



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-IV**

Company Petition No.: IB 783(ND)/2022

IA – 3097/ND/2024

IN THE MATTER OF:

**M/s Conquerent Control Systems Private Limited
...Operational Creditor**

VERSUS

**M/s Ansal Crown Infrabuild Private Limited
... Corporate Debtor**

AND

IN THE MATTER OF IA 3097/ND/2024:

*Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 r/w Rule 11
of NCLT Rules, 2016.*

**SWAMIH Investment Fund 1
(through its investment manager SBI Ventures Limited) ...Applicant**

VERSUS

Mr. Sunil Kumar Agarwal & Anr. ...Respondent

Pronounced on: 17.04.2025

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

Present:



For Applicant : Mr. Krishnendu Datta, Senior Advocate, Mr. Nikhil Mehndiratta, Mr. Agastya Sen, Ms. Nidhisha Chokshi, Advocates.

For RP : Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Ridhima Mehrotra, Adv. Rakesh Kumar, Adv. Preeti Kashyap, Adv. Ankit Sharma, Adv. Yash Dhawan, Sunil Kumar (in person)

For SRA : Mr. Nipun Gautam, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This application has been filed by SWAMIH Investment Fund 1 (through its investment manager SBI Ventures Limited) ("**Applicant / SWAMIH**") against Mr. Sunil Kumar Agarwal (Resolution Professional of Ansal Crown Infrabuild Private Limited) ("**Respondent No. 1**")/ "**Resolution Professional**") and M/s Nanu Ram Goyal & Co ("**Respondent No. 2**") Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 ("**IBC/Code**") r/w Rule 11 of NCLT Rules, 2016. The prayer of the applicant is as extracted below:

"A. Allow the present Application, take on record the Objections of the Applicant to the Resolution Plan of the Resolution Applicant – M/s NRG & Co. dated March 22, 2024 and direct rejection of the Resolution Plan in its present form; and/ or



B. Reject the Application bearing IA. No. 20 of 2024 filed by the Resolution Professional in C.P. IB. No. 783 of 2022 under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 seeking approval of Resolution Plan of the Resolution Applicant- M/ s NRG & Co. dated March 22, 2024; and/ or

C. Direct the Resolution Professional to accept classification of the claim of the Applicant to be in the nature of "interim finance" as defined under Section 5(15) of the Insolvency and Bankruptcy Code, 2016; and/ or

D. Reject Clause 6.2 of the Resolution Plan of the Resolution Applicant- M/ s NRG & Co. dated March 22, 2024, and direct that the same be treated as "interim finance" and hence be treated as "insolvency resolution process cost" under Section 5(13) of the Insolvency and Bankruptcy Code, 2016 for the purposes of computation of dues interest included for the duration of the corporate insolvency resolution process and direct pay out(s) by the Resolution Applicant to the Applicant herein accordingly under the Resolution Plan; and/ or

E. Pass such other or further order(s) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.”

2. The factual background of this case is that this Bench vide order dated 21.04.2023, initiated CIRP against the Corporate Debtor. In the course of the CIRP, the Applicant submitted a claim



amounting to Rs. 6,08,89,690/- (Rupees Six Crore Eight Lakh Eighty-Nine Thousand Six Hundred and Ninety Only), comprising of Rs. 5,30,00,000/- (Rupees Five Crore Thirty Lakh) towards the principal sum and Rs. 66,83,898/- (Rupees Sixty Six Lakh Eighty Three Thousand Eight Hundred and Ninety Eight) towards the Interest on the Rate of Return (IRR) at 15%; and Rs. 12,05,792/- (Rupees Twelve Lakh Five Thousand Seven Hundred and Ninety Two) towards charges and expenses. This claim was duly filed by the Applicant on 8th May 2023, in accordance with the prescribed procedural norms.

