

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT VI, NEW DELHI**

IA 1808/2024

IN IB-682/PB/2021

(Application under Section 60(5) of IBC, 2016)

IN THE MATTER OF:

Nitin Batra & Ors.

...Financial Creditor

VERSUS

M/s. Anand Infoedge Pvt. Ltd. & Ors.

...Corporate Debtors

AND IN THE MATTER OF

Mr. Dheeraj Sharma & Ors

...Applicants

VERSUS

Mr. Nitin Batra

... Respondent No 1

Mr. Gaurav Bharadwaj

... Respondent No 2

Col. Gulshan Juneja

... Respondent No 3

M/s. Anand Infoedge Pvt. Ltd

... Respondent No 4

M/s Mist Avenue Pvt. Ltd

... Respondent No 5

M/s Mist Direct Sales Pvt. Ltd

... Respondent No 6

CORAM:

SHRI. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Petitioner/Financial Creditor: Adv. Sahil Sethi, Adv. Samriddh Bindal, Adv. Vikash Kumar.

For the Intervenor: Adv. Saurabh Kalia, Adv. Janvi Bansal in IA/1808/2024.

For the Respondent/Corporate Debtor: Sr. Adv. P. Nagesh, Adv. N.P.S. Chawla, Adv. Mahima Shekhawat, Adv. Jasjeet Singh, Adv. Praney Sharma for R-3. Adv. Vijay Aggarwal, Adv. Venancio D'Costa, Adv. Astha Ojha, Adv. Gauri Goel for R-1.

ORDER

PER- RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Pronounced on: 02.05.2024

1. This Interlocutory Application No 1808/2024 has been filed jointly by 11 Applicants who have stated to hold 30 units in the 'Festival City' project which is subject to a main petition under Section 7 of the Insolvency and Bankruptcy Code, 2016. Further, by way of additional affidavit dated 19.04.2024, filed by Mr. Dheeraj Sharma, 7 allottees who hold 19 units in the Festival City Project issued Power of Attorneys in favour of the Mr. Dheeraj Sharma. Again, one more additional affidavit dated 25.04.2024 was filed by Mr. Dheeraj Sharma, seeking impleadment of 12 additional allottees collectively holding 35 units in the project. Power of Attorneys were issued in favour of Mr. Dheeraj Sharma. Now the present count stands at under: -

- i. 11 allottees holding 30 units in the main Company Petition.

- ii. 7 allottees holding 19 units - First Affidavit dated 19.04.2024
- iii. 12 allottees holding 35 units- Second Affidavit dated 25.04.2024

Therefore, the number stands at 30 allottees, collectively holding 84 units in the Festival City Project.

The applicants in the present application have prayed for the following reliefs:

(b) Allow the present Application filed on behalf of the Applicants and direct the resolution of the entire dispute between the allottees and Corporate Debtors and not the original Petitioners alone under the aegis of this Hon'ble Tribunal or by way of Mediation or any other manner and in a time bound manner.;

(c) Defer the hearing on the Main Petition till the time the present application is not heard and decided upon; and

(d) Pass any further directions as this Hon'ble Tribunal may deem fit.

2. The Counsels on behalf of the Respondents appeared on the basis of advance notice. Arguments were heard at length and the matter was reserved on 23.04.2024.

FACTS OF THE CASE

3. The submissions of the applicant in brief are as under: -
- i. The present Application is being jointly filed by the Applicants herein who hold 30 units in the Festival City Project being proposed to be constructed jointly by the Respondents/Corporate debtor in main matter bearing C.P. (IB) No. 682/2021 titled as *Mr. Nitin Batra and Ors. vs M/s Anand Infoedge Pvt. Ltd. & Ors.* (hereinafter referred to as 'Main Petition') filed under Section 7 of the Insolvency and Bankruptcy Code' 2016 (hereinafter referred to as 'the Code').
 - ii. That the Main Petition was filed at the instance of 115 allottees out of 1580 allottees of the IT Office Retail Space in the Real Estate Project 'Festival City'. The main Petition was filed under Section 7 of the Code with a prayer to initiate Corporate Insolvency Resolution Process against M/s Anand Infoedge Pvt. Ltd., M/s Mist Avenue Pvt. Ltd. and M/s Mist Direct Sales Pvt. Ltd. (hereinafter referred to as "Corporate Debtors").

