

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI

IB-1771/(ND)/2018

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

In the matter of:

Ms.Priyanshi Arora,
E-50, Naraina Vihar,
New Delhi-110028

.....Financial Creditor

VERSUS

M/s Dream Procon Pvt. Ltd.,
702-704, D-Mall, Netaji Subhash Place,
Pitampura,
New Delhi-110034.

..... Corporate Debtor

Coram:

R.VARADHARAJAN,
Hon'ble Member (Judicial)

K.K.VOHRA,
Hon'ble Member(Technical)

Counsel for the Petitioners: Mr. Vaibhav Tyagi, Advocate
Counsel for the Respondent: Mr. Gaurav Rana, Mr. Ashutosh
Gupta, Mr. Abhishek Aggarwal,
Advocates

Delivered on: 06.09.2019

ORDER

(Order dictated in the open Court)

A Petition has been filed by the Financial Creditor under the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016) read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for brevity called 'AAA Rules, 2016.'

2. Part-I of the Petition discloses that the Petitioner is an individual. Part-II of the Petition discloses details of the Corporate Debtor (CD) from which it is evident that the CD was incorporated on 25.5.2011 and presently the authorized share capital of the CD is stated to be Rs.200,00,000/- and the paid up share capital of Rs.101,00,000/- respectively. The registered office of the CD is stated to be situated at 811,8th Floor, Krishna Apra Plaza, Tower -1, Netaji Subhash Place, Pitampura, Delhi, New Delhi.

2 | Page



3. Part-III of the Petition discloses that one Mr. Manish Gupta has been proposed as the Interim Resolution Professional (IRP).

4. Part-IV of the Petition discloses details of the Financial Debt from which it is seen that the total amount of debt payable by the CD is stated to be in a sum of Rs.48,04,700/- as on 21.11.2018 along with interest at the rate of 24% per annum till the date of realization. It is averred that FC and the CD entered into an Agreement in the year 2015 for a sum of Rs.40,00,000/- which was to be returned after expiry of 1 year along with interest/assured return in relation to the amount made available. It is further averred that post dated cheques were given and that the CD had also provided residential property bearing C3-001, Victory Ace, Plot No.GH-02, Sector 143, Noida as security option to the CD to return the investment as well as the assured return payment. It is averred that in terms of clause 9 of the Agreement, CD was liable to buy back the property from the FC after the expiry of 1 year. It is also highlighted in the Petition that all due payments in relation to the assured return were made by the CD upto 2016. Subsequent to the said year, there has been default on the part of CD and in the circumstances an Article of Agreement dated 27.06.2017 was entered into between FC and CD whereby it was agreed between the parties that the property as described in the said Agreement comprising to the extent of 1895 sq.ft. has been allotted to the FC by the CD with a total



consideration of Rs.40,00,000/- and that under the said Article of Agreement and more particularly the CD was required to complete the development and construction of the flats within 30 months with further extension period of 3-6 months in case the development and construction of the flats is not able to be completed within the period of 30 months. Further, the onus is also placed upon the CD that after the completion of the residential complex, FC would be intimated to take over possession of the flats within 30 days thereafter and the other consequences in relation to registration of sub-lease deed and documentation to follow. Despite these Agreements since neither the money was repaid nor the possession of the flats was given or offered, the Petition in view of default as alleged to have been committed has been filed seeking for the initiation of Corporate Insolvency Resolution Process (CIRP) as against the CD.

6. The CD has filed a reply upon notice wherein the CD seeks to defend its cause on the basis that a sum of Rs.48,04,700/- being the claim due and payable by the CD to the FC, a contention is sought to be raised on the part of CD in relation to the completion, development and construction of flats referring to para 16.8 of the Agreement as entered into between the parties that in view of the circumstances beyond the control of the CD, the CD was not able to complete the project in as much as the CD was precluded by order of Hon'ble High Court dated 1.8.2017

restraining the CD from alienating the property in view of dispute in existence as between the land owner and the developer namely, the CD. The fulcrum of the defence of CD seems to be the above contention as evident from the objections which have been raised in relation to the filing of the Petition.