3. Ld. Counsel for the Applicant has made the following submissions:

a. The Ld. Counsel for the Applicant submitted that the instant Application has been filed seeking appropriate directions for classification of the Applicant's claim as 'interim finance' under Section 5(15) of the Insolvency and Bankruptcy Code, 2016 ("Code"), in the context of the Resolution Plan submitted in the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor. The primary issue raised is that despite the express provisions of the Code and the clarificatory Notification dated 03.10.2022, the claim of the Applicant has not been recognised as interim finance by the Resolution Professional.

b. It is submitted that the Applicant is the investment manager of the Government of India's 'Special Window for Affordable and Mid-Income Housing' (SWAMIH) Investment Fund I, which was



set up with the stated objective of providing priority debt financing for completion of stalled housing projects that fall under the 'Affordable and Middle-Income Housing' category. The Fund was established pursuant to the Union Cabinet's approval dated 06.11.2019 and subsequent operationalisation by the Ministry of Finance, Government of India. The Fund provides last mile financing to stalled projects of financially stressed real estate developers that are net-worth positive and registered under RERA.

- c. It is submitted that the Applicant had sanctioned last mile financing to the Corporate Debtor through a Facility Agreement dated 24.12.2020, after due diligence and in accordance with the Fund's guidelines. The financial assistance was disbursed for completion of the ongoing housing project named "Sushant Megapolis" at Greater Noida, Uttar Pradesh. The debt was secured by way of mortgage over project lands, hypothecation of receivables, personal guarantees of promoters, and exclusive charge over escrow accounts.
- d. Subsequently, on 04.05.2022, the Hon'ble Adjudicating Authority admitted a petition filed under Section 7 of the Code against the Corporate Debtor, thereby commencing CIRP. The Applicant duly submitted its claim in Form C on 13.05.2022. However, the Resolution Professional rejected the classification of the Applicant's debt as 'interim finance' under the Code.
- e. It is further submitted that a Notification dated 03.10.2022, issued by the Ministry of Corporate Affairs, clarified that the



expression “interim finance” in Section 5(15) of the Code shall include any financial debt disbursed by scheduled banks or financial institutions to a Corporate Debtor for completion of a project under the real estate sector, pursuant to a Government-approved scheme or initiative. The Applicant contends that the said Notification was clarificatory in nature and must be given retrospective effect. Reliance is placed on the judgment of the Hon’ble Supreme Court in *Sedco Forex International Drill Inc. v. CIT* (2005) 12 SCC 717, wherein it was held that clarificatory amendments are deemed to have retrospective application.

- f. The Applicant also places reliance on the Statement of Objects and Reasons of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 and the subsequent Amendment Act, 2021, to submit that the legislative intent was to treat last mile funding—such as that provided by the Applicant—as interim finance under the Code. The Ld. Counsel further submits that the claim was not recognised by the Resolution Professional solely on the ground that it arose prior to the commencement of CIRP. It is argued that such a distinction between interim finance disbursed prior to CIRP and that disbursed post-commencement is not borne out from the provisions of the Code and is contrary to the legislative intent.
- g. The Applicant has further submitted that the Resolution Professional has no adjudicatory powers and is only vested with administrative functions under the Code. Reliance is placed on the judgment of the Hon’ble Supreme Court in *Swiss*



Ribbons Pvt. Ltd. v. Union of India (Writ Petition (Civil) No. 99 of 2018), wherein it was held that the Resolution Professional cannot decide disputed claims or interpret law. The Applicant submits that in the present case, the Resolution Professional has acted beyond the scope of their authority by rejecting the classification of the Applicant's claim as interim finance based on its own interpretation of law, thereby assuming quasi-judicial powers.

- h. It is further submitted that the Resolution Professional has taken a contradictory stand by objecting to the Applicant's filing of a separate petition under Section 7 of the Code against the Corporate Guarantor, Ansal Buildwell Ltd. The Ld. Counsel submits that such objection is legally unsustainable, as it is well-settled that a financial creditor has a right to proceed simultaneously against both the principal borrower and the corporate guarantor. Reliance is placed on the judgments of the Hon'ble Supreme Court in *Laxmi Pat Surana v. Union Bank of India* (AIR 2021 SC 1707) and *Lalit Kumar Jain v. Union of India* [(2021) 9 SCC 321], which affirm that the guarantor's liability is independent and does not get discharged due to the insolvency of the principal borrower.
- i. It is also submitted that the funding extended by the Applicant was solely for the purpose of completing the stalled housing project and protecting the interests of allottees, which is in furtherance of the objectives of the Code. Denial of interim finance status to such funding defeats the legislative purpose behind the Amendment Act and the Notification, and would



render these provisions futile.