- iii. It has come as a shock and surprise for the Applicants to find out that the proceedings under Section 7 of the Code had been initiated by the Petitioners against the Corporate Debtors, without the knowledge and consent of the other allottees of the Project i.e., the Applicants herein.
- iv. That the Petitioners in the Main Petition are only 115 unit holders/allottees of the Project and do not in any way represent the wishes of 1580 unit holders/allottees of the said Project. It is submitted that the Applicants herein i.e. a group of unit holders in the Project never provided any authority to the Petitioners of the Main Petition to file the Main Petition and neither the consent of all the unit's holders were ever obtained by the Petitioners herein.
- v. That the Project construction was initiated in the 2012. However, thereafter an inter-se land dispute arose between NOIDA Authority and Greater NOIDA Authority on the title of the land on which the Project was being developed due to which the construction and development of the Project was halted and ultimately lead to the Project registration being

cancelled by Real Estate Regulatory Authority (hereinafter referred to as 'RERA').

- vi. That during the pendency of the Main Petition, the Applicants approached the Respondent No.6 Company to take update on the status of Project. Consequently, the Applicants were apprised by the Respondent No.6 Company that the maximum permissible 34 (thirty four) floors in the Project have already been built.
- vii. That it has come to the knowledge of the Applicants that the Respondent No.6 has moved a Company Application under Section 230 of the Companies Act before this Tribunal which they are proposing a scheme designed to offer the following advantages:
 - i. Holistic resolution of the grievances of the Commercial Unit Allottees of the Festival City Project;
 - ii. Collective endeavor for the earliest completion of the Project;
 - iii. Exit option to the Commercial Unit Allottees;

- iv. Safeguarding the Company from the risk of insolvency and liquidation.
- viii. That by way of the present application, the Applicants herein seek the return of their hard-earned money which they had invested in the Project, prior to any hearing on the merits of the case. Accordingly, through this application, the Applicants respectfully prays before this Adjudicating Authority to consider facilitating a settlement between the Applicants and the Corporate Debtors, either under the jurisdiction of this Tribunal or through mediation, in a time bound manner.
- ix. That the Applicants have a genuine apprehension that upon CIRP being initiated against the Corporate Debtors, the Applicants herein would not get any benefit and may even end up having to take a major haircut on the money owed to them.
- x. It is prayed that till the time the present application is not heard and a settlement is not arrived at between the Applicants and the Corporate Debtors, the hearing on the Main Petition be deferred.

ANALYSIS AND FINDINGS

4. We have heard the submissions made by the applicants as well as Financial Creditor and Corporate Debtor. The issues arising in the present application has already been dealt with by this Adjudicating Authority vide order dated 27.02.2024 wherein some unit holders had approached this Adjudicating Authority praying for giving an opportunity to all the allottees to consider the scheme of Compromise and Arrangement filed under Section 230 of the Companies Act, 2013 proposed by the Corporate Debtor.
5. This Adjudicating Authority vide detailed order dated 27.02.2024 dismissed the application and observed as under: -

13. On an application filed under Section 7 of the IBC, 2016, this Adjudicating Authority merely has to ascertain existence of financial debt and its default. The issue of maintainability in the matter has already been concluded by Hon'ble Supreme Court. The submissions of the applicants, asserting that the admission of the company petition would severely impact and prejudice the rights of the applicant, leading to the corporate death of the company, cannot be entertained because there are no provisions in the IB Code that provide for intervention by a third party, especially at this stage

where arguments of the Financial Creditor have concluded, and arguments of the Corporate Debtor are in progress and soon to be concluded. Furthermore, this application is filed by companies holding units in the Corporate Debtor project, whereas the main company petition is filed by individual allottees whose interests will also be prejudiced if we entertain the present application because it will lead to unnecessary delay.

14. The present application also appears to be similarly motivated, filed with the intention of delaying the proceedings which this Adjudicating Authority cannot entertain, especially in light of the order of the Hon'ble Supreme Court dated 25.07.2023. In this order, the Hon'ble Apex Court expressly directed this Adjudicating Authority to dispose of the main Company Petition expeditiously at the earliest possible date

*15. In view of above facts and circumstances, Ivn. P/11/2024, Ivn. P/12/2024 are **dismissed in limine.***

11. The Counsel for the Financial Creditor appeared before this Adjudicating Authority and strongly objected against the present application and pressed for dismissing the present application since this Adjudicating Authority had already dismissed the

application filed by one set of the intervenors vide order dated 25.07.2023 and another set vide order dated 27.02.2024.

