NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 977 (ND)/2020

In the matter of:

Abhijit Jasrasaria,

E-354, First Floor,

Greater Kailash - II

New Delhi 110048

e-mail: abhi_jasrasariaerediffmail.com ...Financial Creditor

VERSUS

J O P International Limited,

45/77 Punjabi Bagh (West)

Near Iscon Temple,

New Delhi PIN 110026

e-mail: jopinternational@gmail.com ...Corporate Debtor

SECTION: U/S 7 of IBC, 2016

Order delivered on 07.01.2021

Coram:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. KAPAL KUMAR VOHRA, HON'BLE MEMBER (T)

For the Petitioner: Adv. P.K. Sachdeva

For the Respondent:

ORDER

Mr. Abni Ranjan kumar Sinha, Member (Judicial)

1. The present petition is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the

Corporate Debtor on grounds of its inability to liquidate its financial debt.

2. The Financial Creditor is resident of Assam and having a house at New Delhi as well. The applicant was looking for a suitable place to start a business for his livelihood.

3. Dimple Cinema through its proprietor Sh. Dinesh Gupta for short the "Licensee" obtained Licence No. CTP/A111/2005/53115 dated 29.11.2005 from Director Urban Development, Haryana for development of a multiplex over commercial plot No. C-5/567 Ward 17, measuring 3630.45 Sq. Yards at Yamuna Nagar Jagadhari.

4. The Applicant/Financial Creditor booked three shops in the project being developed by the Corporate Debtor.

5. The Respondent entered into Joint Venture Agreement with the Licensee for development of multiplex over commercial plot No. C-5/567, Ward 17, measuring 3630.45 Sq. Yards at Jagadhari. Subsequently, the financial creditor paid a sum of Rs. 87,38,000/- by way of cheques and cash as well. The payment of the amount is acknowledged by the Corporate Debtor in the Buyer's Agreement executed by it with the applicant on 24.02.2009. (On 17.09.2008, the Financial Creditor Mr. Abhijit Jasrasaria paid an amount of Rs. 5,00,000/- (Rs. Five Lakh only) for booking of Shop No. F-3 by cheque and Rs. 18,60,000/- (Rs. Eighteen lakh sixty thousand only) was paid in cash.The Financial Creditor Mr. Abhijit Jasrasaria paid an amount of Rs. 10,00,000/- (Rs.Ten Lakh only) for booking of Shop No. F-2 by cheque and Rs. 13,60,000/- (Rs. Thirteen lakh sixty thousand only) was paid in cash.On 15.10.2008, the Financial creditor Mr. Abhijit Jasrasaria paid an amount of Rs. 10,00,000/- (Rs.Ten Lakh only) for booking of Shop No. G-4 by cheque and Rs. 30,17,000/- (Rs. Thirty lakh seventeen thousand only) was paid in cash).

6. As per the Para 21 of the said Buyer's Agreement, the construction of the project was to be completed within a period of 12 months from the date of agreement and the possession was to be offered to the financial creditor.

7. The Buyer's Agreement dated 24.02.2009 for all three shops were signed between the financial creditor and the Respondent Company through its Director Mr. Baharat Aggarwal. The Respondent has to give possession of the Shops to the Financial Creditor by 24.02.2010. Part completion was issued on 18.10.2011 in respect of the part of the Project as per information received by the Financial Creditor through RTI.
8. In January, 2017, the Financial Creditor came to know that a dispute is going on between the Proprietor of Dimple Cinema, the licensee and the Respondent Company.
9. The Financial Creditor wrote a letter dated 04.02.2017 to Director Urban Local Bodies, Haryana seeking information about the status of the Project under Right to information Act.
10. The Financial Creditor received the response dated 31.03.2017 from the concerned authority.
11. The Financial Creditor wrote a letter dated 09.06.2017 to the Respondent Company seeking information about the present status of the project.
12. The Financial Creditor filed a complaint with National Consumer Dispute Redressal Commission. However, the same was withdrawn with a liberty to file fresh complaint by curing technical defects in the complaint already filed.
13. Also, in May, 2018, the Financial Creditor filed a complaint with RERA against the corporate debtor. The award dated 06.03.2019 for refund of the amount deposited by the Financial Creditor with interest was passed in favor of the applicant.
14. The Financial Creditor filed the execution petition against the Corporate Debtor.In March 2020, The Petitioner sent legal notices to the Corporate Debtor.
15. We have heard the Ld. Counsel for the applicant, since this application is filed on the basis of Judgment and decree passed by the RERA, therefore, we would like to consider the maintainability of the application at this stage itself.