- j. Accordingly, the Ld. Counsel for the Applicant submits that the Resolution Plan, as submitted by the Resolution Professional, is illegal, discriminatory, and contrary to Section 30(2) of the Code read with the relevant CIRP Regulations. It is submitted that the Resolution Plan fails to meet the requirements of law and does not achieve the objectives of the Code.

4. In reply to the contentions raised by the Ld. Counsel for the Applicant, the Ld. Counsel for the Respondent has put forth the following submissions:

- a. The Ld. Counsel for the Respondent submitted that the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated and duly admitted by this Hon'ble Tribunal on 21st April 2023. During the course of the CIRP, the Applicant submitted its claim amounting to Rs. 6,08,89,690/- (Rupees Six Crore Eight Lakh Eighty-Nine Thousand Six Hundred and Ninety Only). This amount comprised of:

- Rs. 5,30,00,000/- towards the principal sum,
- Rs. 66,83,898/- towards interest at the Rate of Return (IRR) of 15%, and
- Rs. 12,05,792/- towards charges and expenses.

- b. The said claim was filed by the Applicant on 8th May 2023, in accordance with the prescribed procedural norms. It is further submitted that on 13.09.2023, the Applicant addressed a letter to the Resolution Professional requesting to make additional



submissions in respect of its earlier claim. The Applicant asserted that the debt should be classified as "interim finance" under Section 5(15) of the Code, based on the Ministry of Corporate Affairs (MCA) Notification dated 18.03.2020 (Annexure A/1 to the Application).

- c. However, the Resolution Professional declined to entertain this request, stating that the debt in question does not qualify as "interim finance" under Section 5(15) of the Code, since it pertains to a liability incurred by the Corporate Debtor prior to the commencement of the CIRP.
- d. Subsequently, email exchanges between the Applicant and the answering Respondent took place on 22nd September 2023, 29th September 2023, and 9th November 2023, as reflected in Annexures A/9, A/10, and A/11 to the Application.
- e. Pursuant to the rejection of its claim, the Applicant filed the present Application on 12.06.2024, challenging the Resolution Plan. The Resolution Plan had already been approved by the Committee of Creditors (CoC) on 02.04.2024 with 98.52% voting share in favour of the Plan.

In view of the above facts and circumstances, the Respondent prays for the dismissal of the present Application on the following grounds:

- f. That the expression "interim finance" as per Sections 5(13) and 5(15) of the Code refers strictly to financial assistance raised during the CIRP period;



- g. That the financial assistance claimed by the Applicant was extended on 08.05.2023, which is prior to the initiation of CIRP on 21.04.2023, and therefore does not qualify as interim finance under the Code;
- h. That the MCA Notification relied upon by the Applicant does not authorize recognition of any interim finance raised prior to the commencement of CIRP;
- i. That, furthermore, it is a matter of record that the CoC has never approved the Applicant's claim as a CIRP cost nor recognized it as interim finance. It is also significant that the Applicant has not challenged the rejection of its claim by filing an appeal under Section 42 of the Code, nor has any application for condonation of delay been filed. Hence, raising such a contention after the approval of the Resolution Plan is entirely misconceived;
- j. That the SWAMIH Investment Scheme, read with the MCA Notification dated 18.03.2020, clarifies that the scheme was intended for revival of stalled housing projects. In the present case, the project has already been revived, and the Resolution Plan provides for 100% payment of the admitted claim, including interest accrued up to the CIRP period. Therefore, the Applicant's claim for priority payment during CIRP or further interest is an attempt to extract undue advantage, which is contrary to the spirit and intent of the Code;



- k. That the Applicant actively participated in all CoC meetings during the CIRP and never raised any objection at that stage. The filing of the present Application only after the approval of the Resolution Plan indicates an intention to derive an additional commercial benefit, and such conduct ought to be discouraged by imposing exemplary cost;
- l. That although the Applicant had requested submission of an additional claim, the same was rejected by the Respondent on 13.09.2023. Instead of appealing under Section 42 of the Code, the Applicant has filed the instant Application challenging the Resolution Plan, which had already been approved by the CoC with 98.52% votes. Therefore, the Application is perverse and not tenable in law;
- m. That the Respondent further pointed out to this Hon'ble Tribunal that a separate petition under Section 7 of the Code has been filed against the parent company of the Corporate Debtor, titled "IDBI Trusteeship Services Ltd. v. Ansal Buildwell Ltd.", bearing CP(IB) No. 132 of 2024. During arguments, it was submitted that the full claim amount of the Applicant is already proposed to be paid under the Resolution Plan, and even if any balance remains, the parent company would discharge the same. Records in CP(IB) No. 132 of 2024 may be referred to in this regard;
- n. That in light of the above, the Applicant is, in any case, receiving its entire claim from the Corporate Debtor and/or its parent company. Accordingly, the claim raised via the email



dated 22.09.2023 is not maintainable.