12. Before proceeding to adjudicate the present application, it is necessary to consider the orders passed by this Tribunal, the Hon'ble NCLAT, and the Hon'ble Supreme Court in the present case

13. The first issue raised by the Corporate Debtor was on the issue of maintainability, which was decided by this Adjudicating Authority vide order dated 21.10.2022 and the order of this Adjudicating Authority was subsequently upheld by the Hon'ble NCLAT vide order dated 17.11.2023 and the Hon'ble Supreme Court vide order dated 11.12.2023. It is pertinent to note that the Hon'ble Supreme Court, while dismissing the appeal filed by the CD against the order of the Hon'ble NCLAT, has held as under: -

“After the application under Section 7 is heard and disposed of on merits, should it become necessary to do so, the parties would be at liberty to take recourse to all appropriate proceedings in accordance with law. At that stage, should it become so necessary, this Court will enquire into both the merits and maintainability. However, we also clarify that the issue of

*maintainability shall stand concluded by the impugned order dated 17 November 2023 insofar as the National Company Law Tribunal and NCLAT is concerned. **Since the application under Section 7 is pending for over two years, we request the NCLT to take up the application at the earliest possible date and to endeavour an expeditious disposal within two months.***

14. Then an application bearing IA 3875/2023 was filed seeking dismissal of the main Company Petition on the ground that the outcome of the present petition shall have a direct bearing on the interests of the applicants and that the Section 7 Petition shall result in the corporate death of the Corporate Debtor. This Adjudicating Authority dismissed the application vide order dated 25.07.2023. While dismissing the application, this Adjudicating Authority made the following observations: -

The Section 7 application is originally a petition moved by the Unit Buyers. Present application is jointly filed by (1) M/s Disire Retail Pvt. Ltd. holding 69 units in the Festival City Project (2) M/s Ramble Markets Pvt. Ltd. holding 60 units in the Project, (3) M/s Swift Buildwell Pvt. Ltd. holding 4 units in the Project and (4) M/s Veena

*Gases and Chemicals Pvt. Ltd. holding 9 units in the Project. The Counsel for the Applicants has submitted that the Applicants are necessary and proper party to the present proceedings, as the outcome of the present petition shall have direct bearing on the interest of the Applicants. The Ld. Counsel for the Applicants have submitted that all the Applicants together have invested an amount, in excess of 21.5 crore in the project of the Corporate Debtor. **It is clear from the submissions of the Counsel that the Applicants are strategic investors in the project, who will ultimately sell the units to interested buyers. The Section 7 Petitioners are allottees of the units. The Applicants in their application has sought for dismissal of the present Section 7 application and also such other and further reliefs.** We have also considered the submissions made by the Ld. Counsel appearing on behalf of the Applicants. **Having considered the stage of the matter and keeping the objects of IBC in view and as the preamble clearly says that timely resolution of CIRP process is one of the prime objects of the Code, the present application by the strategic investors seeking intervention in the matter and the relief of dismissal of Section 7 application cannot be entertained at this stage of the matter. The***

apprehension of the Petitioner's Counsel that if CIRP is initiated the Applicants interest will be defeated, is neither true nor correct. According to this Adjudicating Authority CIRP is a process whereby the project will be taken up by a Successful Resolution Applicant who will be financially & managerially competent to run the project and will continue to do the work of the Corporate Debtor. Only that the Corporate Debtor will be replaced. The CIRP envisages the organization to work as a going concern. Therefore, the objection/apprehension raised by the Ld. Counsel for the Applicant is not sustainable in the eye of law.

