

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

**C.P. No. 3811/IBC/MB/2019**

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

*In the matter of*

**Pentakota Appala Visvesvaraya & Anr.**

Having registered office at:

2380 1<sup>st</sup> Main 3<sup>rd</sup> Cross BDA Layout HAL  
3<sup>rd</sup> Stage Bangalore - 560017

**.....Financial Creditor/Petitioner**

*Vs*

**Sai Shraddha Vivek Projects Developers  
Private Limited**

(CIN: U70102MH2007PTC168056)

Registered office at:

1, Ram Krupa, Devji Bhimji Lane,  
Mathuradas Road Kandivali West  
Mumbai- 400067, Maharashtra (India)

**.....Corporate Debtor**

**Order Reserved On: 04.08.2022**

**Order Pronounced On: 27.09.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**For the Petitioner:** Mr. Himanshu Chaubey, Advocate

**For the Corporate Debtor/ Respondent:** Mr. Karan Bhosale,  
Advocate

*Per: H.V. Subba Rao, Member (Judicial)*

### Order

1. The above Company Petition is filed by Pentakota Appala Visvesvaraya & Anr., hereinafter called as **“Petitioner”** consist of two individuals as Pentakota Appala Visvesvaraya hereinafter called as **“Petitioner 1”** and Mr. Mayank Harshad Talati hereinafter called as **“Petitioner 2”**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Sai Shraddha Vivek Projects Developers Private Limited hereinafter called as **“Corporate Debtor”** by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called **“Code”** read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 21,98,968/-.
2. Pentakota Appala Visvesvaraya and Mr. Mayank Harshad Talati, Financial Creditors, are Individuals, having address at 2380 1<sup>st</sup> Main 3<sup>rd</sup> Cross BDA Layout HAL 3<sup>rd</sup> Stage Bangalore – 560017 and P-801, Tower -7, Adarsh Palm Retreat, Deverabisanahalli, Outer Ring Road, Bangalore, KA – 560103 respectively.
3. Sai Shraddha Vivek Projects Developers Private Limited, Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 having its office at 1, Ram Krupa, Devji Bhimji Lane, Mathuradas Road Kandivali West Mumbai- 400067, Maharashtra (India).

### **Brief Facts:**

4. The Corporate Debtor is engaged in infrastructure development in Mumbai and surrounding areas and has undertaken two

projects by the name of Dwarka and Kapilvastu. For developing the said project, the Corporate Debtor issued **Three product notes** inviting interested persons to invest in the Company vide subscription to Non-Convertible Debentures (hereinafter referred to as **“NCD”**) as detailed below:

<b>Sr. No.</b>	<b>Items</b>	<b>Tranches</b>	<b>Amount</b>	<b>Interest Rate</b>	<b>Term of NCD</b>	<b>Value of Each NCD</b>
1	First Product Note (40 Crores)	First Tranche	20 Crores	18.5% P.a (Paid Monthly)	36 Months	Rs. 10,000/-
		Second Tranche	20 Crores			
2	Second Product Note (40 Crores)	First Tranche	20 Crores	16% P.a. (Paid Monthly)	36 Months	Rs. 10,000/-
		Second Tranche	20 Crores			
3	Third Product note (35 Crores)	First Tranche	15 Crores	18% P.a (Paid Monthly)	36 Months	Rs. 20,000/-
		Second Tranche	20 Crores			

5. As per the said product note the Debenture Holder’s representative and calculating agent was to be M/s Karvy Realty (India) Ltd., a Financial Management firm which was handling the investment portfolio of the Petitioners.
6. On advice of M/s Karvy Private Wealth, Petitioner No. 1 has invested Rs. 90,00,000/- on 25.02.2015 by subscribing to 900 NCDs under Product note 1 having maturity on 23.02.2018 and further Rs. 35,00,000/- on 16.04.2015 by subscribing to 350 NCDs under Product note 2 having maturity on 13.04.2018.

