

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

COMPANY PETITION IB (IBC) NO. 657/ND/2021

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

MANISH ANEJA & ORS.

...Applicants/Financial Creditors

Versus

M/s REVITAL REALITY PRIVATE LIMITED

...Corporate Debtor

Order Delivered on: 04.06.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

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

MEMO OF PARTIES:

Manish Aneja

S/o Mr. Pyara Lal Aneja
R/o H. No. C-4, Model Town,
Mission Compound,
Saharabpur-247001

.... & Ors.

.... Financial Creditors

Versus

M/s Revital Reality Private Limited

Registered Office at: 1114, Hemkunt Chambers 89,
Nehru Place, New Delhi-110019

.... Respondent/Corporate Debtor

APPEARANCES:

For the Applicant(s) : Mr. Piyush Singh, Mr. Akshay Srivastava, Mr. Vivek Kumar, Mr. Jayant Upadhyay, Advs.
For the Respondent : Mr. Ishan Dewan, Mr. V. Siddharth, Ms. Gunjan Arora, Mr. Amritesh Krishna, Ms. Ayushi Mishra, Advs.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Mr. Manish Aneja & Ors. (hereinafter referred to as ‘Financial Creditor’), represented by Mr. Vishal Kumar, Mr. Ankit Bajpai, Mr. Ajay Bhyan and Mr. Ravinder Singh, who are also the Financial Creditors, authorized through a letter of authorization, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Revital Reality Private Limited [CIN: U70101DL2011PTC217124] (“Corporate Debtor”).
2. The Corporate Debtor was incorporated on 06.04.2011, having CIN: U70101DL2011PTC217124, under the Companies Act, 1956. Its registered office is at 1114, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 13.10.2021 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 31,22,62,345/- (Rupees Thirty-One Crore Twenty-Two Lacs Sixty-Two Thousand Three Hundred and Forty-Five).
4. **Submissions of learned Counsel appearing on behalf of the Financial Creditors**
 - a) The Section 7 petition was originally filed by 147 unit-holders under a real estate project named ‘Baseria’ situated at Sector 79, 79B, Gurgaon, Manesar Urban Complex, Haryana seeking to initiate CIRP against the Corporate Debtor. However,

subsequently certain allottees/Petitioners withdrew their names from the present petition on the account of settlement with the Corporate Debtor.

- b) During 2014-2017, the Financial Creditors booked residential units in the project under “Affordable Group Housing Policy 2013” and the Corporate Debtor issued Allotment Letters to the Financial Creditors. Thereafter, the Corporate Debtor executed separate Flat Buyer’s Agreements (BBAs) for each unit between 2015-2017.
 - c) As per Clause 3.1 of the BBAs, the Corporate Debtor had to complete the project and to handover the possession of the units to the allottees within 4 years from the date of approval of the building plan or grant of Environment Clearance certificate, whichever is later. Admittedly, the building plan approval was obtained on 19.12.2014 and the Environmental Clearance was obtained on 22.01.2016. Accordingly, the possession of the units was to be offered by 22.01.2020.
 - d) Based on the payment plan mentioned in the BBAs, the Applicants made payment towards the sale consideration to the tune of Rs. 31,22,62,345/- (Rupees Thirty-One Crore Twenty-Two Lacs Sixty-Two Thousand Three Hundred and Forty-Five) to the Corporate Debtor, however, the Corporate Debtor failed to deliver the possession of units by 22.01.2020.
5. The Financial Creditors have proposed the name of Mr. Gaurav Katiyar, having registration number IBBI/IPA-001/IP-P00209/2017-18/10409, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

6. Submission of learned Counsels appearing for the Corporate Debtor

- a) The application portrays co-allottees as single allottees i.e., 165 Financial Creditors (172 initially) including co-allottees of the individual units instead of 142 (initially 148).
- b) The date of default is claimed to be 22.01.2020 i.e., 4 years from the date of environmental clearance admittedly, but Clause 3.1 of the Agreement provides for

“Grace Period” of 6 months from the actual date of possession. Hence, including the Grace Period of 6 months, the said default will fall under the period squarely covered under Section 10A IBC.

- c) There is no default because as per the Agreement, the possession would be given subject to the receipt of Occupancy Certificate (OC) and since the Corporate Debtor did not receive the OC, the possession did not become due and hence, no question of default arises.
- d) The Financial Creditors have failed to discharge the burden of prima facie showing the default on part of the Corporate Debtor, have chosen to not enclose all the relevant information - agreements pertaining to subject units, termination Letter, emails and other documents, on the basis of which the Financial Creditors have filed the present Application - only 3 allotment letters and 3 Agreements are on record. Further, the enclosed documents themselves show that different agreements have different clauses. – such as inclusion of grace period of 6 months.
- e) The Applicants have concealed the fact that numerous allottees including several out of the Applicants have been issued pre possession notices requesting to clear dues and take possession even prior to filing of the present application.
- f) The Corporate Debtor has offered an alternative unit to the buyers in terms of their allotment, project is in full swing and possession of several units have already started, is viable and near completion.
- g) The Corporate Debtor states that the delay in offering possession was due to force majeure events such as blanket stay on construction activities in NCR region by the Hon’ble Supreme Court vide order dated 04.11.2019, covid 19 pandemic, etc. Further, a delay of 89 days occurred due to such force majeure events.

