

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

C.P. NO. IB-638 (ND)/2020

IN THE MATTER OF:

Ms. Manjula Tripathi and Ors.

..... **Petitioner**

Vs.

M/S Clarion Townships Pvt. Ltd

..... **Respondent**

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Judgment delivered on: 03.05.2021

CORAM:

P.S.N PRASAD MEMBER (JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

For FC: Mr.Shivam Wadhwa, Advocate.

ORDER

P.S.N PRASAD, HON'BLE MEMBER (J)

1. Ms. Manjula Tripathi , claiming as the financial creditor, has filed the instant application 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 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/S Claion Township Pvt. Ltdreferred to as the corporate debtor.

2. The Respondent M/S Clarion Township Pvt. Ltd. against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 11.04.2012 having its registered office at F-50 B Madhu Vihar Extension, New Delhi. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. The applicant has proposed the name of Mr.Mukesh Gupta, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P01494/2018-2020/12254, Resident of F-1, Milap Nagar, Uttam Nagar, New Delhi. Mr.Mukesh Gupta has agreed to accept appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.
4. As per part IV of the application it is claimed that a sum of Rs.7,66,91,952/- along with interest is due from the respondent company.
5. The case of the Financial Creditor is as under:

- a. That the Corporate Debtor through its authorised agents, marketing staff and employees, represented the applicants that they are developing a residential project under the name “ ROHTAS PLATINA” Situated at faizabad Road Lucknow, amongst other projects.
- b. That based on the representation of the Corporate Debtor the applicants booked residential Flats for their own personal use to be constructed in project “ ROHTAS PLATINA” situated at Faizabad Road Lucknow, with the assurance of builder to handover possession by within 60 months from the date of start of construction.
- c. In consideration they paid the initial deposit as demanded by the Corporate Debtor and subsequently paid other the instalments as and when demanded by Corporate Debtor. The applicants have paid all the instalments as demanded and no amount is due as on date which is unpaid, which was demanded by CD in terms of allotment of the flat Till date applicants have paid Rs. 4,72,37,572/-.
- d. Since the applicants have booked Flat for their use and Corporate Debtor has collected the consideration amount towards the same, in terms of Section 5(8)(f) as amended from time to time, the buyers of home are financial creditor. As per the aforesaid sections, the

applicants are Financial Creditor and entitled to file this application for initiation of CIRP against the Corporate Debtor.

- e. That upon booking of abovementioned flats and on payment of booking amount the Corporate Debtors allotted units in the project.
- f. That subsequently the allotment letters were issued by the Corporate Debtor along with detailed term and conditions.
- g. That in terms of Clause 11 of the allotment letters, the Corporate Debtor agreed to handover the possession of the said residential Flats to the Applicant within 60 months from the start of construction which has expired on 12.07.2017.
- h. That the Corporate Debtor from time to time demanded certain money from the Applicants as per payment plan and the applicants paid a total sum of Rs. 4,72,37,572/- for the residential flats from the period commencing from the date of Booking in 2012 till date which is duly acknowledged by the Corporate Debtor.
- i. That the applicant after project site visit found that there is hardly any development activities or development since.
- j. That it is submitted that in manner the Corporate debtor has failed and has defaulted by failure to complete its project as per time lines agreed in Clause 11 of the Allotment to handover the possession of the said residential Flats to the Applicant by 12.07.2017 within 60 months from the date of start of construction.

6. Despite several opportunities none appeared on the behalf of Corporate Debtor. Hence there were proceeded ex parte vide order date 07.04.2021 of this Tribunal.
7. Heard the Applicant and perused the record.
8. The Hon'ble Supreme Court in the case of *Innovative Industries Ltd. V. ICICI Bank & Anr(2018) 1 SCC 407* has held that in cases of financial creditors triggerimng the process, the scope of inquiry by the Adjudicating Authority is very limited and it is to satisfy itself only on three counts i.e.
 - i. There was a financial debt.
 - ii. That a default has occurred;
 - iii. That the application is complete.
9. In order to allow any application under Section 7 of the Code, the applicant has to proof that the application is maintainable as the applicant is a '*financial creditor*', and the debts claimed in the application come within the purview of "*financial debt*" as defined under the Code. If we apply the above principle to the case in hand it is clear that in terms of Section 5(8)(f) of the IBC i.e. definition of financial debt, there exist a default on the part of the Corporate Debtor towards the 'Real Estate Allottee and therefore the Applicants herein are the Financial Creditors, and have complied with all requirements under the Insolvency and

Bankruptcy Code for filling the present application. The Applicant has also filed the compliance (annexed as Annexure IV of the petition) that they met out the basic criteria to file the application as per the ordinance i.e the application can be filed by 10% OR 100 whichever is less, number of financial creditor.

10. Additionally, after due opportunity, no one present on the behalf of Corporate Debtor at the time of final hearing of the matter. The Corporate Debtor has not shown adequate interest to defend the claim filed against him. Hence this Tribunal initiates CIRP on the corporate debtor with immediate effect.

11. The provisions of Section 7 (2) and Section 7 (5) of IBC stand satisfied but the same may be read as under:

“Initiation of corporate insolvency resolution process by financial creditor.

7 (1)

7 (2) The financial creditor shall make an application under subsection (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3)

7 (4)

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b)

12.A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred within the meaning of Section 4 of the Code and the application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional. Thus, the application warrant admission as it is complete in all respects.

13.As a sequel to the above discussion, this petition is admitted and Mr.Mukesh Gupta, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P01494/2018-2020/12254

resident of F-1, Milap Nagar, Uttam Nagar, New Delhi is appointed as an Interim Resolution Professional.

14. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(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 Securitisation 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.”

16. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of

Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

18. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, 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 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/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

(-Sd)

(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

(-Sd)

(P.S.N PRASAD)
MEMBER (JUDICIAL)