7. Both the parties were heard by this Tribunal in detail. Ld. Counsel for the Petitioner/FC reiterated the submissions based on the pleadings which have been filed by the Petitioner. It is brought to the notice of this Tribunal by Ld. Counsel for the Petitioner that a sum of Rs.40,00,000/- which was originally made available as an investment by the Petitioner in relation to the project was required to be returned after the period of 1 year. Further, the assured return was also offered by the CD which was paid till the year 2015 and subsequently, there has been a default. Thus, taking into consideration the default the Petitioner/FC had the option to go in for taking the possession of the flats as contemplated under clause 4 of the Agreement i.e. which provides the period of 30 months with a further extension of 3-6 months, as contemplated under the Agreement as entered into between FC and CD. However, as the home buyers in view of the default committed in handing over the property as contemplated, there has been a default on the part of the CD as envisaged under the provisions of IBC,2016. However, Ld. Counsel for the CD vehemently contended that the FC is



required to come either as a person who has granted the loan being a commercial borrowing or in the capacity of a home buyer under the provisions of Section 5(8)(f) of IBC,2016. However, we are not in a position to appreciate the contention as made by Ld. Counsel for the CD, in view of the recent Judgement passed by the Hon'ble Supreme Court in the matter of Pioneer Urban Land and Infrastructure Ltd. & Anr. vs. Union of India & Ors. in Writ Petition (Civil) No.43 of 2019 dated 9.8.2019 as under the provisions of IBC,2016 the various sums which have been made to the CD is in relation to financing the project which entitles them to be treated as 'Financial Creditors'. Further, even in relation to assured return as undertaken by the CD, taking into consideration the decision of Hon'ble National Company Law Appellate Tribunal a home buyer is entitled to maintain a Petition as the amounts have been paid as against consideration for the time value for money and thus in the capacity of the home buyer an expectation to either hand over the property or to entertain the claim for the refund of amount along with compensation from the CD on the expiry of the time limit failing which there is a 'default', is also further required to be noted that the Petitioner is not a party to the dispute as between the CD and the land owner. Under the circumstances, Petitioner is not required to await for the decision of the Hon'ble High Court of Delhi for getting refund if the CD is not able to give possession. In the



circumstances, we do not find any exception to be made as submitted by the CD that there is impossibility suffered by the CD. If that being so, the CD is required to return back the money which was collected by it by way of financing the project and ⁱⁿ effect a commercial borrowing as envisaged under the provisions of IBC,2016 more particularly, under Section 5(8)(f) of IBC,2016. Having failed to do so, we are of the considered view that default has been committed on the part of CD in relation to the claim as made by the Petitioner which warrants the initiation of the CIRP as against the CD. The petition stands admitted. Ue

8. Shri Manish Gupta, registered with IBBI having registration number IBBI/IPA-001/IP-P0113/2018-2019/11826, email: ip.manishgupta31@gmail.com, Mob.9810215494, is appointed as the Interim Resolution Professional (IRP). A declaration in Form 2 has been filed by the above said IRP annexed at page 82-83 of the typed set. The IRP shall strictly act in accordance with provisions of IBC,2016 and the attendant rules and regulations framed there under in relation to conduct of IRP and as well as in relation to the CIRP of the CD.

9. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:



(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.

However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

10. Based on the above terms, the Application/Petition stands admitted in terms of Section 7(5)(i) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition a copy of the order shall also be forwarded to IRP named above for initiation of action and to IBBI for its records.

- Sol -
(K.K.VOHRA,
MEMBER(Technical),

- Sol -
(R.VARADHARAJAN)
MEMBER(Judicial)

U.D.Mehta
06.09.2019

9 | Page