



BEFORE THE COMPETITION COMMISSION OF INDIA
(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

Case No. -	01/2023
Date of Institution	02.02.2023
Date of Order	10.07.2023

In the matter of:

Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s Puma Realtors Pvt. Ltd., Regd. Office: 8D, Hansalaya 15, Barakhamba Road, New Delhi – 110001.

Respondent

Coram: -

Smt. Ravneet Kaur, Chairperson,
Dr. Sangeeta Verma, Member,
Sh. Bhagwant Singh Bishnoi, Member.

ORDER

1. The present Report dated 31.01.2023, has been received by the Competition Commission of India **(hereinafter referred to as the**

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“Commission”) from the Director General of Anti-Profiteering (**herein after referred to as the “DGAP”**) after a detailed investigation as per the directions given under Rule 133(4) of the Central Goods and Service Tax Rules, 2017 (**herein after referred to as the “Rules”**) contained in erstwhile National Anti-profiteering Authority’s (**herein after referred to as the “NAA”**) Interim Order (I. O.) No. 10/2022 dated 04.08.2022, passed in the matter of Project **“Ireo Rise”** executed by M/s Puma Realtors Pvt. Ltd. Regd. Office: 8D, Hansalaya 15, Barakhamba Road, New Delhi – 110001 (**herein after referred to as “the Respondent”**).

2. The DGAP vide his Report dated 31.01.2023 has inter-alia submitted that:-
 - i. The NAA passed an Interim Order No. 10/2022 dated 04.08.2022 directing the DGAP to further investigate the matter under Rule 133(4) of the Rules and furnish a comprehensive report. Vide Para 8 and 9 of the aforesaid order, the NAA had made following observations:
 8. *The DGAP had not conducted the investigation as directed by this Authority vide its Interim Order No. 14/2019 dated 21.10.2019. The Report dated 25.10.2021 of the DGAP is silent on the aspect of profiteering, if any, by the Respondent in his Project “Ireo Rise” and no investigation had been done in terms of Section 171 of the CGST Act, 2017 and the Rules made thereunder.*
 9. *This Authority now, by this Order, under the provisions of Rule 133(4) of the CGST Rules, 2017 and Section 171 of CGST Act, 2017 reiterates its directions to the DGAP as made under Interim Order No.*

14/2019 dated 21.10.2019 and requires the DGAP to discharge his responsibilities of investigation on supplies made by the Respondent in his Project "Ireo Rise" under Section 171 of CGST Act, 2017 and CGST Rules, 2017.

- ii. The DGAP has submitted that accordingly, vide letter dated 25.08.2022, the Respondent was requested to furnish the requisite information/ documents.
3. The DGAP vide his Report dated 31.01.2023 has inter-alia also submitted that in response to the letter dated 25.08.2022 and subsequent reminders dated 08.09.2022 and 15.09.2022, the Respondent vide his letters/e-mails dated 08.09.2022, 20.09.2022, 04.11.2022 and 09.11.2022 has submitted that:-
- a. By virtue of the order dated 17.10.2018 passed by the Hon'ble National Company Law Tribunal, New Delhi (**hereinafter referred to as the "NCLT"**), the Respondent has undergone Corporate Insolvency Resolution Process ("CIRP"). Thereafter, the Consortium of One City Infrastructure Pvt. Ltd. and APM Infrastructure Pvt. Ltd. had submitted the Resolution Plan for the Respondent. The said Resolution Plan was approved by the Committee of Creditors (CoC) on 05.09.2019 and subsequently approved by the NCLT vide its order dated 01.06.2021. Pursuant to which, new management took over the affairs of the Respondent.