7. On advice of M/s Karvy Private wealth, Petitioner No. 2 has invested Rs. 25,00,000/- by subscribing to 125 NCDs under product note 3.
8. The investment portfolio of Petitioner 1 is reflected in the Wealth Statement as prepared by Karvy Private Wealth, is annexed to the petition.
9. As per the terms and conditions of the subscription of NCDs the petitioner herein were entitled for an interest on Principal Amount, as invested, at the rate of 18.5%, 16% and 18% per annum respectively. The said payment was to be made to the Petitioners on a monthly basis. The Petitioners were also entitled to re-payment of Principal Amount in 18 Equal Monthly Instalments starting from the end of the 19<sup>th</sup> month.
10. In case of the Petitioner No. 1 the payment is made as per the schedule till 31.06.2016. However post June 2016, the Corporate Debtor has been continuously defaulting in making payment of interest.
11. In case of Petitioner No. 2 the payment towards interest is made till August 2016. However post August 2016, no payment is made towards interest due.
12. The Corporate Debtor vide Emails dated 02.09.2016, 28.11.2016 and 18.01.2017 addressed to the Petitioner, has admitted the delay in repayment of interest.
13. The Petitioner enclosed the following details of documents, records and evidence of default:
  - i. Copy of Product Note 1, 2 & 3 issued by the Corporate Debtor.

- ii. Copy of the Bank Statement of Petitioner 1 & 2 reflecting payment made.
  - iii. Copy of the Wealth Statement as prepared by M/s Karvy Realty.
  - iv. Copy of Email dated 02.09.2016, 28.11.2016 and 18.01.2017 issued by the Corporate Debtor.
  - v. Copy of Email dated 19.07.2017 as issued by M/s Karvy Realty.
  - vi. Copy of the 26AS Certificate of Petitioner 1 & 2.
  - vii. Copy of the Statement depicting the Due amount and the Default qua the said due amount, in relation to Investment made by Petitioner No. 1 and 2.
14. The Corporate Debtor vide email dated 10.03.2017 assured Petitioner No.1 that the Principal Amount will be disbursed on the same day and interest will be further be cleared by April 2017.
15. The Corporate Debtor started making payment towards the repayment of Principal Amount however the default in respect to the interest component continued.
16. The Petitioners were regularly following up with the Corporate Debtor as well with M/s Karvy Realty, regarding the payment of Interest Component. However, no positive response was provided. M/s Karvy Realty vide an email dated 19.07.2017, assured the Petitioners that it will ensure payment of interest.
17. Till date the dues with respect to payment of interest, have not been cleared by the Corporate Debtor. The Corporate Debtor has paid the Principal Amount. However the interest as was to be paid under the Agreement, has not been paid till date.

18. Even though no payment of interest was made in favour of the Petitioners, the Corporate Debtor deposited TDS for the said payment with the Tax Authorities, as if the said payment has been made in favour of the Petitioners. No Corresponding entry is reflected in the bank account of the Petitioners to show the payment has been made in their favour. Therefore not only did it make the payment, the Corporate Debtor has tried to play a fraud with the Tax Authorities.
19. As on the date the total payment outstanding in favour of the Petitioner No. 1, from the Corporate Debtor is Rs. 18,06,517/-, under both the investments inclusive of the penal interest as is required to be made on the delayed payment.
20. As on the date the total payment outstanding in favour of the Petitioner No. 2, from the Corporate Debtor is Rs. 3,92,451/-, The said amount is inclusive of the penal interest required to be made on the delayed payment.

### **Submissions by the Corporate Debtor**

21. The Corporate Debtor in its reply has denied each and every statement, contention, allegation and averment contained in the Petition.
22. The Corporate Debtor submits that M/s. Karvy Realty was the representative of the debenture holders and also managed the investment portfolio of the Petitioner Company; and Vistra ITCL was appointed as the Debenture Trustee of the Corporate Debtor. Corporate Debtor has entered into a Debenture Trust Deed dated 09.07.2015 (“**DTD-1**”) and on 20.02.2015 (“**DTD-2**”) for the facility of Rs. 35,00,0000/- and Rs. 40,00,000/- respectively which was granted.