16. Ld. Counsel for the applicant in course of his arguments submitted that although the applicant has invested the amount on the basis of the Buyer's agreement executed on 24.02.2009 but when the project was not completed and the shops were not handed over within the period of 12 months from the date of agreement then the applicant moved before the RERA, and an award was passed by the RERA in favour of the applicant and the execution proceeding is pending before the RERA.

17. He further submitted that the claim of the applicant is not barred by the amendment made in Section 7 in respect of the number of applicant, which was raised by the amendment for filing an application by the Allottee.

18. He further submitted that in part-V of the application, it is mentioned that the award passed in favour of the applicant and on the basis of that the present application is filed, which is maintainable even after the amendment made in Section 7 of the IBC.

19. He further submitted that the date of default is 24.10.2020 and still it is continuing as no possession is handed over till the date of filing of this application.

20. He also placed reliance upon the decision passed by National Consumer Disputes Redressal Commission passed in First Appeal No. 409 of 2019 on 03.12.2019 on the point of continuing default.

21. Now, in the light of the submissions raised on behalf of the applicant, we consider whether the present application is maintainable, under Section 7 in view of the amendment and in view of the facts that the present application has been filed on the basis of the decree passed by the RERA.

22. At this juncture, we would like to refer the Judgment of ***Hon'ble NCLAT passed in Civil Appeal (AT) (Insolvency) No. 452 of 2020 in the case of Sh. Sushil Ansal Vs. Ashok Tripathi and Ors. decided on 14.08.2020***

23. The question formulated by the Hon'ble NCLAT in that matter are as follows: -

(i). Whether this is fit case for invoking Rule 11 of the NCLAT Rules to allow the parties to settle the dispute.

(ii). Whether application filed by the respondent no. 1 and 2 under Section 7 of the I &B Code was not maintainable."

24. We are concerned with point number 2 that the application filed by the respondent no. 1 and 2 under Section 7 of the IBC was not maintainable and the facts of this case is similar to the facts of the case in hand because herein the case in hand also there was a Builder Buyers's Agreement and thereafter the applicant approached the RERA for refund of the money and accordingly, the RERA directed the Corporate Debtor to pay the amount payable to the applicant and while deciding this issue the Hon'ble NCLAT in para 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 held that

"15. Now we proceed to come to grips with the main contention advanced on behalf of Respondent No.3. Be it seen that Section 7 of the 'I&B Code' as amended in terms of the 'Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019' enforced w.e.f. 28th December, 2019 added provisos to Section 7, sub-section (1) before the explanation providing a threshold limit for initiation of Corporate Insolvency Resolution Process at the instance of allottees under a Real Estate Project providing that an application shall be filed jointly by not less than one hundred of such allottees under the same Real Estate Project or not less than ten percent of the total number of such allottees under the same Real Estate Project, whichever is less. It was further provided that where such an application has been filed by a Financial Creditor but has not been admitted before commencement of the Ordinance viz

28th December, 2019, such application shall be modified to comply with the aforesaid requirements in regard to threshold limit within 30 days of Company Appeal (AT) (Insolvency) No. 452 of 2020 the commencement of such Ordinance, failing which it

shall be deemed to have been withdrawn at the pre-admission stage. This Ordinance was subsequently replaced by the 'Insolvency and Bankruptcy Code (Amendment) Act, 2020' ("Amending Act" for short) incorporating the amendment introduced in Section 7 by virtue of the aforestated Ordinance with express provision that the Amending Act shall be deemed to have come into force on 28th December, 2019. Section 3 of the Amending Act is extracted hereinbelow:

