

(2024) 03 NCLT CK 0018
In the National Company Law Tribunal
Case No : I.A. 199 Of 2021

Ultra Lifespaces Private Limited

APPELLANT

Vs

Mr. Devarajan Raman

RESPONDENT

Date of Decision : 01-03-2024

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 60(5)
Companies Act 2013 — Section 185
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2024) 03 NCLT CK 0018

Hon'ble Judges : V.G. Bisht, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Rohan Agarwal, Vidisha

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (T)

1. This Application IA 199/2021 is filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (?Code?) read with Rule 11 of the NCLT Rules, 2016 by Ultra Lifespaces Private Limited (?Applicant?) in the Corporate Insolvency Resolution Process (?CIRP?) of M/s Satra Properties (India) Limited (?Corporate Debtor?), seeking following reliefs:

- a. That this Tribunal be pleased to quash and set aside the Respondent's Order/communication dated 18th September 2020 addressed to the Applicant;
- b. That this Tribunal be pleased to direct the Respondent to accept the Applicant's Proof of Claim dated 17th August 2020 and admit the Applicant as a Financial Creditor of the Corporate Debtor and induct him into the Committee of Creditors of the Corporate Debtor;
- c. Pending the hearing and final disposal of the present Interim application the Order/communication dated 18th September 2020 issued by the Respondent be stayed;

2. The Applicant challenges the Order/Email dated 18th September 2020, whereby the Applicant's Proof of Claim dated 17th August 2020 as a Financial Creditor against the Corporate Debtor has been rejected by the Respondent.

2.1. Vide a Work Contract Agreement dated 11th August 2014 the Applicant (earlier known as 'Satra Bildeon Pvt. Ltd.') had awarded certain works to be performed by the Corporate Debtor in respect of one of the Applicant's projects at Bandra ("Work Contract Agreement").

2.2. Under the said Work Contract Agreement as per Clause 5 thereto, the Applicant had advanced an amount of Rs.34,00,00,000/- as a deposit to the Corporate Debtor ("security deposit"). It was agreed between the Parties that the said security deposit would be refunded and returned by the Corporate Debtor to the Applicant as per mutual agreement or within 2 (two) months from the date of Award of the Contract or as mutually agreed. Clause 5 of the Work Contract Agreement is reproduced hereinbelow for the sake of brevity.

"5. SECURITY DEPOSIT

1) An Interest free security deposit of 21% (Twenty one percent) of the total contract price shall be paid to the contractor. The Security deposit payment shall be released to the contractor within two months of the award of contract of as mutually agreed upon.

2) Recovery of security deposit will be done by the Developer / Owner on completion of the contract or as mutually agreed."

2.3. Subsequently, the Corporate Debtor failed and neglected to comply with its obligations under the said Work Contract Agreement and it was therefore agreed between the Applicant and the Corporate Debtor that the above said security deposit stood converted into a loan bearing interest @ 18% per annum.

2.4. It is relevant to note that such an arrangement was agreed orally between the Applicant and the Corporate Debtor because under Section 185 of the Companies Act 2013, the Applicant was prohibited from advancing any loan to the Corporate Debtor due to the following reasons:

(1) Mr. Praful Satra (a Director of the Corporate Debtor) was also a Director of the Applicant until 30th April 2019;

(ii) Since Mr. Praful Satra at the relevant time was also a Director in both the Corporate Debtor and the Applicant, no loan could have been advanced by the Applicant to the Corporate Debtor as there existed a common interest between the Applicant and the Corporate Debtor and therefore the Applicant under Section 185 of the Companies Act, 2013 was prohibited from advancing any loan to the Corporate Debtor, who at the relevant time was also a 51% holding company of the Applicant.

2.5. The Applicant submits that pursuant to the Consent Terms dated 8th August 2019 in Commercial Suit No. 859 of 2019, 51% shareholding in the Applicant

was purchased by the Mayank Shah Group and consequently thereafter the entire 100% shareholding in the Applicant stood with the Mayank Shah Group. Thereafter, a Demand Notice dated 24th December 2019 was issued by the Applicant to the Corporate Debtor calling upon the Corporate Debtor to pay an amount of Rs.33,55,36,315/- to the Applicant. This letter was responded to by the Corporate Debtor vide its letter dated 6th January, 2020 raising untenable and frivolous contentions.

2.6. In view of the non-payment of the amounts by the Corporate Debtor to the Applicant, a Petition under Section 7 the Insolvency and Bankruptcy Code, 2016 being Company Petition No. 266 of 2020 as also filed by the Applicant before this Hon'ble Tribunal. The Applicant craves leave to refer to and rely upon the papers and proceedings of Company Petition No. 266 of 2020 as and when produced. Subsequently vide an Order dated 3rd August 2020, this Hon'ble Tribunal was pleased to admit the present Company Petition No.1632 of 2019 and therefore the Applicant's Company Petition no. 266 of 2020 is now infructuous. However, it is relevant to note that the Corporate Debtor did not choose to file its Affidavit-in-Reply to the Company Petition despite service and enough opportunity and time having been granted. The Applicant craves leave to refer and rely on Order dated 3rd August, 2020 passed by this Tribunal.

2.7. Pursuant to the Public Announcement dated 8th August 2020 issued by the Respondent, the Applicant filed its Proof of Claim i.e. FORM 'C' as the Financial Creditor of the Corporate Debtor, dated 17th August 2020. Vide an email dated 7th September 2020, the Respondent raised certain queries in respect of the Applicant's claim which were duly responded to by the Applicant vide the Applicant's Advocate's email dated 11 September 2020.

