

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

C.P. NO. (IB) 357 OF 2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF:

Suresh Sareen & Ors.

...FINANCIAL CREDITOR/APPLICANT

VERSUS

M/s International Land Developers Pvt. Ltd.

...CORPORATE DEBTOR/RESPONDENT

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 29.02.2024

PRESENT:

For the Applicant : Mr. Ishaan George,
Mr. Archit Jain, Advs.

For the Respondent : Ms. Nistha Gupta, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The instant Company Application is filed by Suresh Sareen and 45 other home buyers ('Applicant'/ 'Financial Creditors'/ 'Allottees') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. International Land Developers Pvt. Ltd. ('Respondent/Corporate Debtor') having CIN: U70100DL2012PTC237604 on the ground that the Corporate Debtor had committed a default in payment of Rs. 19,48,28,414/- (Rupees Nineteen Crores Forty-Eight Lacs Twenty-Eight Thousand Four Hundred Fourteen Only). as on 09.12.2021 as the Corporate Debtor has cumulatively defaulted the Financial Debt paid by the Applicants towards the purchase of their respective units, for the defaults committed against the Financial Debts being the non-delivery of the flats/non-payment of the amount paid by the Applicants in lieu of the units purchased.
2. The Corporate Debtor i.e., M/s. International Land Developers Pvt. Ltd. having CIN: U70100DL2012PTC237604 is incorporated dated 28.07.2006 under the provisions of the provisions of the Companies Act, 1956 having its registered office situated at B-418, New Friends Colony, New Delhi- 110065. Since the registered office of the Corporate

Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. Briefly stated the facts of the present case as averred by the Applicant/ Financial Creditor are: -
 - a) The Corporate Debtor is engaged in the business of Real Estate and Infrastructural development. The Corporate Debtor is a Developer who had launched its Housing Project namely "ARETE" situated at Village Dhunela, Sector 33, Sohna, Gurgaon (Haryana).
 - b) It is submitted that the present application is being preferred preferred by more than 10% of the total allottees in the said Project.
 - c) The Corporate Debtor had launched its Project with various representations and promises regarding the timely delivery of the Project along with various other quality amenities / facilities that would be offered in the Project. Based on the attractive advertisements and representations made by the Corporate Debtor, the Applicants/ Financial Creditors booked and agreed to purchase the Unit(s) from the Corporate Debtor in its project.
 - d) Believing the representations of the Corporate Debtor, the Financial Creditors and the Corporate Debtor executed Agreements encapsulating the terms of the purchase of booked Flat. The Financial Creditors booked Units in the Project between the year 2014-2017.

Thereafter, the Corporate Debtor had issued Allotment Letters to the

Financial Creditors allotting Units to them and also collected the booking amount from them.

- e) In the period between 2014-2017 the Corporate Debtor had sold the majority of units in the said project and accordingly executed Flat Buyer's Agreement with the Financial Creditors in respect of the Units booked by them. As stipulated in the Flat Buyer's Agreement, the Corporate Debtor was to complete the Project and deliver possession of the Units to the Financial Creditors within a period of 48 months from the date of signing of the said Agreement.
- f) Based on the payment plan mentioned in the Agreement, the Financial Creditors diligently made payment towards each demand that was raised by the Corporate Debtor and accordingly to comply with the payments, availed financial assistance from various financial institutions / banks in anticipation of timely construction and possession of their Units.
- g) It is submitted that the Flat Buyer's Agreement recorded that the payments were to be made on completion of different milestones. However, the Corporate Debtor had misrepresented the actual stage of completion of the Project where the Financial Creditors had booked the Apartment. The Corporate Debtor was always evasive on enquiries regarding the stage of completion and refused to divulge any details. It is stated that the Corporate Debtor had been wrongly demanding payments without the structure itself being ready.

- h) The Financial Creditors have paid an amount of Rs. 19,48,28,414/- (Rupees Nineteen Crore Forty Eight Lakhs Twenty Eight Thousand Four Hundred and Fourteen Only) to the Corporate Debtor towards the sale consideration of the Units i.e. up to 90% to 95% of the sale consideration and in some cases, up to 100% of the sale consideration which can be evidenced from the Statement of Account /Payment Receipts issued by the Corporate Debtor. But to the utter dismay of the Applicants/ Financial Creditors and despite making contractual promises and obligations, the Corporate Debtor has drastically failed to stand over its commitments and defaulted in the construction of the project under the question, consequently delaying the possession of the Units/Flats.
- i) The delay is not normal but an extraordinary delay. It is pertinent to mention here that as per the current status of the Project, it is unlikely that the Project will be completed in the near future. Moreover, the Corporate Debtor has failed to offer any reasonable explanation for the delay in offering possession of the Units.
4. This Adjudicating Authority vide its order dated 23.05.2022, had directed the Applicant/ Financial Creditor to issue notice to the Corporate Debtor as to why the application for initiating the CIRP should not be admitted against the Corporate Debtor. The Applicant/ Financial Creditor vide affidavit of service dated 20.07.2022 submitted that the notice to the Corporate Debtor had been sent through e-mail, Speed post and Courier. Considering the facts stated herein above