"3. In section 7 of the principal Act, in subsection (1),

before the Explanation, the following

provisos shall be inserted, namely:—

"Provided that for the financial creditors,referred to in clauses (a) and (b) of sub-section

(6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

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:

Provided also that where an application for initiating the corporate insolvency resolution

process against a corporate debtor has been filed by a financial creditor referred to in the

first and second provisos and has not been admitted by the Adjudicating Authority before

the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such

application shall be modified to comply with the requirements of the first or second proviso

within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission."

16. The dictum of law is loud and clear. An application for initiating Corporate Insolvency Resolution Process against the Corporate Debtor by allottees under a Real Estate Project is required to be filed jointly by not less than one hundred of such allottees or not less than ten percent of the total number of such allottees under the same Real Estate Project. It is manifestly clear that a minimum threshold limit has been laid down for taking cognizance of application under Section 7 for triggering of Corporate Insolvency Resolution Process when such application is relatable to a Real Estate Project. It is also clear that an application at the instance of a single allottee or by a group of allottes falling short of the prescribed threshold limit would not be maintainable. Provision has been made in respect of pending application filed by the allottees, where same have not been admitted to Insolvency Resolution, for garnering support of the requisite majority to meet the threshold limit within thirty days of the commencement of the Amending Act failing which such application(s) shall be deemed to be withdrawn before admission. On a plain reading of the provision, it emerges that this is a one-time opportunity provided only with respect to pending applications at pre-admission stage where the allottees have been granted thirty days' time to meet the threshold limit

for initiation of Corporate Insolvency Resolution Process. It is flabbergasting to discover that such one-time opportunity is practically non-existent inasmuchas the allotees in such case are required to garner support of the requisite number of allottees for meeting the threshold limit within thirty days of the commencement of the Amending Act which in terms of Section 2 of the said Amending Act is deemed to have come in force on 28th December, 2019 though the same has been notified on 13th March, 2020. The thirty days' time granted to allottees for meeting the threshold limit would, therefore, commence w.e.f 28th December, 2019 and not w.e.f. 13th March, 2020. This is bound to lead to absurdity. It is brought to our notice that one Mr. Manish Kumar has filed Writ Petition (Civil) No. 26/2020 before the Hon'ble Apex Court challenging the amended Section 7 with respect to allottees who has already filed applications under Section 7 prior to the date of amendment. The Hon'ble Apex Court vide order dated 13th January, 2020 issued notice to Respondents and order to maintain status quo. It is, therefore, clear that provision of Section 7 of the 'I&B Code' as it obtained prior to the date of amendment, occupies the field as of now. Since the issue is pending consideration before the Hon'ble Apex Court, we refrain from making any observation thereon.

17. However, the matter does not rest here. Respondent Nos. 1 and 2 admittedly approached the Adjudicating Authority not in the purported capacity of allottees of a Real Estate Project bringing them within the fold of Financial Creditors claiming to be decree-holders against the default of financial debt committed by the Corporate Debtor on account of non-payment of principal amount along with penalty as decreed by the 'UP RERA' vide orders dated 16th November, 2017 and 13th December, 2018 followed by issuance of Recovery Certificate dated 10th August, 2019 but not as allottees. Their contention of coming within the

purview of 'Financial Creditors' rests on strength of definition of 'Creditor' in terms of provision of Section 3(10) of the 'I&B Code' which includes a decree-holder within its fold. The question arising for consideration is whether a decree-holder, though covered by the definition of 'Creditor', does fall within the definition of a 'Financial Creditor' across the ambit of Section 5(7) of the 'I&B Code'. Section 5(7) defines 'Financial Creditor' as under:

