NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.269 of 2021

[Arising out of Order dated 22.02.2021 passed by National Company Law Tribunal, Division Bench, Delhi Bench – III in IA-3022/2020 in IB-1771/ND/2018]

IN THE MATTER OF:	**Before NCLT**	**Before NCLAT**
Mansi Brar D-66, Third Floor, Defence Colony, New Delhi – 110024	Applicant	Appellant
Versus		
Dream Procon Pvt. Ltd. Through its Resolution Professional Mr. Nilesh Sharma, C – 10, LGF Lajpat Nagar – III, New Delhi - 110024	Respondent/ Corporate Debtor	Respondent

For Appellant: **Shri Sunil Fernandes and Shri Darpan Sachdeva, Advocates**

For Respondent: **Ms. Varsha Banerjee, Advocate**

O R D E R
(Virtual Mode)

08.04.2021 This is fresh case. Heard Counsel for the Appellant. The present Appeal has been filed against Impugned Order dated 22nd February, 2021 passed in IA-3022/2021 in IB-1771/ND/2018 by Adjudicating Authority (National Company Law Tribunal, Division Bench, Delhi Bench III).

2. The Appellant is a homebuyer. He filed I.A. before the Adjudicating Authority under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (IBC – in short) read with Rule 11 of National Company Law Tribunal Rules seeking directions and challenging certain decisions taken by the Respondent – Resolution Professional Mr. Nilesh Sharma in the course of Corporate Insolvency Resolution Process (CIRP- in short). He made the following prayers before the Adjudicating Authority:-

> "A. Direct the Resolution Professional to place all the flats of the Applicant in Annexure B (i.e., transfer Unit Nos. C1 – 1102, C1- 1201 and A1 – 705 from Annexure C to Annexure B) so that all six units of the Applicant (A2 – 101, A2 – 302, D1 – 1701, C1 – 1102, C1 – 1201 and A1 – 705) are in Annexure B;
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> B. Direct the Resolution Professional to issue a clarification to Prospective Resolution Applicants that six completed apartment units (A2 – 101, A2 – 302, D1 - 1701, C1 – 1102, C1 – 1201 and A1 -705) have to be provided to the Applicant without payment of any further consideration;
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> C. Direct the Resolution Professional to Withdraw the aggregate demand of Rs.60,00,000 qua flat nos. A2-101, A2-302 and D1-1701 contained in the "summary of Receivables" issued by the Resolution Professional vide E-Mail dated 29.06.2020;
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> D. Direct the Resolution Professional to initiate appropriate criminal proceedings against the officers/promoters/directors of the CD for committing fraud on the Applicant by indulging in double sale of apartment units;
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> E. Direct the Resolution Professional to make all consequential and necessary changes in the Evaluation Matrix and the Information Memorandum and or any other documents, which may be necessary to give effect to foregoing prayers;"

3. The Adjudicating Authority after hearing the parties, recorded findings as follows:-

> "**Findings:-**
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> 5. The first relief sought by the applicant is to place the units mentioned in the Annexure C (namely, C1 – 1102, C1 – 1201 and A1 – 705) in Annexure B. We have gone through the submissions made by the respective counsels. The Annexure B consist of the Financial Creditors that were allotted the fresh apartments/units and in the Annexure C those Financial Creditor/Homebuyers are placed, who were allotted the same units at the subsequent sale. In other words, the apartment was sold earlier to some other person. The purpose of such segregation is to ensure just and reasonable treatment to each class of Financial Creditor, the same flat cannot be earmarked for the two buyers, because the interest and right of the homebuyers (first sale) and the homebuyers (subsequent sale) shall vary, due to which it was required to create different class to allot the voting rights correctly, so that the CIR process goes smoothly. Thus, we have verified from the record and found that the Units namely, C1 – 1102, C1 – 1201 and A1 – 705 were already sold to someone prior to the allotment of the said Units to the Applicant. Therefore, the RP has rightly made the Annexure B and C for Financial Creditors/Homebuyers. This is in consonance with the well-known proposition of law that like should be treated alike, not the unlike should be treated alike.
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> 6. Another relief sought by the Applicant is to provide all the units without any further payment or admit an amount equal to the cost of the Units/Apartments. From the records and Book of Account of the Corporate Debtor it was found that the Applicant has paid only an amount of Rs.80 lakhs against the six units/Apartments, hence, the RP has rightly admitted the claim of the applicant which is based on Books of Account of the CD. Therefore, balance amount has been paid by the applicant, as was agreed in the initial agreement, which he did not pay. Further, the plea of buy-back taken by the applicant has no legal basis, because the applicant has never paid the full consideration, so the first agreement was never concluded. Therefore, the plea of buy back is primarily ill founded and not maintainable because the

Resolution Professional's right and duties are limited to the collating and verifying the claim, the Resolution Professional in no manner can decide or consider that the entire amount of Rupees two Crores has been paid, when the amount has never been received by the Corporate. It must be noted that the RP is duty bound to be fair and impartial, when the amount has not been received by the corporate debtor, there arises no occasion to deem that the amounts have been received.

7. As far as the relief regarding the direction to RP to initiate criminal proceedings against the officers of CD for committing fraud is concerned, the Applicant is at liberty to file the appropriate application before the concerned police authorities.

8. In view of the observation made above, the application is devoid of merits and stands rejected. However, there is no order for payment of costs.

