

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

CP No. 481/(IB)-MB-V/2021

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

In the matter of

1. Deepak Cheeda

1001, Cairo Skyline Oasis Complex.
Primer Road, Vidya Vihar West

2. Neeta Kenny

B-702, Nestle Apartments Opp.
Toyota Showroom, Link Road,
Malad West, Mumbai-400064

3. Nagin Parekh

6-A, Federation House, 24/30, Opp.
Metro, Anandilal Poddar Marg.
Mumbai- 400002.

4. Krishna Kulkarni

701, Ekta Elegance CHS, New Link
Road, Opp. Eskay Resorts Borvali
West-400092

5. Harshad Singh Rana

I-120, Iscon platinum Ahmedabad
Gujarat- 380058.

6. Parth Kamlesh Doshi

9, Sangam Society, Surendra
Nagar, Wadhwan, Gujarat-363001

**7. Infinium Natural Resources
Investments Pvt. Ltd.**

909, Shitiratna Complex, Off. C G
Road, Nr. Panchwati Circle
Ahmedabad Gujarat 380006

8. Thakkar Keyur Balkrishna HUF

4/265 Satyagrah Chhavani, Satellite
road, Ahmedabad Gujarat 380015

9. Keyur Balkrishna Thakkar

4/265 Satyagrah Chhavani, Satellite
road, Ahmedabad Gujarat 380015

10. Ulpa Shah

14, 3rd Floor, Bhandari Building,
Wadiya Street, Tardeo, Mumbai 400
034

11. Mrs. Jagaruti Thakkar

Keyur Balkrishna Thakkar 4/265
Satyagrah Chhavani, Satellite road,
Ahmedabad Gujarat 380015

12. Bacon Vanijya Private Limited

Godoun 09, SG Road Po Kankrol,
Taluka Himatnagar Sabar Kantha GJ
383001

.... Petitioners/Financial Creditors

Vs.

**M/s. Anuradha Real Estate
Developers Private Limited,**

1069, Near Balaji School, Vlg Malad
West, bhd Eveshine mall Mumbai
400064 in

...Corporate Debtor/Respondent

Order Pronounced On: 11.08.2021

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Mr. Yakshay Chedda Adv.

For the Respondent : Mr. Amol Kumaria Adv.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. The Petitioners/Applicant viz.

- i. Deepak Cheeda
- ii. Neeta Kenny
- iii. Nagin Parekh
- iv. Krishna Kulkarni

- v. Harshad Singh Rana
- vi. Parth Kamlesh Doshi
- vii. Infinium Natural Resources Investments Pvt. Ltd.
- viii. Thakkar Keyur Balkrishna HUF
- ix. Keyur Balkrishna Thakkar
- x. Ulpa Shah
- xi. Mrs. Jagaruti Thakkar
- xii. Bacon Vanijya Private Limited (hereinafter as Petitioner)

has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of “Financial Creditor” by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against ‘M/s. Anuradha Real Estate Developers Private Limited’ (hereinafter as ‘Corporate Debtor’).

2. In the requisite Form-1, under the head “Particulars of Financial Debt” the total amount claimed to be in default is Rs. 12,59,40,000/-. Apart from this, the Petitioners are also entitled to interest @ 9% on the default amount until the date of payment. The date of default is stated to be between 2018 to 2020.

BRIEF HISTORY OF THE CASE

3. Anuradha Real Estate Developers Private Limited is a private limited company incorporated under the Companies Act, 1956, having Registration no. U454000MH2009PTC196597. The company was incorporated on 21.10.2009.
4. The Corporate Debtor through a newspaper advertisement invited the general public to purchase the residential building ‘Royal Accord’ proposed to be developed at Village, Malad, Taluka Borivali bearing survey no. 429, Hissa No. 1/3, C.T.S No. 1069.