"5. Definitions.- ....(7) "financial creditor" means

any person to whom a financial debt is owed and

includes a person to whom such debt has been

legally assigned or transferred to"

18. On a plain reading of this provision, it comes to fore that 'Financial Creditor' encompasses any person to whom a financial debt is due. Assignees and transferee of financial debt are also covered under the definition of 'Financial Creditor'. It would, therefore, be relevant to ascertain the nature of debt styled as 'financial debt' within the ambit of Section 5(8) of the 'I&B Code' which reads as under:-

"5. Definitions.- ....(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes–

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(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 subclause, -

(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);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause"

19. Sub-clause (f) of sub-section (8) of Section 5 provides that any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing would fall within the ambit of 'financial debt' and the explanation added to sub-section by Act No. 26 of 2018 provides that 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. Thus, the relevant consideration for determination of 'financial debt' would be whether the debt was disbursed against the consideration for the time value of money which may include amount raised from an allottee under a Real Estate Project, the transaction deemed to be amount having the commercial effect of a borrowing. Since the initial transaction was an allotment under a Real Estate Project, there can be no doubt that such transaction has the contours of a borrowing as contemplated under Section 5(8) (f) of the 'I&B Code'. However, the case set up by the Respondent Nos. 1 and 2 before the Adjudicating Authority is not on the strength of a transaction having the commercial effect of a borrowing, thereby clothing them with the status of 'Financial Creditors' but on the strength of being 'decree-holders'. It having been noticed that before the Adjudicating Authority Respondent Nos.1 and 2 staked claim in their capacity as 'decree-holders' and they having approached 'UP RERA' with complaints for refund of money culminating in issuance of a Recovery Certificate by the 'UP RERA' in terms of order dated 10th August, 2019, it cannot lie in their mouth that they are the allottees and the amounts raised from them as allottees under the Real Estate Project deemed to be having the commercial effect of a borrowing would clothe them with the capacity of being 'Financial Creditors'. Such argument being absurd and incompatible with their plea before the Adjudicating Authority and the events following filing of complaints before the 'UP RERA' and leading to passage of

Recovery Certificate needs to be rejected outright. Respondent Nos. 1 and 2 neither asserted nor sought triggering of Corporate Insolvency Resolution Process in a purported capacity as allottees of Real Estate Project but sought initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on the strength of being 'decree-holders' which owed its genesis to the Recovery Certificate issued by the 'UP RERA'. It is, therefore, required to be determined whether in their projected capacity as 'decree-holders' Respondent Nos.1 and 2 could maintain an application under Section 7 as 'Financial Creditors'.

20. A 'decree-holder' is undoubtedly covered by the definition of 'Creditor' under Section 3(10) of the 'I&B Code' but would not fall within the class of creditors classified as 'Financial Creditor' unless the debt was disbursed against the consideration for time value of money or falls within any of the clauses thereof as the definition of 'financial debt' is inclusive in character. A 'decree' is defined under Section 2(2) of the Code of Civil Procedure, 1908 ("CPC" for short) as the formal expression of an adjudication which conclusively determines the rights of the parties with regard to the matters in controversy in a lis. A 'decreeholder', defined under Section 2(3) of the same Code means any person in whose favour a decree has been passed or an order capable of execution has been made. Order XXI Rule 30 of the CPC lays down the mode of execution of a money decree. According to this provision, a money decree may be executed by the detention of judgment-debtor in civil prison, or by the attachment or sale of his property, or by both. Section 40 of the 'Real Estate (Regulation and Development) Act, 2016' lays down the mode of execution by providing that the RERA may order to recover the amount due under the Recovery Certificate by the concerned Authority as an arrear of land revenue. In the instant case, RERA has conducted the recovery proceedings at the instance of