- b. Further, Respondent has submitted that the Resolution Plan, as approved by the NCLT, shall in terms of Section 31 of the Insolvency and Bankruptcy Code 2016 ("Code") shall have a binding effect upon the debts of the Respondent including the dues of the Central Government, any State Government or any local authority to whom debt in respect of the payment of dues arising under any law for the time being in force, was owed. The Relevant portion of Section 31 of the Code is reproduced hereunder:

"31. Approval of resolution plan. -

- (a) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and his employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues was owed, guarantors and other stakeholders involved in the resolution plan.*

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan had provisions for his effective implementation."

c. Further, the Respondent has submitted that the aforesaid provision of the Code has been duly upheld by the Hon'ble Supreme Court of India in the matter of Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited (2021 SCC On Line SC 313) wherein the Hon'ble Supreme Court had held as follows:

"68. All these details were required to be contained in the information memorandum so that the resolution applicant is aware, as to what was the liabilities, that he might had to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon his satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in subsection (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved"

d. The Respondent has also stated that no action qua the dues relating to the GST could be taken against the new management as well as the Respondent under Section 171 of the above Act. It has been further stated that the new management has protection from the offences committed by the previous management of the Respondent,

in terms of Section 32A of the Code and in fact, the Respondent is not even liable to pay the dues, if any, pertaining to the pre-CIRP period, after the approval of the Resolution Plan, if the same were not taken into consideration in the Resolution Plan. Section 32-A of the Code is reproduced herein below for ready reference:

“ 32A. (2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of part II of this Code to a person, who was not....”

- e. Further, the Respondent has claimed that he was not liable to pay any dues whether statutory or otherwise, pertaining to the period prior to the approval of the Resolution Plan and furthermore, shall not be liable for any wrongs/ offences committed by the erstwhile management of the Respondent.
- f. The Respondent vide e-mail dated 20.09.2022 has intimated the DGAP that he was not handling any operation of M/s Puma Realtor Pvt. Ltd. as vide NCLT's above order his business was taken over by the 'One Group Developers' with effect from 01.06.2021.
- g. In his reply dated 09.11.2022, the Respondent informed that before the initiation of CIRP, he had obtained partial Completion Certificate

(CC) from the Country & Town Planning Department of Govt. of Haryana for all the Towers (Tower-1, 2, 3, 4, 5, 6 and 7) vide partial CC Memo No. GMADA/STP/2017/2034 dated 30.06.2017 for the Tower No. 1, 4, 5, 6 and 7 and Memo No. GMADA/STP/2018/588 dated 01.03.2018 for the Tower No. 2 and 3.

- h. The Respondent has also informed that the present management viz. M/s One Group Developers is collecting the outstanding amount from the homebuyers whose builder-buyer agreements were executed before the date of CC and who had not paid the total consideration.
 - i. Further, the Respondent has also submitted that he was ready and willing to provide any assistance that the DGAP may require, provided the same is in the scope of his duties as per the law and will produce all the documents and filings made or done post CIRP.
4. The DGAP vide his Report dated 31.01.2023 has inter-alia submitted the following findings: -
- a. The main issue to be looked into was whether there was reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so, Whether the Respondent has passed on such benefit to the recipients, in terms of Section 171 of the CGST Act, 2017.
 - b. As regards the issue of profiteering the same could not be concluded because the Respondent did not furnish the requisite documents required for concluding the investigation to ascertain as to whether there is any benefit of ITC which has accrued to the Respondent and

if so whether the said benefit of ITC has been passed on to the home buyers in whose case demands had been raised or advances had been received post GST.

- c. Further vide his letter dated 25.10.2021, DGAP's Senior Standing Counsel Shri Zoheb Hossain has opined that the claims/benefit that could not be quantified because of the non-submission of the documents by M/s Puma Realtors Pvt. Ltd. would stand extinguished and the Resolution Applicant viz. M/s One Group Developers cannot be held accountable for the actions of the Respondent for not passing of the benefit of ITC to the eligible recipients under Section 171 of the CGST Act, 2017 after approval of the Resolution Plan.
- d. The claims/benefit could not be quantified because of the non-submission of the documents by the Respondent. Further, any claim on Respondent would stand extinguished in view of the order of NCLT dated 01.06.2021 and the Resolution Applicant (M/s One Group Developers) cannot be held accountable for the action of M/s. Puma Realtors Pvt. Ltd. in not passing on the benefit of ITC to the eligible recipients under Section 171 of the CGST Act, 2017 after Resolution Plan had been approved by the NCLT. Accordingly, the proceedings initiated vide letter dated 25.08.2022 could not be continued against the Respondent.
- e. However, as M/s 'One Group Developers' is collecting the outstanding amount from the homebuyers and is also collecting GST thereon, hence, he is liable to pass on the benefit of ITC to his recipients if the benefit of ITC has accrued to him due to

