:"* Further, one of the New Developer-related suggestions reads as under:

"a. The past developer/builder who are originally part of O2 project should not be included in the developer/builder panel."

Again, another Claim-related suggestion reads:

"The AR stated that additionally, the Management Committee of the rehab society have also emailed him that the past builders such as Savla, Ahuja, etc., should be avoided.", which was followed by Resolution No: C-1 to the effect: *"RESOLVED THAT the existing home buyers/past developers associated with the corporate debtor as well as their related/connected entities should not be invited in the EOI process"*.

This led to the inclusion of the bar against the Applicants in Form G.



4.4 Appreciating the facts and circumstances in the matter, we feel that the

only issue to be decided in this IA is whether the RP is justified in laying down the criterion in question other than those are provided under Section 29A read with Section 25(2)(h) of the IBC. Section 29A of the IBC governs the eligibility or otherwise of persons to become resolution applicants. Section 25(2)(h) relating to the duties of the RP reads:

“25. Duties of resolution professional. – (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(a).....

*(h) invite prospective resolution applicants, who fulfil **such criteria as may be laid down by him** with the approval of committee of creditors, **having regard to the complexity and scale of operations** of the business of the corporate debtor **and such other conditions** as may be **specified by the Board**, to submit a resolution plan or plans;”* (Emphasis supplied).

4.5 Hence, it is clear that the duty of the RP to lay down the criteria for inviting prospective resolution applicants (PRAs) must be with the approval of the CoC and is not independent. It is noticed that the IBBI has not yet specified



any additional criteria for guidance of RPs while inviting PRAs to submit EOIs. Be that as it may, the duty of both RP and CoC is to lay down such criterion as is formulated only having regard to the complexity and scale of operations of the business of the CD and other conditions specified by the IBBI. In the present case, the criterion laid down by the RP, to exclude the existing homebuyers and past developers associated with the CD as well as their related/connected persons, was approved by the AR, who is the lone member of the CoC, representing the financial creditors comprising only of homebuyers. There are no other financial creditors such as, banks or financial institutions in the CoC, but it comprises only one class of creditors, viz., the homebuyers. In the Affidavit-in-Reply to this IA, the RP has produced four emails received by the AR from some of the homebuyers dated 01.04.2024 and 02.04.2024. Out of these, only in one email, the sender specifically suggests that the AR should strictly avoid any persons who were earlier associated with the project. In the other three emails, the senders only sought clarifications from him regarding the project and raised concerns. As stated above, the Managing Committee of Rehab Society (on behalf of the re-settlers) also sent a letter dated 01.04.2024 to the RP requesting him not to consider the Applicants/past developers and their associate entities. The matter regarding fixing criterion for the PRAs was not in the agenda of the first CoC meeting dated 02.04.2024. However, in that meeting itself, a decision was taken as 'Resolution No: C-1' to bar existing homebuyers/past



developers and their connected/related entities in the EOI process although the agenda to 'Discuss and approve criteria for PRAs and expense relating to issuance of Form G' was only formally included and reflected in the second CoC meeting dated 29.04.2024. The minutes of the first meeting of the CoC does not suggest that the CoC took the decision to bar the Applicants, having regard to any complexity and scale of operations of the business of the CD. From the minutes of first and second CoC meetings, we do not find any material to show that there was any comparison of the capabilities of the Applicants/past developers vis-à-vis the other developers under consideration. Hence, it is difficult to infer that the CoC had any commercial consideration of the matter. We feel that, except a sense of distrust and prejudice arising out of failure of the Applicants as former developers in completing the project on time and their eventual exit after handing over the project to the Ahujas, led to dissatisfaction among the homebuyers. This subjective consideration influenced decision-making by the AR and consequent inclusion of the clause in question in Form G, which made Form G vulnerable to legal challenge. Lack of confidence of homebuyers on some individuals, even if based on some past experience, cannot be a reason for expressly barring them in the EOI process, who are otherwise not ineligible under Section 29A of the IBC to submit plans. We find that the AR and RP, instead of having objective considerations, were carried away by certain



sentiments expressed by some homebuyers. Decisions taken by the RP based on such sentiments cannot override statutory provisions.

4.6 The Ld. Counsel for the RP has brought to our notice a decision of the Hon'ble Supreme Court in *India Cements Ltd. & Ors Vs. UOI & Ors.* [(1990) 4 SCC 356], wherein the Hon'ble Court had the occasion to consider the expression "having regard to". However, we find that the said decision was taken while interpreting vires of a subordinate legislation made by the Central Government in a Gazette notification. The matter on hand does not relate to any subordinate legislation but one directly emanating from the plain meaning of the principal statute itself. No external aid is necessary to construe the real intent and purport of Section 25(2)(h) of the IBC.

4.7 It is also relevant to consider Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) relating to invitation for EOI from PRAs. Regulation 36A (1) states:

*"The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule I at the earliest, not later than sixtieth day from the insolvency commencement date, from **interested and eligible** prospective resolution applicants to submit resolution plans."* (Emphasis supplied).