23. The Corporate Debtor further submits that under the DTD-1 and DTD-2 the payments were made through karvy vis-à-vis the Corporate Debtor and payments were not made directly by the Corporate Debtor to the Debenture holder.
24. It is submitted that the Corporate Debtor has executed and provided a registered Power of Attorney (“POA”) dated 30.03.2017 and executed an Agreement for Sale in respect of office premises in favour of the Debenture Holders Representative on the agreed terms that the sale of the Office Premises and clarity on/working of the interest amount mentioned in the Letters so exchanged between the Corporate Debtor and Debenture Holder Representative, the same shall be discharged (if any) from the sale of the said Office Premises and The remainder amount from the sale proceeds was to be returned to the Corporate Debtor.
25. It is further submitted that the Debenture Holder representative vide letter dated 30.03.2017, after discharge of the payment obligations under the Debenture trust deed i.e. DTD-1 and DTD-2, Issued “No Dues letter/Certificate” to the Debenture Trustee.
26. The Corporate Debtor submits that as per the agreement dated 30.03.2017 with Karvy & Debenture Trustee the interest payment obligation of the Corporate Debtor is discharged in lieu of the documents executed & exchanged between the Corporate Debtor, Karvy & Debenture Trustee wherein it was agreed that only TDS amount was to be credited by Corporate Debtor against the concerned debenture holders for IT purposes. However, the obligation for payment of requisite interest for which TDS was deducted is to be borne/discharged by Karvy.

**Findings:**

Heard the arguments on both sides and perused the material available on record. The undisputed facts of the case are as follows:

27. Both the petitioners are debenture holders who have purchased Non-Convertible Debentures, issued by the Corporate Debtor. M/s. Vistra ITCL is the debenture trustee. The petitioner made the investment in the debentures through their representative M/s. Karvy Realty through cheques. All the debentures were issued for raising the working capital requirement of the Corporate Debtor. It is also undisputed fact that both the petitioners have received the entire principal amount and the present company petition is filed for the un-paid interest.
  
28. It is the contention of the Corporate Debtor that the whole transaction was routed by the petitioners through their authorized representative M/s. Karvy Realty and there is no privity of contract between the Petitioners and the Corporate Debtor and therefore the above Company Petition without impleading M/s. Karvy Realty is not maintainable. It is his further contention that the Corporate Debtor executed and provided a registered Power of Attorney dated 30.03.2017 and also an agreement for sale in respect of office premises situated at one of the project in Goregaon "A" wing, 1st Floor, CTS No. 27 (pt), Siddharth Nagar, Off S.V. Road, Opp. to Ram Mandir Signal, Goregaon West, Mumbai-400104 admeasuring area about 3141 sq. ft. Carpet area in favour of the debenture holders representative and it was agreed between all concerned parties (including the debenture trustee) that upon the sale of the office premises and clarity on working of the interest amount mentioned in the letters so exchanged between the Corporate Debtor and the debenture holder representative, the



same shall be discharged if any from the sale of the said office premises at a price having a market value not less than Rs. 24 Crores and the remaining amount from the sale proceeds was to be returned to the Corporate Debtor upon such sales and therefore it was the duty of M/s. Karvy Realty to give clarity about the outstanding interest due and payable. However till date M/s Karvy Realty has neither sold the office premises nor provided the exact outstanding interest if any due and payable and M/s Karvy Realty has not even raised or communicated any alleged outstanding claims to the Corporate Debtor. It is appropriate to mention here that the sale transaction in respect of the above office premises has not yet been finalised even 5 years after executing the alleged power of attorney in favour of M/s. Karvy Realty by the Corporate Debtor and the Corporate Debtor continues to be the owner even today. Therefore it is very clear from the above that M/s. Karvy Realty and the Corporate Debtor are duping the investors by throwing blame on each other.

29. In this regard it is important to look at the following emails at Page Nos. 132 to 135 annexed by the Petitioner in the company petition.

