

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH**

**MA 2248/2019 in
CP(IB)-3633(MB)/2018**

Under Section 47, 72, 73 and 60(5)
of the Insolvency and Bankruptcy
Code, 2016.

In the matter of

Mrs Seema K. Nayar and
Mr. K. Vijaya Mohan Valiathan,
Both resident of Saketam,
Kilikolloor,
Mangad Village, Kollam Taluk,
Kollam District
Kerala – 691004.

..... Applicants

V/s

Mather Projects Private Limited
Under CIRP
401, B Niranjana Building,
99 Marine Drive,
Maharashtra – 400 002

**Represented by Resolution
Professional, Kizhakkekara
Kuriakose Jose.**

..... Respondent

Order delivered on : 18 .01.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Ms. Shubharanjani Ananth, Counsel.

For the Respondent: Mr. Ashok G.V., Counsel i/b Sachin R Pawar for Resolution Professional;
Mr. Jose K K, Resolution Professional in person.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This Application MA 2248/2019 in CP(IB)-3633(MB)/2018 has been filed by Mrs Seema K Nayar and Mr K Vijaya Mohan Valiathan who are Financial Creditors in the Corporate Debtor Company in the capacity of flat owners and the total financial debt owed by the applicants is about Rs.49.69 lakhs. These Applicants are joint flat purchasers in the Corporate Debtor Company. These applicants are part of the group of home buyers who were represented through an authorised representative and these applicants have also voted in electing the “authorised representative” to represent all home buyers.
2. The Corporate Debtor had five projects under the Company, one of it being ‘Hacienda’. This particular joint home buyers are home buyers in the ‘Hacienda’ project. The main grievance of the Applicant is two-fold:-
 - (a) That the Deed of Assignment dated 05.09.2018 wherein the construction of the remaining flats in the Hacienda Project were assigned to M/s Locus Construction Private Limited, according to the Applicants is an undervalued/ preferential transaction and, therefore, should be set aside and declared null and void.

- (b) That the successful Resolution Applicant, Mr. Mohammed Shaffi Mather is a related party of the Corporate Debtor and, therefore, ineligible to be a Resolution Applicant.
3. The CIRP of the Corporate Debtor Company commenced by NCLT Order dated 30.11.2018. The Bench also notes that the Resolution Plan submitted by Mr. Mohammed Shaffi Mather has been approved with 72.37% vote of the CoC in the 5th meeting of the CoC held on 18.05.2019.
 4. This present Miscellaneous Application has been filed on 11.03.2019, i.e. after almost a month since the meeting of CoC wherein the successful Resolution Plan was approved. The Bench also notes that as per Regulation 35A(i) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the IRP/ RP has to form an opinion about the transactions of the nature mentioned in Section 43, 45, 50 or 66 of the IBC within T+75 days from the date when CIRP starts. The Bench observes that the IRP/ RP never pointed out to any transaction which attract Section 43, 45, 50 or 66. Therefore, the Bench notes that neither the CoC nor the RP in the present CIRP have pointed out to any transaction of the nature mentioned in Section 43, 45, 50 or 66 of the IBC, 2016.
 5. The Applicants in their submission have mentioned that the entire 'Hacienda project' was handed over by a Deed of Assignment dated 05.09.2018 to M/s Locus Construction Private Limited, which included the liabilities of the Applicant towards the Corporate Debtor. The Bench notes that statement of the Applicant is not correct because, a mere perusal of the

Assignment Deed dated 05.09.2018 would reveal that it does not assign the right, title and interest in respect of entire 'Hacienda project'. The Bench notes that it was an arrangement made by the Corporate Debtor in the ordinary course of business for the purpose of completing the remaining project which was totally stalled by mid-2018 due to cash flow issues being faced by the Corporate Debtor.

6. The Bench notes that the rights, title and interest and concomitant liability in respect of 29 apartments which include the apartment of the Applicant were sold prior to the execution of the said deed and are vested with the Corporate Debtor itself. Therefore, in the remaining 50 flats which were part of the Deed of Assignment dated 05.09.2018, the present Applicants were not in any way concerned.
7. The Bench notes that the Applicants have not put forward any cogent argument or facts which can substantiate their claims that the transaction on Deed of Assignment dated 05.09.2018 is undervalued or preferential. The RP mentions that prior to the Deed of Assignment and sale of the 50 apartments by the Assignee M/s Locus Construction Private Limited, the price at which the 29 apartments were sold by the Corporate Debtor was at Rs.2188 per sq ft. However, the Bench notes that the average price per sq ft at which the 50 apartments were sold under the deed dated 05.09.2018 was Rs.2899 per sq ft. which is much higher than the price which the earlier 29 flats were sold by the Corporate Debtor before the assignment. Therefore, the Bench is of the view that the amount of Rs.2899 per sq ft at which the sale of 50 flats

in project Hacienda had taken place cannot in any way be called as an undervalued transaction when the average sale of the earlier sold 29 Apartments were only at Rs.2188 per sq ft.