4.8 Hence, it is clear that the RP is required at this stage to invite PRAs from the interested and eligible persons. Regulation 36A (4) of the CIRP Regulations states that the detailed invitation for resolution plans shall specify the criteria for PRAs, as approved by the CoC **in accordance with Section 25(2)(h) and also state the ineligibility norms under Section 29A** to the extent applicable for PRAs. Hence, it is clear that the IBBI has not made any regulation regarding any other conditions under Section 25(2)(h). From a conjoint reading of Section 25(2)(h) and Regulation 36A (1), it can be presumed that the RP is not authorised to adjudicate as to the qualification or disqualification of PRAs. Rather, his duty is limited to laying down criteria only having regard to the complexity and scale of operation of the business of the CD, and nothing else. We observe that the RP has rightly included the first criteria that in clause (I) of Form G, against Serial No. 9, *“All applicants who are not disqualified under Section 29A of the IBC, 2016”* would be eligible for being PRAs under Section 25(2)(h) of the IBC. However, clause II, viz., *“The existing homebuyers and past developers associated with the Corporate Debtor as well as their related/connected entities are not eligible”* is not in consonance with the spirit of Section 25(2)(h) as discussed above. The Ld. Counsel for the RP submits that the criterion to exclude existing homebuyers and past developers was taken by the CoC, represented by the lone AR. It is difficult for us to appreciate such an action of the RP as he is under obligation to comply with the provisions of the IBC as well as rules and



regulations made under it. An insolvency professional is duty bound to abide by all the laws at all times during the resolution process. The Hon'ble NCLAT, Principal Bench, New Delhi in *Vishram Narayan Panchpor, RP of Blue Frog Private Ltd. Vs. CoC & Anr.* [Company Appeal (AT) (I) No. 1489/2023], on 11.01.2024, held that Section 29A does not make *per se* promoters and directors ineligible to submit a plan unless they are ineligible under clauses (a) to (g) of the said Section. Hence, we hold that barring the Applicants to submit the EOI pursuant to publication of Form G is unsustainable in law.

4.9 The Ld. Counsel for the RP drew our attention to the decision of the Hon'ble NCLAT, New Delhi in *Kannan Tiruvengandam Vs. M. K. Shah Exports Ltd. & Ors.* [Company Appeal (AT) (Insolvency) 203/2018], wherein it was observed that it is not in the domain of the Adjudicating Authority to decide the requirement of minimum net worth of one or other category of eligible resolution applicant, which is matter of experts like the Committee of Creditors to decide. However, we do not find that in the instant matter, the CoC hardly took any expert commercial decision to bar existing homebuyers and past developers from submitting resolution plans. Rather, the reason for such a decision emanates from certain prejudices of some homebuyers who lost faith in the past developers and they simply wanted to oust them from the process at the very outset. Hence, the said decision of the Hon'ble NCLAT has no bearing on the issue at hand. Further, the Ld. Counsel also banked on decision of a



coordinate Bench of NCLT New Delhi in *M/s Dynacon Projects Pvt. Ltd.*

Vs. M/s Today Homes & Infrastructure Pvt. Ltd. [CP No. (IB)-

2130(ND)/2019], wherein the Bench observed that since the IBC does not

mandate specific uniform criteria for the invitation of resolution plans, the

committee of creditors is allowed to set its criteria on a case-by-case

basis. However, we feel that the legislative intent of Section 25(2)(h)

allowing the RP to undertake his duties in a fair, objective and

dispassionate manner for laying down criteria is only to be performed

having regard to complexity and scale of operations of the business of the

corporate debtor and other conditions, if any, specified by the IBBI.

4.10 In the light of the above, we hold that neither the CoC nor the RP has any inherent right to negate a statutory provision available to a person to submit EOI, if such a person is otherwise not ineligible within the meaning of Section 29A of the IBC. An RP or an AR, who again is an IP, is not supposed to be carried away by extraneous considerations while discharging their duties under the IBC and the regulations, especially when the class of creditors comprises only homebuyers. The Code of Conduct under Regulation 7(2)(h) r/w the First Schedule to the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, under the heading, "Independence and Impartiality", under Paragraph 27A requires an IP to exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person complies with the applicable laws. Hence, an RP is the only person who would



ensure compliance of all the laws in the processes under the IBC. It has been brought to our notice that the IBBI has also come out with certain guiding principles for CoC recently titled 'Guidelines For Committee of Creditors' dated 06.08.2024 and published on their website, for the purposes of self-regulating and enhancing transparency and coordinated approach of decision making by members of the CoC. Guideline 6 lays down that a member of the CoC, among other things, shall follow relevant provisions of the IBC and regulations, in letter and spirit, while performing their roles and functions. In light of the above, we therefore, expect them to carry out their duties as per law. We thus, come to the conclusion that the RP is not justified in putting any additional restriction on the PRAs otherwise than statutory provisions, as such an action amounts to adjudication, which is not within his domain under Section 25(2)(h) of the IBC.

ORDER

In view of the above discussions, we partially allow this IA and set aside the following portion in Form G, viz., *“(II) The existing home buyers and past developers associated with the Corporate Debtor as well as their related/connected entities are not eligible.”* We allow the Applicants to submit their EOI, if any, to the RP, within ten days from the date of this Order, keeping in mind the principle, 'time is the essence of Code'. The RP is directed to consider the EOIs by the Applicants along with other



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EOIs already received by him, as per law. With the above directions, IA
3693/2024 is disposed of.

The designated Registrar is directed to forward electronic version
of this Order to the IBBI, only for the purposes of information and record.
By this Order, we do not in any way make observations on the professional
conduct of the RP and the AR.

Ordered accordingly.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

(LRAs-Tanmay/Alka)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)