Ld. Counsel for the Applicant has also raised another argument that after filing of present Section 7 application approximately 10 Petitioners have opted for settlement with the Corporate Debtor and walked out of the array of Petitioners. In terms of "Manish Kumar Vs. Union of India" judgment passed by the Hon'ble Supreme Court of India, the criteria that should be looked into by Adjudicating Authority is whether as on date of filing of the Section 7 petition, the Petitioners are able to master the support of minimum number of Applicants or not. Therefore, the argument advanced by the Counsel for the Applicants is not sustainable. At the outset it is clarified that few of the Petitioners at their own wisdom walked

out of the array of the Petitioners, does not create an impression to this Adjudicating Authority that Petitioners are treating this proceeding as recovery proceeding. In fact, at the stage of the matter, the very presence of the Petitioner's counsel and on the other dates of hearing undoubtedly leads to an impression that Petitioners are interested to have their own units through initiation of CIRP. **In view of the above, this Adjudicating Authority dismisses the present application, without costs. This order is dictated in the open Court. Dasti Allowed.**

15. Subsequently, the Corporate Debtor (CD) filed three separate applications to dismiss the main Company Petition, alleging that the Financial Debtor had committed fraud/forgery. The Adjudicating Authority dismissed all three applications vide order dated 05.01.2024. This Adjudicating Authority while dismissing the applications held, inter alia as follows:

*10. In light of the above, we find no merit in the present Application filed for dismissal of IB-682/PB/2021 which a Section 7 Application. **The present Application appears to be misleading, filed only for the purpose of delaying the adjudication of IB682/PB/2021. The applicant has failed to***

appreciate that the intent behind classification of homebuyers as “Financial Creditor” by the legislature was to enable homebuyers to participate in the insolvency resolution process in a constructive and egalitarian manner. The Applicant is insisting on dismissal of the Section 7 Petition even after the same has been held maintainable by the Hon’ble NCLAT vide order dated 17.11.2023 and the Hon’ble Supreme Court vide order dated 11.12.2023 has held that the issue of maintainability shall stand concluded by the order dated 17.11.2023 insofar as the Adjudicating Authority and NCLAT are concerned. The malafide intention of the Applicant to delay the adjudication of the Section 7 Petition is also evident from the fact that the Applicant never raised this contention of affidavits being forged during the adjudication of maintainability of the Section 7 Petition neither before this Adjudicating Authority nor before the Hon’ble NCLAT.

11. Further, prior to admission of Section 7 Application making attempts to seek dismissal of the application by the applicant is not a practice which in consonance with the provisions of IB Code, 2016 as well as the objects sought to be achieved by the said legislation.

12. From the prayers made at (a) to (g) in the application it transpires that the applicant is

attempting to drag on the proceedings and build an approach to have a road-way for forum shopping, therefore, the IA/5400/2023 is dismissed.

*13. IA/5400/2023 stands dismissed. Consequently, IA/4312/2023, IA/4121/2023 & IA/4122/2023 also stand dismissed. **The applicant is also directed to refrain from filing such frivolous applications in future so as to avoid imposition of cost.***

16. Subsequently, two Intervention Petitions were filed wherein some unit holders have approached this Adjudicating Authority praying for giving an opportunity to all the allottees to consider the scheme of Compromise and Arrangement filed under Section 230 of the Companies Act, 2013 proposed by the Corporate Debtor. This Adjudicating Authority after hearing the submissions of all the parties dismissed the Petitions and observed as under: -

14. The present application also appears to be similarly motivated, filed with the intention of delaying the proceedings which this Adjudicating Authority cannot entertain, especially in light of the order of the Hon'ble Supreme Court dated 25.07.2023. In this order, the Hon'ble Apex Court expressly directed this Adjudicating

Authority to dispose of the main Company Petition expeditiously at the earliest possible date

*15. In view of above facts and circumstances, Invn. P/11/2024, Invn. P/12/2024 are **dismissed in limine.***

17. Now coming to the present application, it is observed that there are 11 allottees holding 30 units in the same real estate project, Festival City. The applicants are requesting to direct the resolution of the entire dispute between the allottees and the Corporate Debtors through mediation or another suitable method. They also request to defer the hearing on the Main Petition until the present application is heard and decided upon. However, given the specific directions from the Hon'ble Supreme Court to expeditiously dispose of the main company petition, we cannot defer the matter. Furthermore, the prayer to direct mediation or another method cannot be granted, as multiple attempts were made by the Corporate Debtors to settle the matter before, which was rejected by the Financial Creditors and it was duly recorded in the order dated 06.02.2023. The relevant extract of the aforesaid order is reproduced as under: -