ANNEXURE "P13"

P13 132

**Pentakota, Visvesvaraya**

**From:** Deep Tanna <omsainam11@yahoo.co.in>  
**Sent:** Friday, September 2, 2016 9:52 PM  
**To:** Vidhi Karvy; TARAL REVAR  
**Cc:** Vivek Tanna; Vivektanna; Jeki Mehta; Deep Tanna  
**Subject:** NCD's Interest Payment

Dear Investors,

Greetings,

This is in regards to your investment in Non-convertible Debentures issued by Sai Shraddha Vivek Projects Developers Pvt. Ltd. in which Karvy is the Debenture Holder Representative. We thank you for your investment.

We regret the delays in interest payments. We have been in constant touch with the Debenture holder representative and are trying our best to make the payments as soon as possible.

The cash flows of the underlying project that you have funded have slowed down due to slow down in sales in the past few months. Moreover, the project is at a decent stage of development and requires funds for construction. This has led to short-term cash flow trouble and we are unable to make the interest payments on time.

As on date, the interest payment for the month of July and August is due and outstanding. We will be making the July interest payment along with penal interest by 10th Sept and the Aug interest payment by mid-sept.

We are also trying to get a re-finance done from other institutional investors so that the we can pay off all your outstanding dues along with principal invested.

We regret the delay and the inconvenience caused and appreciate your support and patience in tough times like these. We are trying our best to make all outstanding payments with principal amount by way of refinance as soon as possible. We will keep you updated on any further development on this front.

The Management of Sai Shraddha Vivek Projects Developers Pvt. Ltd is committed to regularize the payments at the earliest possible date.

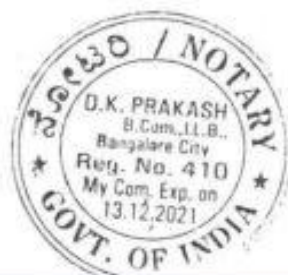
Regards,



Regards

**Deep Tanna**

*Shree Sai Groups Of Companies  
 Developers|Hospitality| Investment  
 1, Ramkrupa Building, Devji Bhimji Lane,  
 Mathuradas Road, Kandivali - West,  
 Mumbai - 400 067.  
 Tel(+91 22 28629992)  
 (E)deep.tanna@shreesaigoup.net.in*



CERTIFIED THAT THIS IS A TRUE COPY  
**D.K. PRAKASH**, B.Com., LL.B.  
 NOTARY PUBLIC  
 GOVT. OF INDIA  
 No. 2722, HAL 3rd Stage,  
 New Heppanandra Main Road,  
 Bangalore-560 075 M 9448703920

GOVT. OF KARNATAKA  
 HAS WITHDRAWN NOTARY  
 STAMPS W.E.F 01.04 2003

- 5 OCT 2019

ANNEXURE P14

1014  
133

**Pentakota, Visvesvaraya**

**From:** Deep Tanna <omsainam11@yahoo.co.in>  
**Sent:** Monday, November 28, 2016 6:00 PM  
**To:** CA Jeki Mehta Company; Vivek Tanna; Vidhi Kany; TARAL REVAR  
**Subject:** Shree Sai - NCD Update

Dear Investor,

Greetings from Shree Sai Group.

At the onset, we would like to thank you for your investment in our NCD.

We regret the delay in the interest payments that have been happening over the past couple of months. We also regret the fact that we have given commitments and not been able to live up to that because of market condition.

But we would like to inform you that we are trying our best to arrange funds and pay all outstanding dues as soon as possible. We would like to inform you that we have received a sanction letter from a lender for a re-finance deal and the due diligence of the same is in process. We request you to please bear with us for the next few weeks till we close the deal and receive the funds. We shall pay off all outstanding dues including interest, penal interest and principal as soon as we receive the funds from the re-finance deal.

We regret the inconvenience caused to you and thank you for your support through this difficult time.