various opportunities were given to the Corporate Debtor to present its side. However, the Corporate Debtor did not turn up and order was passed to proceed ex-parte vide order dated 29.08.2022. Whereas in the next date of hearing the Counsel for the Respondent submitted that they had not received the copy of the Application. Despite issuing notice twice by the Applicant, the Counsel for Corporate Debtor prayed for setting aside the order dated 29.08.2022. The Adjudicating authority vide order dated 30.09.2022 set aside the ex-parte order dated 29.08.2022 subject to payment of the Cost of Rs. 20,000/- and also recorded that the right to file reply shall be closed if reply from the Corporate Debtor is not filed before the next date of hearing.

5. It is submitted that neither the Reply nor the compliance to order dated 30.09.2022 had been complied by the Corporate Debtor. In the subsequent hearing dated 13.03.2023 the Counsel on behalf of the Corporate Debtor stated that the reply had been filled, but the same was not reflected on the DMS Portal. The Order dated 13.03.2023 is reproduced here-below :

“Reply stated to have been filed on 21.11.2022 is not reflected on e-portal of the Tribunal. Even the Counsel for the petitioner also denied to have received a copy of the reply. Learned Counsel for the respondent is directed to ensure that reply is uploaded on DMS, failing which, the right to file the same will be forfeited and the petition would be heard and decided on the basis of the pleadings and documents available on e-portal.

Let the matter be fixed for hearing on 31.03.2023.”

6. It is submitted that despite various opportunities granted by this Adjudicating Authority, the Learned Counsel for the Corporate Debtor did not file its reply and again on hearing dated 18.05.2023, the Ld. Counsel sought time to file the reply, accordingly vide order dated 18.05.2023, the Adjudicating Authority granted One week's time to the Corporate Debtor subject to payment of Rs.50,000/- as cost to the Applicant. From the records, it is observed that the Corporate Debtor has not complied with the Orders.
7. It is submitted that there have been no efforts on behalf of the Corporate Debtor to proceed into the matter. The Adjudicating authority in the interest of justice again provided an opportunity to argue the matter. The order dated 07.06.2023 is reproduced here-below –

“The Ld. Counsel for the Financial Creditor is present. No one is present on behalf of the Corporate Debtor at the time of hearing of the matter. The Ld. Counsel for the Financial Creditor may inform the next date of hearing to the Counsel for the Corporate Debtor. Court-officer to send e-notice to the Counsel for the Corporate Debtor for their appearance. It is made clear that if the Corporate Debtor fails to appear before this Tribunal on the next date of hearing, the opportunity afforded for arguing the matter will be closed and the matter shall be proceeded further.”

8. On the next date of hearing dated 06.07.2023, It was submitted by the Proxy Counsel for the Corporate Debtor that Counsel for the Corporate Debtor is unwell and prayed for grant of an adjournment. Accordingly, in the interest of natural justice, the Adjudicating authority granted a

week's time and directed the Counsel for the Corporate Debtor to produce medical certificate as well as details of the drugs prescribed by the doctor and the treatment taken for illness.

9. Again, on the next date of hearing the proxy counsel for the Corporate Debtor prayed further time to file a reply. The Order dated 21.07.2023 is reproduced here-below-

“Heard the submissions made by Learned Counsel for the Financial Creditor as well as Proxy-Counsel for the Corporate Debtor. Proxy-Counsel for the Corporate Debtor prayed for further time to file reply. Perusal of the record shows that on earlier occasions enough opportunities have been granted to the Learned Counsel for the Corporate Debtor to file reply or to argue the matter. On the last occasions also, Proxy-Counsel for the Corporate Debtor was directed to file reply along with medical certificates as well as details of the drugs prescribed by Doctor for the treatment of Main counsel. Today, Proxy-Counsel again sought an adjournment for filing reply. In view of the same, we do not find any merit in granting further time as no clear efforts have been made by Learned Counsel for the Corporate Debtor to argue the matter. So far the reply is also not filed, therefore, the right to file reply stands closed. Arguments on behalf of the Financial Creditor were already heard in the month of April 2023. Order in this matter is reserved.”