Respondent Nos.1 & 2 against the Corporate Debtor which culminated in issuance of Recovery Certificate and passing of order under Section 40 of the 'Real Estate (Regulation and Development) Act, 2016' directing the concerned Authority to recover amount of Rs.73,35,686.43/- from the Corporate Debtor as an arrear of land revenue. As already stated elsewhere in this Judgment, Respondent Nos.1 & 2 instead of pursuing the matter before the Competent Authority sought triggering of Corporate Insolvency Resolution Process against the Corporate Debtor resulting in passing of the impugned order of admission which has been assailed in the instant appeal. The answer to the question whether a decree-holder would fall within the definition of 'Financial Creditor' has to be an emphatic 'No' as the amount claimed under the decree is an adjudicated amount and not a debt disbursed against the consideration for the time value of money and does not fall within the ambit of any of the clauses enumerated under Section 5(8) of the 'I&B Code'.

21. Now we proceed to determine whether execution of decree on the strength of Recovery Certificate issued by the 'UP RERA' would justify triggering of the Corporate Insolvency Resolution Process at the instance of Respondent Nos.1 & 2. This Appellate Tribunal has considered the issue in "G. Eswara Rao v. Stressed Assets Stabilisation Fund and Ors.- MANU/NL/0092/2020". It was held that an application under Section 7 of the 'I&B Code' cannot be filed for execution of a decree. The relevant portion of the Judgment may be reproduced hereunder:

"26. By filing an application under Section 7 of the I&B Code, a Decree cannot be executed. In such case, it will be covered by Section 65 of the I&B Code, which stipulates that the insolvency resolution process or liquidation proceedings, if filed, fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or

liquidation, attracts penal action."

22. It has already been noticed in this Judgment that the 'UP RERA', which ordered recovery of amount of Rs.73,35,686.43/- owed to Respondent Nos.1 and 2 in terms of its order dated 10th August, 2019 has forwarded the Recovery Certificate to the Competent Authority for effecting recovery in the manner and as an arrear of land revenue from the Corporate Debtor. In the backdrop of this factual situation, Respondent Nos. 1 and 2 can safely be held to have approached the Adjudicating Authority only with a view to execute the decree in the nature of Recovery Certificate and recover the amount due thereunder. No conclusion other than the one that Respondent Nos. 1 and 2 were seeking execution of the Recovery Certificate issued by RERA and did not file the application under Section 7 of the 'I&B Code' for purposes of Insolvency Resolution, would be available in the facts and circumstances noticed hereinabove. This conclusion is further reinforced by the fact that the Recovery Certificate issued by RERA had been forwarded to the Competent Authority for effecting recovery as arrears of land revenue and the process was underway when Respondent Nos.1 and 2 sought triggering of Corporate Insolvency Resolution Process against the Corporate Debtor. It is indisputable that the Recovery Certificate sought to be executed is the end product of an adjudicatory mechanism under the 'Real Estate (Regulation and Development) Act, 2016' and realisation of the amount due under the Recovery Certificate tantamounts to recovery effected under a money decree though mode of execution may be slightly different. In this view of the matter, we are of the considered opinion that the application of Respondent Nos.1 and 2 under Section 7 of 'I&B Code' was not maintainable. It is accordingly held that in their projected capacity as decree-holders Respondent Nos. 1 and 2 could not maintain an application under Section 7 as 'Financial Creditors'.

23. We accordingly summarise our finding as under:

(i) Respondent Nos. 1 and 2 can no more claim to be allottees of a Real Estate Project after issuance of Recovery Certificate dated 10th August, 2019 by 'UP RERA' directing recovery of Rs.73,35,686.43/- due thereunder as arrears of land revenue by the Competent Authority. On their own showing they are the decree-holders seeking execution of money due under the Recovery Certificate which is impermissible within the ambit of Section 7 of the 'I&B Code'. Clearly their application for triggering of Corporate Insolvency Resolution Process is not maintainable as allottees.

(ii) Decree-holder, though included in the definition of 'Creditor', does not fall within the definition of 'Financial Creditor' and cannot seek initiation of Corporate Insolvency Resolution Process as 'Financial Creditor'.