*Heard the submissions made by the Counsel for the Financial Creditor as well as Counsel for the Corporate Debtor. **Counsel for the Financial Creditor has on instructions categorically stated that the improved offer as referred to in the order dated 24.01.2024 made by the Corporate Debtor was rejected by the Financial Creditor and therefore they did not opt to file any reply.***

18. Mere plain reading of the provision under section 7 of the Code shows that in a section 7 Petition, the Adjudicating Authority is only required to consider the question whether the 'debt' and 'default' is proved or not. Further, the Hon'ble Supreme Court in the matter of *E.S. Krishnamurthy and Ors. vs. Bharath Hi Tech Builders Pvt. Ltd. (14.12.2021 - SC) : MANU/SC/1249/2021* observed that under Section 7(5) of the IBC, the Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to

the proceedings before it to settle a dispute. The relevant extract of the aforesaid judgement is reproduced as under: -

*27. The Adjudicating Authority has clearly acted outside the terms of its jurisdiction Under Section 7(5) of the IBC. **The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred.** Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. **These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute***

*29. The IBC is a complete code in itself. The Adjudicating Authority and the Appellate Authority are creatures of the statute. Their jurisdiction is statutorily conferred. The statute which confers jurisdiction also structures, channelizes and circumscribes the ambit of such jurisdiction. **Thus, while the Adjudicating Authority and Appellate Authority can encourage settlements, they cannot direct them by acting as courts of equity.***

19. In the present application the Applicants have stated that the Petitioners in the main petition represent only 115 unit holders/allottees of the project, and do not in any way reflect the wishes of the 1580 unit holders/allottees of the said project. It is submitted that the Applicants herein never authorized the Petitioners of the main petition to file it, nor was the consent of all unit holders ever obtained by the Petitioners.

20. We are of the considered view that the proviso of Section 7(1) of the Code only provides a minimum threshold of 100 or 10%, whichever is less, for filing a petition under Section 7 by Financial Creditors who are allottees under a real estate project. Nowhere in the Insolvency and Bankruptcy Code (IB Code) or the regulations made thereunder is it stipulated that the consent of all the allottees of the project is required to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. Therefore, the consent of all the allottees of the project is not required for filing a petition under Section 7 of the Code.

21. The present application also appears to be similarly driven, like other applications filed merely to delay proceedings, despite the

express directions of the Hon'ble Supreme Court to expeditiously dispose of the matter.

22. In view of the above, IA 1808/2024 stands **dismissed in limine**.

Let a copy of this order be served to the parties concerned.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT-VI

Item No.601
IB-682/PB/2021
IA/293/2024

IN THE MATTER OF:
Mr. Nitin Batra and Ors.

...PETITIONER

Vs

M/s. Anand Infoedge Pvt. Ltd. and Ors.

...RESPONDENT

Section
U/s 7 of IBC, 2016

Order delivered on 02.05.2024
Hybrid Hearing (PHYSICAL & VC)

Coram:
SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner/Financial Creditor	:Adv. Sahil Sethi, Adv. Samriddh Bindal, Adv. Vikash Kumar
For the Respondent/Corporate Debtor	:Adv. V.D Costa, Adv. Astha Ojha, Adv. Himanshu Sharma, Adv. Gauri Goel for R-1. Adv. Ravinder Singh, Adv. Abhishek Kathuria, Adv. Aishwarya Bhatia for R-2. Sr. Adv. U K Chaudhary, Adv. NPS Chawla, Adv. Jasjeet Singh, Adv. Surekh Kant Baxy, Adv. Veera Mathai, Adv. Anmol, Adv. Aashima Jain, Adv. Mansyumer Singh, Adv. Pranay Sharma for R-3.

ORDER

Heard the arguments advanced by the Ld. counsels on behalf of R-2 and R3. The arguments of R-2 and R-3 having been concluded, counsel for R-1 who is present sought time for his concluding arguments as his Sr. counsel is not available. List the matter for completion of arguments by counsel for R-1 and rejoinder arguments, if any, by counsel for Financial Creditors on **07.05.2024**. IA/293/2024 be also listed on **07.05.2024**.

Sd/-
(Rahul Bhatnagar)
Member (T)

Sd/-
(Mahendra Khandelwal)
Member (J)