10. It has been found that there have been deliberate efforts to delay the proceeding in the present matter by the Corporate Debtor on one pretext or the other. IBC Proceeding are time bound proceeding hence they have to be completed in a timely manner. It is submitted that time is a crucial facet of the scheme under the Code and to allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the Code.
11. In adherence to the principles of natural justice, this Adjudicating Authority extended numerous opportunities to the Respondent/Corporate Debtor, aiming to ensure a fair and transparent legal process. Despite the diligent efforts of this Adjudicating Authority to ensure a fair and comprehensive adjudication process, the respondent consistently neglected to seize the multiple opportunities provided for presenting its version or responding to the allegations as made by the Applicant/Financial Creditors. Unfortunately, the Respondent's persistent non-compliance and failure to engage in the process has resulted to proceed ex-parte.
12. Heard. We have also perused the documents on record. The issue at hand is that whether the Applicants are fulfilling the threshold limit of the second proviso to Section 7(1) of the IBC, 2016.
13. The project in question namely "ARETE" Phase 1 located at Sector 33, Dhunela, Sohna, Gurugram consists of 6 towers and the total number of flats/units in the said project is 556, out of which 274 flats have been sold/allotted to the buyers.

14. At this stage, it is pertinent to refer to the definition of the expression

“Financial Debt” defined in sub-section 8 of Section 5 of the Code.

Section 5(8)(f) along with its explanation reads as follows:

Section 5: Definitions

.....

“(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]”

15. At this stage, it is also pertinent to refer to Section 7 of the Code.

Section 7 along with the second proviso reads as follows:

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

“(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.”

The 2nd proviso to Section 7(1) reads as follows:-

“Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:”

16. For better understanding of the preceding paragraph, we may refer to the definitions of “Allottee” defined under Section 2(d) and “Real Estate Project” defined under Section 2(zn) of the RERA Act, 2016.

Section 2(d) and Section 2(zn) reads as follows:

2. Definitions —

(d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;”

“(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;”

17. The Hon'ble Supreme Court in the case of **Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs Union of India & Ors.** (2019) 8 SCC 416 has upheld the status of allottees of a real estate project as financial creditors provided "the allottees are interested in completion of the project".
18. It is submitted that the total units sold by the Corporate Debtor are 274 and the present application is filed by the 46 allottee and therefore the present application is maintainable as per the threshold limit as set out in Section 7 of the Code. As per the settled law, the Financial Creditors/homebuyers are entitled to file petition under Section 7 of the Code against the Corporate Debtor for its failure to hand over the possession in terms of the Flat Buyer Agreement by claiming the Principal Amount along with Interest payable (delay penalty as well as Interest payable for the delay). In the present case, as a matter of fact, the Corporate Debtor is liable to make payment to all the allottees for the delay in handing over the possession along with the Interest. Apparently, the threshold limit as prescribed under the provisions of the code is satisfied.
19. It is submitted that the Corporate Debtor has committed default of financial debt owed to Applicant/Financial Creditors. In terms of the Allotment Agreement(s) executed with the respective allottees, including the Applicants, the Corporate Debtor was required to hand over the possession of the allotted units to the Applicants within 48

months with an additional grace period of 6 months. However, the Corporate Debtor has failed to hand over the possession of the said units.

20. While determining Issue and on the analysis of the legal position and the facts of the present case, we are of the considered view that this is a project where the Applicants meet the threshold limit as laid down in the statute.
21. Further, we are supported by the judgment of the Hon'ble Supreme Court in the **Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407**, which clearly held that:

“The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the application to rectify the defect within 7 days receipt of a notice from the adjudicating authority. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility, or other evidence produced by the financial creditor to satisfy itself that a default occurred. It is of no matter that the debt is disputed so, long as the debt is "due" i.e., payable unless interdicted by some law, or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise”

22. In view of the above, we hold that this application is maintainable in the eyes of the Law. The Application bearing (IB) 357 /2022 filed by the Applicants, under section 7 of the Code read with Rule 4 of the

Adjudicating Authority Rules for initiating CIRP against the Respondent M/s International Land Developers Pvt. Ltd., is hereby admitted.

23. The applicant in Part-III of the application has proposed the name of Mr. Sanyam Goel as Interim Resolution Professional, having Registration Number IBBI/IPA-002/IP-N00138/2017-2018/10397. Mr. Sanyam Goel, having registration number IBBI/IPA-002/IP-N00138/2017-2018/10397 and email – id goelsanyam@gmail.com is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.
24. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property

including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

25. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

26. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation

6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

27. We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2,00,000/- (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Sanyam Goel to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
28. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
29. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any

tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

30. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
31. In terms of Section 7(7) of the Code, The Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.
32. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./357(ND)/2022 stands admitted.**

Sd/-

(DR. SANJEEV RANJAN)

MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (J)