24. In view of the conclusion reached and findings on the issues recorded hereinabove, we are of the considered view that the impugned order dated 17th March, 2020 initiating Corporate Insolvency Resolution Process against Corporate Debtor cannot be sustained. The Adjudicating Authority has landed in grave error in admitting the application of Respondent Nos.1 and 2 under Section 7 who claimed to be the 'Financial Creditors' in their capacity as 'decree-holders' against the Corporate Debtor on account of non-payment of the amount due under the Recovery Certificate dated 10th August, 2019 issued by the 'UP RERA' while execution of decree/ recovery of amount due under Recovery Certificate would not justify triggering of Corporate Insolvency Resolution Process. We are also of the firm view that the application of Respondent Nos. 1 and 2 was moved for execution/ recovery of the amount due under the Recovery Certificate and not for insolvency resolution of the Corporate Debtor. The

impugned order suffers from grave legal infirmity and cannot be supported. We accordingly set aside the impugned order dated 17th March, 2020."

25. We further notice that this finding of the ***Hon'ble NCLAT is based upon a earlier decision passed by the Hon'ble NCLAT in the case of "G. Eswara Rao v. Stressed Assets Stabilisation Fund and Ors.- MANU/NL/0092/2020".***

26. In the light of that decision,when we consider the case in hand then we notice that in part IV of the application at column no. 1, the amount of Rs. 87,38,0000 plus interest of Rs. 32496260/- are shown and in part-V column no. 2, the applicant referred the award passed by the RERA, in favour of the financial creditor and applicant has also enclosed a copy of the order passed by the RERA, which is at page 78 of the application. We have gone through the order passed by the H. RERA in Complaint no. RERA-PKL-276/2018 and we notice that the Corporate Debtor had also contested this matter and after considering the rival contention in para 8 of the order, the H. RERA held that "For the reason recorded above the Authority directs the respondents to refund the amount paid i.e. Rs. 87,38,000/- along with interest from the date of deposit of the amount to the actual date of refund as per Rule 15 of the HRERA Rules, 2017 within a period of 90 days from the date of uploading of the order. The amount shall be paid in two installments of which the first installment of 50% amount shall be paid within 45 days and the remaining 50% amount shall be paid in second installment within next 45 days".

27. Therefore, on the basis of that order, the applicant has filed this application and also claimed that an execution proceeding is pending before the H. RERA. When we consider the facts of this case in the light of the finding given by the Hon'ble NCLAT passed in Civil Appeal (AT) (Insolvency) No. 452 of 2020 in the case of Sh. Sushil Ansal Vs. Ashok Tripathi and Ors. decided on 14.08.2020 then we find, the similar facts were before the Hon'ble NCLAT, so, under circumstances,

we are of the considered view that the present application is covered by the aforesaid decision of Hon'ble NCLAT and on the basis of that decision, we have no hesitation to hold that the applicant can no more claim to be allottees of the Real Estate Project after issuance of recovery certificate dated 06.03.2019 by HRERA directing recovery of amount of Rs. 87,38,000/- along with interest due their under as arrear. They are own showing that they are decree holders seeking execution of money due under the recovery certificate, which is impermissible under the ambit of Section 7 of the IBC, therefore, the application for triggering of CIRP is not maintainable as an allottee. The decree holder though included in the definition of creditor does not fall within the financial creditor and cannot seek initiation of CIRP as financial creditor.

28. For the reasons discussed above, in view of the finding given by the Hon'ble NCLAT passed in Civil Appeal (AT) (Insolvency) No. 452 of 2020 in the case of Sh. Sushil Ansal Vs. Ashok Tripathi and Ors. decided on 14.08.2020, we hold that the present application is not maintainable, the applicant is not the financial creditor.

29. ***Accordingly, the Application is hereby DISMISSED.***

-Sd-
K.K. Vohra
(Member Technical)

-Sd-
Abni Ranjan Kumar Sinha
(Member Judicial)