5. We have heard the learned counsels appearing for both the parties at length and have carefully considered the submissions made on their behalf. After a thorough examination of the case, including the arguments advanced by both sides and the evidence presented, we find that the central issue arising for determination in the present case is whether the financial assistance extended by the Applicant is to be classified as interim finance under Section 5(15) of the Insolvency and Bankruptcy Code, 2016 (“the Code”), and consequently, whether the amount due is liable to be treated as part of the CIRP cost under Section 5(13) of the Code, and paid in priority under the approved Resolution Plan.

6. In order to answer this question it is pertinent to understand the nature of the debt extended by the Applicant, it is pertinent to understand the chronology of certain notifications. On March 13, 2020, the Insolvency and Bankruptcy Code (Amendment) Act 2020 ("Amendment Act") came into force, vide which inter alia Section 5(15) of the Code was amended and the definition of 'interim finance' was expanded by adding the words '**and such other debt as may be notified**'. The relevant extracts from the Amendment Act are highlighted below for ease of reference:

*"Interim finance means any financial debt raised by the resolution professional during the insolvency resolution process period [or by the corporate debtor during the pre-packaged insolvency resolution process period, **and such other debt as may be notified**."*



7. It bears emphasis to mention that the precursor to the Amendment Act i.e. the Insolvency and Bankruptcy (Amendment) Ordinance, 2019 ("Ordinance") in its Statement of Objects categorically emphasized on the importance and need to provide the highest priority in repayment of last mile funding to the corporate debtors. Accordingly, the Ordinance was retained in the same substance under the Amendment Act and the words '**and such other debt as may be notified**' were added to the existing definition of 'interim finance' as defined under Section 5(15) of the Code. Further, in order to give colour to the abovementioned amendment, the Government of India vide its Notification classified the debt raised by the Applicant to be included within the ambit of interim finance. The relevant extracts of the Ordinance are captured below:

***THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT)
ORDINANCE, 2019 No. 16 OF 2019***

*WHEREAS a need was felt to give the highest priority in repayment to last mile funding to corporate debtors **to prevent insolvency** in case the company goes into corporate insolvency resolution process or liquidation, to provide immunity against prosecution of the corporate debtor, to prevent action against the property of such corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions and to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016;*



8. Thereafter, in order to give colour to the above, the Government of India through the Ministry of Corporate Affairs vide notification bearing S.O. 1145(E) dated March 18, 2020 ("Notification") (Annexure A/3 @Pg. 39 Vol 1) specifically categorized the debt raised by the Applicant to be in the nature of 'interim finance' under Section 5(15) of the Code. The relevant text of the notification is as extracted below:

"In exercise of the powers conferred by clause (15) of section 5 of the Insolvency and Bankruptcy Code, 2016 (3 I of 20/ 6), the Central Government hereby notifies a debt raised from the Special Window for Affordable and Middle-Income Housing Investment Fund I, for the purposes of the said clause.

Explanation. -For the purposes of this notification, the expression "Special Window for Affordable and Middle-Income Housing Investment Fund I" shall mean the fund sponsored by the Central Government for providing priority debt financing for stalled housing projects, as an alternate investment fund and registered with the Securities and Exchange Board of India, established under sub-section (1) of section 3 of the Securities and Exchange Board of India Act, 1992 (/5 of 1992), to provide financing for the completion of stalled housing projects that are in the affordable and middle income housing sector".