Regards,  
Shree Sai Group

*Visvesvaraya*



Regards  
**Deep Tanna**  
*Shree Sai Groups Of Companies*  
*Developers/Hospitality/ Investment*  
1, Ramkrupa Building, Devji Bhimji Lane,  
Mathuradas Road, Kandivali - West,  
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No. 272, 4th Floor  
New Pappannagar, Bangalore - 560 075 M 945

- 5 OCT 2019

GOVT. OF KARNATAKA  
HAS WITHDRAWN ALL  
STAMPS W.E.F. 01.04.2003

ANNEXURE "P15"

P15  
134

Pentakota, Visvesvaraya

**From:** Deep Tanna <omsainam11@yahoo.co.in>  
**Sent:** Wednesday, January 18, 2017 11:10 AM  
**To:** Vidhi Karvy; TARAL REVAR; Omsainam11; Vivek Tanna  
**Subject:** NCD Update

Dear Investor,

Further to our email communication to you on 28th November 2016, we would like to inform you that we are likely to pay all outstanding interest dues by end of January 2017.

Further we would like to inform you that, The re-finance deal that we are working on is expected to close in mid-February. We shall pay off all outstanding principal along with Applicable interest by end of February.

We regret the inconvenience caused to you and thank you for your support through this difficult time.

Regards,  
Shree Sai Group

*Visvesvaraya*



Regards  
**Deep Tanna**  
Shree Sai Groups Of Companies  
Developers/Hospitality/ Investment  
1, Ramkrupa Building, Devji Bhimji Lane,  
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GOVT. OF KARNATAKA  
HAS WITHDRAWN NOTARY  
STAMPS W.E.F 01.04 2003

- 5 OCT 2019

ANNEXURE "P16"

P16 135

**Pentakota, Visvesvaraya**

**From:** Deep Tanna <omsainam11@yahoo.co.in>  
**Sent:** Friday, March 10, 2017 2:09 PM  
**To:** CA Jeki Mehta Company; Vivek Tanna  
**Subject:** NCD's Update

Dear Investors,

We are happy to inform you that, we have made an arrangement of repayment of entire Principal amount of yours and we shall be releasing the entire amount of Principal today itself and it shall be credited to your account by End of the Day. With respect to interest component, we will be doing it in April 2017.

We really appreciate for your kind support till date and expect the same in future.

Regards

*Urvashi*



Regards

**Regards**

**Deep Tanna**

*Shree Sai Groups Of Companies*

*Developers/Hospitality/ Investment*

1, Ramkrupa Building, Devji Bhimji Lane,

Mathuradas Road, Kandivali - West,

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- 5 OCT 2019

GOVT. OF KARNATAKA  
HAS WITHDRAWN NOTARY  
STAMPS W.E.F 01.04 2003

30. It is very clear from the above email correspondence that the Corporate Debtor is in direct touch with the petitioners with regard to non-payment of interest payable to the petitioners and in fact the Corporate Debtor assured the petitioners for early settlement of interest part also. Therefore, it is very clear that the stand of the Corporate Debtor with respect to lack of privity of contract between them is out and out false, more so in the absence of any evidence to the effect that the Corporate Debtor has not utilized the fund raised from the issue of non-convertible debentures.
31. Hence this tribunal after carefully examining the contest of both parties and their respective documents, is of the view that there is an existence of “**Financial Debt**” due and payable by the Corporate Debtor to the petitioners and the Corporate Debtor has committed “**default**” in payment of such debt. It has been also observed that the above Company Petition being filed on 25.10.2019 is well within limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.
32. When the petitioner satisfies the above legal requirements, this bench has no option except to admit the Company Petition as per the settled proposition of law.
33. Accordingly, the above Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. 3811/IBC/MB/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sai Shraddha Vivek Projects Developers Private Limited**
- b. This Bench hereby appoints **Mr. Jugraj Singh Bedi Insolvency Professional**, Registration No IBBI/IPA-001/IP-P00731/2017-2018/11208 residing 1250, Ground Floor, Dr. Mukherjee Nagar ,New Delhi, National Capital Territory of Delhi ,110009 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central

Government in consultation with any financial sector regulator.

- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 3811/IBC/MB/2019 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**