8. The other allegation of the Applicant is that the Resolution Applicant Mather has met with disqualification u/s 29A of the Code. In this regard the Bench would like to walk through clause by clause of Section 29A and see whether the Successful Resolution Applicant attracts any of the disqualification under Section 29A. The details in this regard are as under:-

- 8.1. Section 29A (a) bars an undischarged insolvent from being a Resolution Applicant. The Bench notes that the Resolution Applicant is not an undischarged insolvent and hence Sub-Clause (a) of Section 29A does not act as a bar.
- 8.2. Sub-Clause (b) of Section 29A bars a **wilful defaulter in accordance with the guidelines of the RBI** from being a Resolution Applicant. The present Resolution Applicant is not a wilful defaulter in accordance with the guidelines of the RBI and hence Sub-Clause (b) of Section 29A of IBC does not act as a bar.
- 8.3. Sub-clause (c) of Section 29A bars a **person who has an account classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949** from being a Resolution Applicant. In the present matter, the Resolution Applicant is not a person who has an account classified as non-performing asset in accordance with the guidelines of the

Reserve Bank of India issued under the Banking Regulation Act, 1949 and hence sub-clause (c) of Section 29A does not act as a bar in the present matter.

- 8.4. Sub-clause (d) of Section 29A bars **a person who has been convicted for any offence punishable with imprisonment under the Acts specified** from being a Resolution Applicant. In the present matter, the Resolution Applicant is not a person who has been convicted for any offence punishable with imprisonment under the Acts specified and hence sub-clause (d) of Section 29A does not act as a bar in the present matter.
- 8.5. Sub-clause (e) of Section 29A bars **a person who is disqualified to act as a Director under the Companies Act, 2013** from being a Resolution Applicant. In the present matter the Resolution Applicant is not a person who is disqualified to act as a Director under the Companies Act, 2013 and hence sub-clause (e) of Section 29A does not act as a bar in the present matter.
- 8.6. Sub-clause (f) of Section 29A bars **a person who is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets** from being a Resolution Applicant. In the present matter, the Resolution Applicant is not a person who is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets and hence sub-clause (f) of Section 29A does not act as a bar.

- 8.7. Sub-clause (g) of Section 29A bars **a person who has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, under value transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the adjudicating authority under the IBC from being a Resolution Applicant.** In the present matter, the Resolution Applicant is not a person who has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, under value transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the adjudicating authority under the IBC and hence sub-clause (g) of Section 29A does not act as a bar in the present matter.
- 8.8. Sub-clause (h) of Section 29A bars **a person who has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part** from being a Resolution Applicant. In the present matter, the Resolution Applicant is not a person who has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains

unpaid in full or part and hence sub-clause (h) of Section 29A does not act as a bar in the present matter.

8.9. Sub-clause (i) of Section 29A bars **a person who has any disability corresponding to clauses (a) to (h) of Section 29A of the Code, under any law in the jurisdiction outside India** from being a Resolution Applicant. In the present matter, the Resolution Applicant is not a person who has any disability corresponding to clauses (a) to (h) of Section 29A of the Code.

8.10. Sub-clause (j) of Section 29A bars **a person who has a connected person not eligible under clauses (a) to (i) of Section 29A of the Code** from being a Resolution Applicant. In the present matter, the Resolution Applicant is not a person who has a connected person not eligible under clauses (a) to (i) of Section 29A of the Code and hence sub-clause (j) of Section 29A does not act as a bar in the present matter.

9. From the above it is very clear that Section 29A does not bar the Resolution Applicant in any manner. Therefore, the contention of the Applicants that the Resolution Applicant Mr. Mohammed Shaffi Mather faces disqualification u/s 29A of the Code is incorrect and untenable.

10. In view of this, **MA 2248/2019 in CP(IB)-3633(MB)/2018** is **'not allowed'** and **'Dismissed'**.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
H V Subba Rao
Member (Judicial)