Analysis and Findings

7. We have heard the Learned Counsel for the Financial Creditor and the Learned Counsels for the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, therefore, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency

Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.

8. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a debt owed to the Financial Creditor and whether there is a default with respect to such debt. Additionally, we also need to see whether the Financial Creditors being the allottees under a real estate project in the present case, fulfill the threshold limit provided under Section 7 of the IB Code, for maintaining this application.
9. Proviso to Section 7 which lays down the minimum threshold limit for the Financial Creditors who are allottees under a real estate project state that:

“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.”.

10. In the present case, the Applicants are the group of allottees who have booked their units in a project named “Basera” of the Corporate Debtor. M/s Revital Reality Private Limited (Corporate Debtor) is engaged in the business of real estate activities which includes developing, buying, selling, renting, managing and appraising real estate amongst others. Further, it is envisaged under Section 5(8)(f)(ii) of the Code that the definition of ‘allottees’ for the purpose of IBC, shall have same meaning as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.
11. In the present case, the petition has originally been filed by 172 allottees holding 147 units. However, subsequently, settlement arose between certain allottees and the Corporate Debtor and therefore, such allottees withdrew their names from the present petition. Further, it is the contention of the Corporate Debtor that the Applicants have falsely portrayed the co-allottees as individual allottees. It is observed that the Applicants have themselves stated the fact that a total of 172 allottees includes the co-allottees holding 147 units. The Applicants have also stated that subsequently unit-

holders of 6 units withdrew their names from the present petition on the account of settlement between them and the Corporate Debtor. Thus, this Adjudicating Authority is of the view that even after the number of allottees is taken as per the count of unit-holders, the total number of allottees would be 147, at the date of the filing of the instant application, which is well above the minimum threshold of 100 allottees. Therefore, the present petition fulfills the threshold limit of minimum hundred allottees as envisaged under Section 7 of the IB Code, 2016. Hence, the contention of the Corporate Debtor that the Applicants have falsely represented the actual number of allottees does not hold any ground and therefore, is not sustainable.

12. Further, in the present case, the Corporate Debtor had launched its project “Basera” and undertook to offer various amenities to the unit-holders under the “Affordable Group Housing Policy, 2013” based on which the present Applicants booked 147 units in the Corporate Debtor’s project during the period ranging from 2014 to 2017. Thereafter, the Corporate Debtor issued Allotment Letters to the Financial Creditors allotting Units to the Financial Creditors. Some of the Allotment Letters are placed on record before this Adjudicating Authority. Subsequently, the Corporate Debtor entered into Flat Buyer’s Agreement with the Applicants. Further, the Applicants have made payment to the Corporate Debtor in lieu of booking a unit under the project for which the payment receipts are issued by the Corporate Debtor to the Financial Creditors and the same has been placed on record. The payment receipt evidences the fact that the Financial Creditors had made payments to the Corporate Debtor. Therefore, this Adjudicating Authority is of the view that disbursements have been made by the Financial Creditors in the favour of the Corporate Debtor. Hence, first essential ingredient of application under Section 7 of the IB Code, 2016 i.e., there is a ‘debt’ stands substantiated. Moreover, the Corporate Debtor has also not raised the issue as to the disbursements made by the Applicants in the favor of the Corporate Debtor.
13. It is the contention of the Corporate Debtor that there is no default on the part of the Corporate Debtor as the possession has not yet become due. In this regard, the Corporate Debtor has placed reliance upon Clause 3.1 of the Flat Buyer’s Agreement. For ease of reference, Clause 3.1 of the Flat Buyer’s Agreement is reproduced hereunder as:

“Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer’s Agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the Developer proposes to offer possession of the said flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the “Commencement Date”), whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs. 5.00/- (Five rupees Only) per sq. ft. of area of the flat per month for any delay in handing over possession of the flat beyond the given promised period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier.

The Corporate Debtor has placed its reliance on the Clause 3.1 stating that the possession is to be offered ‘*subject to the receipt of the Occupation Certificate*’ by the Corporate Debtor and since, in the present case, the Corporate Debtor has not yet received the Occupancy Certificate then the possession has not become due and hence, there is no default on the part of the Corporate Debtor. However, in our considered view, upon the perusal of the above stated Clause 3.1, it can not be concluded that the 4 years period in handing over the possession to the allottees would be subjected to the receipt of the Occupancy Certificate by the Corporate Debtor because as a matter of fact, the Occupancy Certificate is granted by the competent authority only on the completion of the project. If such a contention of the Corporate Debtor is taken into consideration, then, it would lead the tendency of intentional prolonged delays on the part of the Corporate Debtor for an uncertain period in order to avoid handing over the possession to the respective allottees. Further, we are of the view that it is the duty of the Corporate Debtor to obtain the Occupancy Certificate on time, failure of which would not entitle the Corporate Debtor to take the benefit in the performance of its obligations. The words “subject to the receipt of Occupation Certificate” cannot be used as a shield by the Corporate Debtor for an uncertain period in order to entitle him in delaying the handing over the possession of the units to the allottees.