9. A conjoint reading of the aforementioned paragraphs unequivocally establishes that the debt extended by the Applicant, i.e., Special Window for Affordable and Middle-Income Housing Investment Fund I (hereinafter referred to as "SWAMIH



Fund"), qualifies as interim finance under the expanded scope of Section 5(15) of the Insolvency and Bankruptcy Code, 2016 ("Code"). The legislative intent behind the amendment to Section 5(15), as reflected in the Statement of Objects and Reasons of the Insolvency and Bankruptcy (Amendment) Ordinance, 2019, was to accord highest repayment priority to last mile funding—irrespective of whether such funding was infused pre or post-commencement of the Corporate Insolvency Resolution Process (CIRP).

10. The Amendment Act of 2020, which substituted the Ordinance without any material deviation, added the phrase "**and such other debt as may be notified**", thereby conferring upon the Central Government the power to notify any category of debt as interim finance for the purposes of the Code. Pursuant to such enabling provision, the Central Government, vide Notification No. S.O. 1145(E) dated March 18, 2020, expressly brought within the ambit of interim finance the debt extended from the SWAMIH Fund. The notification is categorical and unqualified in its language—it does not impose any temporal limitation regarding the stage at which such debt must be advanced, nor does it restrict its applicability to post-commencement funding under CIRP.
11. It is further pertinent to note that the Explanation to the Notification affirms the objective of the SWAMIH Fund as providing priority debt financing for the completion of stalled housing projects in the affordable and middle-income segments.



This aligns seamlessly with the overarching policy rationale espoused in the Ordinance's preamble—that last mile funding is critical to prevent insolvency or facilitate timely resolution.

12. Accordingly, the debt raised by the Applicant from the SWAMIH Fund, being notified by the Central Government and falling squarely within the definition under the amended Section 5(15), must be treated as interim finance, irrespective of whether such debt was disbursed prior to or during the CIRP. The Notification confers a blanket status upon debt extended from the SWAMIH Fund as interim finance, thereby entitling it to the attendant statutory protections and priority under the Code. Hence the question is answered accordingly.

13. Further, it is pertinent to note that the Resolution Plan approved by the Committee of Creditors (CoC) does not dispute the liability of the Corporate Debtor towards the Applicant. On the contrary, Clause 6.1 of the Resolution Plan makes an express and unequivocal commitment that the entire CIRP cost shall be paid in actual, in priority over other debts, within 30 days from the Effective Date. The relevant portion is extracted as under:

“As per the information received in the IM/VDR, the total estimated Insolvency Resolution Cost is around INR 1.5 Crores. However, the Resolution Applicant has considered the estimated provision of the Insolvency Resolution Process Costs to the tune of INR 2 Crores. It is further clarified that in case the total CIRP costs exceed the sum of INR 2 Crores, it shall be borne by the Resolution Applicant to that extent. The Resolution Applicant



undertakes to pay the entire CIRP cost, in actual, in priority over other debts payable under this Plan. The CIRP cost shall be paid in full within a period of 30 days from the Effective Date.”

14. In light of the above clause, we find that the Resolution Plan already contemplates a provision broad enough to accommodate the Applicant’s claim as CIRP cost. Accordingly, it is not necessary to remit the Resolution Plan back to the CoC for reconsideration. This Tribunal, while exercising its powers under Section 31 of the Code, is competent to interpret the provisions of the Plan and issue appropriate directions to ensure compliance with the statutory mandate of Section 30(2)(a), which requires that CIRP costs be paid in priority.

15. It has also been submitted without prejudice by Respondent No. 2 that even assuming, for the sake of argument, that the Applicant’s claim constitutes CIRP cost, the Resolution Plan remains compliant with the Code, inasmuch as it provides for the full payment of such cost within the stipulated time frame. This admission further strengthens the case for allowing the present application without disturbing the Resolution Plan.

16. In view of the above findings, we are of the considered opinion that the Applicant’s claim qualifies as interim finance and is liable to be treated as CIRP cost under Sections 5(13) and 5(15) of the Code. Consequently, the Successful Resolution Applicant (SRA) is directed to pay the entire amount due to the Applicant as CIRP cost, in priority to all other payments under the Resolution Plan,



and in accordance with Clause 6.1 thereof. Such payment shall be made within 30 days from the Effective Date.

Consequently, **IA 3097(ND)/2024** in CP No. 783(ND)/2022 stands disposed of with the above directions.

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(DR. SANJEEV RANJAN)

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)