9. The order is pronounced through video conferencing."

4. Aggrieved by the above, the present Appeal is filed and the prayers made now in Appeal are as under:-

"**Relief sought:**

In view of the facts mentioned in para 7 above, point in dispute and question of law set out in para 9, the appellant prays that this Hon'ble Tribunal be please to:

A. Quash the Impugned Order dated 22.02.2021 passed by the Ld. NCLT, New Delhi Bench – III in IA/3022/2020 in IB/1771/ND/2018;

B. Direct the Resolution Professional to place all the flats of the Appellant in Annexure B (i.e. transfer Unit Nos.C1 – 1102. C1 – 1201 and A1 – 705 from Annexure C to Annexure B) so that all six units of the Applicant (A2 – 101, A2 – 302, D1 – 1701, C1 -1102, C1 – 1201 and A1 – 705) are in Annexure B;

C. Direct the Resolution Professional to issue a clarification to Prospective Resolution Applicants

that six completed apartment units (A2 – 101, A2 – 302, D1 – 1701, C1 – 1102, C1 – 1201 and A1 – 705) have to be provided to the Appellant without payment of any further consideration;

D. Direct the Resolution Professional to Withdraw the aggregate demand of Rs.60,00,000 qua flat nos. A2–101, A2-302 and D1-1701 contained in the "Summary of Receivables" issued by the Resolution Professional vide E-Mail dated 29.06.2020;

E. Direct the Resolution Professional to make all consequential and necessary changes in the Evaluation Matrix and the Information Memorandum and or any other documents, which may be necessary to give effect to foregoing prayers;

F. Grant a*d-interim, ex-parte* and *interim* reliefs in respect of prayers A to E and Direct the RP not to create third party rights in apartment units A2-101, A2-302, D1-1701, C1-1102, C1-1201 and A1-705;

G. Pass any such other order (s) as this Hon'ble Appellate Tribunal may deem fit in the fact and circumstances of this case."

5. The grievance of the learned Counsel for the Appellant is that the Appellant had entered into Agreements and Memorandum of Understandings with the Corporate Debtor, before the CIRP started with regard to six flats. It is stated that accordingly amounts were advanced and the flats were awarded. After the CIRP started, the Appellant filed claims before the Resolution Professional and the claims were accepted. The grievance is with regard to placing of the claim of Appellant with regard to three flats in category 'C' instead of category 'B'. Three flats of the Appellant have been put in category 'B' while another three flats have been put in category 'C'. It is stated that with regard to the flats put in category 'C', those are flats where it has transpired

that the earlier Directors of the Corporate Debtor had sold those flats and subsequently, the same flats were sold over again and the Appellant is affected by the alleged second sales. The Counsel for Appellant claims that the Appellant did not know that the Corporate Debtor – Builder had already sold those three flats and the Appellant was bona fide purchaser for value.

6. The learned Counsel submits that Resolution Professional has sufficient flats available and the Appellant could have been accommodated in flats which are vacant and were available for which the Appellant has been open.

7. The learned Counsel for Resolution Professional submits that there are more than 300 homebuyers who have filed claims and that Resolution Plan is already before the COC (Committee of Creditors) and that the Resolution Professional has not rejected the claims even of those persons who were victims of the double sale and their claims are being entertained but in the category 'C'. She submits that the Resolution Professional has tried to accommodate the flat buyers to the extent the record of the Corporate Debtor permitted.

8. The learned Counsel for the Appellant now submits that the persons who are victims of the double sale and who have been in category 'C' are not getting voting rights. The learned Counsel for the Resolution Professional submits that the victims of the double sale put in category 'C' are still being treated as Financial Creditors.

9. Going through the material on record, we refer to Judgement in the matter of **"Arcelormittal India Private Limited v. Satish Kumar Gupta"** 2018 SCC OnLine SC 1733 where the Hon'ble Supreme Court in paragraphs 79 and 80 observed as under:-

> "**79.** What has now to be determined is whether any challenge can be made at various stages of the corporate insolvency resolution process. Suppose a resolution plan is turned down at the threshold by a Resolution Professional under Section 30(2). At this stage is it open to the concerned resolution applicant to challenge the Resolution Professional's rejection? It is settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable. *In Commissioner of Income Tax, Delhi v. S. Teja Singh*, [1959] Supp. 1 S.C.R. 394, this Court said, at page 403:
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> > "We must now refer to an aspect of the question, which strongly reinforces the conclusion stated above. On the construction contended for by the respondent, S.18- A(9)(b) would become wholly nugatory, as ss.22(1) and 22(2) can have no application to advance estimates to be furnished under s.18-A(3), and if we accede to this contention, we must hold that though the legislature enacted s.18-A(9)(b) with the very object of bringing the failure to send estimates under s.18-A(3) within the operation of s.28, it signally failed to achieve its object. A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, "*ut res magis valeat quam pereat*". Vide Curtis v. Stovin [1889] 22 Q.B.D 513 and in particular the following observations of Fry, L. J., at page 519:
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> > > "The only alternative construction offered to us would lead to this result, that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect".

> Vide also Craies on Statute Law, p. 90 and Maxwell on The Interpretation of Statutes, Tenth Edn., pp. 236-237. "A statute is designed", observed Lord Dunedin in *Whitney v. Commissioners of Inland Revenue* [1925] 10 Tax Cas. 88, 110, "to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable".
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> **80.** Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster."

10. Considering the above observations of the Hon'ble Supreme Court, it is clear that statute is designed to be workable. At every stage, for every action of Resolution Professional, challenges cannot be made and pursued. Still Adjudicating Authority has looked into the grievances and recorded reasons to reject the Application. We find substance in the reasons and findings recorded. Resolution Plan is already before COC. We do not find that at every stage Application should be filed and pursued in the manner in which the present Application has been pursued. We do not find any reason to interfere with the Impugned Order. We decline to entertain the Appeal.

The Appeal is dismissed. No Orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

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