14. It is further observed that the fact that the Corporate Debtor had yet not received the Occupancy certificate is explanatory of the fact that the Corporate Debtor had failed to complete the project within time. The building of the Corporate Debtor is not in a habitable condition yet which is why, the Corporate Debtor had not received the Occupancy Certificate till now. Therefore, this Adjudicating Authority is of the view that the Corporate Debtor had failed to handover the possession of the units to the Financial Creditors within the stipulated time. Furthermore, the fact that the Corporate Debtor had not received Occupancy Certificate till now evidences the fact that there was deficiency in services on the part of the Corporate Debtor. The same is affirmed by the Hon'ble Supreme Court in the case of **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., 2021 (2) SCR 1** Wherein, the Hon'ble Supreme Court has held that *"The Occupation Certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them"*. Therefore, the second major essential ingredient of an application under Section 7 of the IB Code, 2016 i.e., there is a 'default' with respect to the debt, stands substantiated.
15. Furthermore, the Corporate Debtor had raised the contention that the default in the instant case occurred during the period excluded by Section 10A of the IBC. i.e., 25.03.2020-24.03.2021. It is observed that in the present case, as per Clause 3.1 of the Flat Buyer's Agreement, the Corporate Debtor had to deliver the possession of the units to the allottees within 4 years from the date of approval of the building plan or the receipt of Environment Clearance, whichever is later. It is observed that the building plan for the project was approved on 19.12.2014 and the Environment Clearance Certificate was received on 22.01.2016. Accordingly, the possession became due on 22.01.2020. The Corporate Debtor contends that a delay of 89 days in completion of project occurred due to Force Majeure events such as ban on construction activities, Covid-19 Pandemic, etc. due to which the date of default would be 20.04.2020, which falls within Section 10A of the Code. We are of the view that even after the delay of 89 days is taken into consideration, the project was nowhere near completion. Further, no such Force Majeure events were brought to notice before any court or Tribunal. The Corporate Debtor further placed its reliance on the Clause 3.1 of the Flat Buyer's Agreement

claiming that a Grace Period of 6 months from the actual date of possession is provided in handing over the possession. The relevant extract of the Clause 3.1 of the Agreement reads as under:

*“.....the Developer proposes to offer possession of the said flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the “Commencement Date”), whichever is later. **The Developer also agrees to compensate the Allottee/Buyer @ Rs. 5.00/- (Five rupees Only) per sq. ft. of area of the flat per month for any delay in handing over possession of the flat beyond the given promised period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier.***

On the perusal of the above-stated clause, it is observed that the grace period of 6 months is applicable only in the cases of delay compensation and it does not have the effect of extending the time period for handing over the possession. Further, even if the contention of the Corporate Debtor as to the grace period of 6 months is taken into consideration, it is observed that the default is of continuing nature which took place much before the period falling under Section 10A of the Code and did not occur exclusively between such excluded period under Section 10A of the Code. Hence, the contention of the Corporate Debtor in this regard does not hold any ground.

16. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. *“Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”*

Section 5(7) of IBC defines Financial Creditor: *“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.”*

Section 5(8) of IBC defines Financial Debt. “*Financial Debt means a debt along with 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 maybe 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;*
- (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-clauses (a) to (h) of this clause.”*

17. It is clear after examining the records, that there is a debt, and there has been a default by the Corporate Debtor for an amount of Rs. 31,22,62,345/- (Rupees Thirty-One Crore Twenty-Two Lacs Sixty-Two Thousand Three Hundred and Forty-Five). The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor are in default of a ‘debt due and payable’ and that the ‘default’ is for an amount which is more than the minimum amount of pecuniary threshold stipulated under section 4 (1) of the Code.

18. In the light of the above facts and circumstances, and in terms of Section 7(5)(a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/657/(ND)/2021** filed by Manish Aneja & Ors. the Financial Creditors, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Revital Reality Private Limited (Corporate Debtor) stands **admitted** and this Adjudicating Authority initiates CIRP against M/s Revital Reality Private Limited.
19. The petitioner in part-III of the petition has proposed the name of Mr. Gaurav Katiyar as the Interim Resolution Professional. Therefore, Mr. Gaurav Katiyar, having registration number IBBI/IPA-001/IP-P00209/2017-18/10409 and email – id cagauravkatiyar@gmail.com is hereby appointed as an Interim Resolution Professional (IRP) for the Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that IRP has a valid AFA.
20. 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.

21. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and 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(s) in terms of Section 14 (3) (b) of the Code.
22. 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.
23. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Rupees Two Lakhs) with the Interim Resolution Professional, namely, Mr. Gaurav Katiyar to meet out the expenses to perform the initial 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.
24. 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.

25. It is further made clear that all the personnel connected with the Corporate Debtor, their 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 Adjudicating Authority with a prayer for passing appropriate orders.
26. 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.
27. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
28. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **CP I.B./657 (ND)/2021 stands admitted.**
29. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)