implementation of GST. Therefore, the DGAP has submitted that an order/direction may be issued to investigate M/s One Group Developers who has taken over the project after NCLT Order dated 01.06.2021 so that violation of section 171 of the CGST Act, 2017 could be investigated.

5. Issues to be decided by the Commission

The Commission finds that the following two issues are required to be decided in the present proceedings: -

- a. **Issue No. 1:** Whether the proceedings already initiated against the Respondent viz. M/s. Puma Realtors Pvt. Ltd. under Section 171 of the CGST Act, 2017 and CGST Rules, 2017 in the matter of the project 'Ireo Rise' should be continued even after passing of NCLT order dated 01.06.2021 or not?
- b. **Issue No. 2:** Whether directions to investigate M/s One Group Developers which has taken over the project 'Ireo Rise' as per NCLT's Order dated 01.06.2021, under section 171 of CGST Act 2017 and CGST Rules, 2017 be passed or not?

6. Findings of the Commission

The Commission after careful consideration of the DGAP's Report dated 31.01.2023 and also the Respondent's submissions made before the DGAP holds on both the above issues as under:

- a. **Issue No.1:** That any claim of not passing on the benefit of ITC to the recipients under Section 171 of the CGST Act and the Rules made there under, would not survive in view of the Order dated 01.06.2021

passed by the NCLT under Section 31 of the Code which extinguishes his all liabilities including any liability on account of passing on the benefit of ITC to the recipients of the Project Ireo Rise as the same has not been incorporated in the Approved Resolution Plan. Further the New Management viz. M/s One Group Developers can also not be held liable for the liability of M/s. Puma Realtors Pvt. Ltd. of not passing on the benefit of ITC to the eligible homebuyers/recipients under Section 171 of the CGST Act, 2017 in view of the NCLT order dated 01.06.2021. Accordingly, the proceedings already initiated against the Respondent viz. M/s. Puma Realtors Pvt. Ltd. for determining the benefit of Input Tax Credit under Section 171 of the CGST Act, 2017 and rules made there under, with regard to the project 'Ireo Rise' shall be discontinued henceforth.

- b. **Issue No.2:** It is revealed from the material brought on record that by virtue of Order dated 01.06.2021 of the NCLT, the management of M/s. Puma Realtors Pvt. Ltd. (Respondent) has been taken over by M/s One Group Developers under the Code. It is also revealed that M/s One Group Developers is collecting the outstanding installments from the homebuyers/recipients for the project 'Ireo Rise' and is also collecting GST thereon. It is further revealed that the CC has not been issued till date in respect of this project and it is still under execution. Hence M/s One Group Developers is apparently liable for passing on the benefit of ITC under the provisions of Section 171 of the CGST Act and Rules made there under as it is availing the benefit of ITC. Therefore, the DGAP is directed to investigate M/s One Group

Developers with regard to the project 'Ireo Rise' for any violation of Section 171 of the CGST Act, 2017 and the Rules made there under.

7. A copy of this Order be supplied to the DGAP and the Respondent. File be consigned after completion.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary CCI

F. No. 22011/NAA/PUMA/40/2021 / 383-385

Date: 12.07.2023

Copy to:

1. M/s Puma Realtors Pvt. Ltd., Regd. Office: 8D, Hansalaya 15, Barakhamba Road, New Delhi – 110001.
2. The Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. Guard File.