2.8. Vide a further email dated 12 September 2020 the Respondent once again raised certain queries which were duly responded to by the Applicant's Advocate's email dated 15th September 2020. Hereto annexed and marked as ANNEXURE-6 is a copy of the email dated 12th September 2020 of the Respondent and ANNEXURE-7 is a copy of the email dated 15th September 2020 of the Applicant's Advocate in response to the Respondent's email of 12th September 2020.

2.9. Vide an email dated 18 September 2020 the Respondent has rejected the Applicant's claim as a Financial Creditor, inter alia, on the ground that there is no contract for a loan between the Parties, that there is no confirmation of the transaction in the records of the Corporate Debtor and that the books of the Corporate Debtor do not reflect any amounts payable by the Corporate Debtor to the Applicant. The Applicant respectfully submits that the Applicant's claim as a Financial Creditor is based on an oral agreement between the Applicant and the Corporate Debtor. It is wholly incorrect for the Respondent to outrightly reject the Applicant's claim as a Financial Creditor. Moreover, the Hon'ble National Company Law Appellate Tribunal as also the Hon'ble Supreme Court in a catena of judgments has held that an Interim Resolution Professional is not an

adjudicating authority and an Interim Resolution Professional's role and duty is to simply verify and collate the claims filed by the creditors, however, in the instant case the Respondent has gone ahead to adjudicate the Applicant's claim. It is most respectfully submitted that the Interim Resolution Professional has exceeded his authority and powers and failed to appreciate the genesis of the transactions between the Applicant and the Corporate Debtor.

2.10. The Applicant therefore submits that in view of the above, this Tribunal be pleased to quash and set aside the Respondent's decision/ communication dated 18th September 2020, whereby the Applicant's Proof of Claim has been rejected. The Applicant submits that the Applicant's claim is huge to the tune of Rs.37,27,32,083/- and if its claim is not accepted the Applicant will suffer huge loss having already burnt its fingers by advancing moneys to the Corporate Debtor.

3. The Respondent filed affidavit in reply dated September 2021 stating that the Applicant is not a Financial Creditor but an Operational Creditor as per Work Contract. Additionally the claim of the applicant is time barred as the work contract is of 11.08.2014.

3.1. The Applicant has claimed there was an oral agreement to convert the work contract to a loan agreement, the same has been denied by the suspended director of the corporate debtor and there is no confirmation available for such conversion. On the contrary, the suspended director has categorically stated that the dues from the work contract were fully settled by virtue of consent terms in Commercial Suit No.859 of 2019 before the Hon'ble High Court, Bombay. Although it has been categorically stated that all the dues have been settled by virtue of consent terms dated 08.08.2019 in Commercial Suit No.859 of 2019 before the Hon'ble High Court, Bombay the Applicant has failed to annex a copy of the consent terms, for reasons best known to him.

3.2. The books of the Corporate Debtor do not reflect any outstanding payable to the Applicant. However, it is pertinent to mention that as per clause 5 of Work Contract Agreement, the security deposit was to be returned after the completion of the contract. The work as per terms of the contract was never executed and the security deposit amount was used as consideration against the transfer of 51% shares of Satra Buildcon Pvt. Ltd. now known as Ultra Lifespace Pvt. Ltd. to Mr. M J Shah. Mr. Mayank Shah had 49% of shares of Applicant entity and has subsequently acquired 51% of shares by virtue of consent terms in Commercial Suit No.859 of 2019 before the Hon'ble High Court, Bombay. In view of consent terms, the Applicant and the CD settled all outstanding dues and disputed between themselves. On a plain reading of Para 11 and 18 of the Consent Terms, it is clear that the parties decided to settle all civil/criminal proceedings against each other and withdraw all statements, allegations, complaints against each other.

4. Heard learned Counsel and perused the material on record.

4.1. Para 11 and 18 of the Consent Terms reads as under:

11. The Defendant No.1 hereby confirms and declares that nothing is due and payable to them from Defendant No.4 company under Work contract Agreement dated 1 February, 2014 (being exhibit J to the Plaint) and hereby unconditionally and irrevocably discharges the Defendant No.4 from the payment thereof and similarly Defendant No.4 company discharges the Defendant No.1 of all the obligations as set out under the Work Contract Agreement and shall not claim any amount, whether as damages or otherwise howsoever, from Defendant No.1."

"18. The Plaintiff and the Defendant No.1 to 3 hereby withdraw all statements, allegations, complaints whether civil or criminal, correspondence and proceedings addressed/initiated by them in relation to the said 51% Shares and/or any claim in relation to any right, title or interest in the said Defendant No.4 Company and the Bandra Project being subject matter of the present Suit, agree not to raise any claims in the future."

4.2. The Respondent Resolution Professional asked the Applicant to substantiate the existence of an oral understanding that the said security deposit was converted into loan in the light of the fact that the account books of the Corporate Debtor and the explanation offered by the Suspended Board was at variance with this claim. It is noted that applicant has fails to bring on record any corroborative evidence to substantiate the existence of understanding in relation to conversion of Security Deposit into loan. On the other hand, the appropriation of said security deposit against the transfer of 51% of SBPL is evidenced from the treatment accorded in the books of the Corporate Debtor which reflect no amount payable to the Applicant. Accordingly, we do not find any infirmity in the decision of the Resolution Professional in this regard.

5. In view of the above, the IA 199/2021 is dismissed and disposed of accordingly.