5. By this advertisement the Financial Creditors purchased their respective flats from the Corporate Debtor on the following dates:

S.No.	Name of Applicant	Flat Nos.	Date of Booking
1.	Deepak Chheda,	1302	31.12.2013
2.	Neeta Kenny	1602	03.02.2014
3.	Nagin Parekh	903	27.01.2017
4.	Krishna Kulkarni	2201	06.02.2017
5.	Krishna Kulkarni	2202	06.02.2017
6.	Harshad Singh Rana	2102	26.11.2020
7.	Parth Kamlesh Doshi	2101	26.11.2020
8.	Infinium Natural Resources Investments Pvt Ltd	202	07.08.2020
9.	Thakkar Keyur Balkrishna HUF	2001	18.09.2020
10.	Keyur Balkrishna Thakkar	701	18.09.2020
11.	Ulpa Shah	2604	20.02.2017
12.	Mrs. Jagaruti Thakkar	801	18.08.2020
13.	Bacon Vanijya Private Limited	3004	05.10.2020
14.	Bacon Vanijya Private Limited	3104	05.10.2020

6. The separate agreement for sale/ allotment letter between each Financial Creditor and Corporate Debtor has been executed between the years 2013-2020. Copies of the agreements are annexed to the Petition.
7. As per the Schedule of payments, the payments to be made were linked to the stages of construction. As per the said agreements/allotment, the unit numbers and the total consideration are as under:

SR. NO	FLAT NO	NAME OF THE PARTY	CARPET AREA (in Sq. Ft)	TOTAL FLAT VALUE (INR)	Type of Document
1	1302	Deepak Cheeda	1020	1,37,60,000.00	Agreement for Sale
2	1602	Neeta Kenny	1020	1,28,00,000.00	Allotment Letter
3	903	Nagin Parekh	820	1,39,00,000.00	Allotment Letter
4	2201	Krishna Kulkarni	1020	2,11,47,000.00	Allotment

5	2202	Krishna Kulkarni	1020	2,11,47,000.00	Allotment Letter
6	2102	Harshad singh Rana	1020	2,11,47,000.00	Agreement for Sale
7	2101	Parth Kamlesh Doshi	1020	2,11,47,000.00	Agreement for Sale
8	202	Infinium Natural Resources Investments Pvt Ltd	1020	2,02,50,000.00	Allotment Letter
9	2001	Thakkar Keyur Balkrishna HUF	1020	2,11,47,000.00	Allotment Letter
10	701	Keyur Balkrishna Thakkar	1020	2,11,47,000.00	Allotment Letter
11	2604	Ulpa Shah	820	1,80,00,000.00	Allotment Letter
12	801	Mrs. Jagaruti Thakkar	1020	2,11,47,000.00	Allotment Letter
13	3004	Bacon Vanijya Private Limited	820	1,68,00,000.00	Allotment Letter
14	3104	Bacon Vanijya Private Limited	820	1,68,00,000.00	Allotment Letter
		TOTAL		₹ 26,03,39,000.00	

8. Again, the demand was raised by the Corporate Debtor from the flat owners representing the various stages of construction of the building wherein the said flats, were situated and the Flat Owners made payments as per the demands raised by the Corporate Debtor. The following payments have been made on behalf of the Financial Creditors: -

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SR. NO	FLAT NO	NAME OF THE PARTY	TOTAL FLAT VALUE (INR)	AMOUNT PAID (INR)	BALANCE AMOUNT (INR)
1	1302	Deepak Cheeda	1,37,60,000.00	85,40,000.00	52,20,000.00
2	1602	Neeta Kenny	1,28,00,000.00	58,50,000.00	69,50,000.00
3	903	Nagin Parekh	1,39,00,000.00	5,00,000.00	1,34,00,000.00
4	2201	Krishna Kulkarni	2,11,47,000.00	5,00,000.00	2,06,47,000.00
5	2202	Krishna Kulkarni	2,11,47,000.00	5,00,000.00	2,06,47,000.00
6	2102	Harshad singh Rana	2,11,47,000.00	1,80,00,000.00	31,47,000.00
7	2101	Parth Kamlesh Doshi	2,11,47,000.00	1,80,00,000.00	31,47,000.00
8	202	Infinium Natural Resources Investments Pvt Ltd	2,02,50,000.00	15,00,000.00	1,87,50,000.00
9	2001	Thakkar Keyur	2,11,47,000.00	1,98,50,000.00	12,97,000.00

		Balkrishna HUF			
10	701	Keyur Balkrishna Thakkar	2,11,47,000.00	1,98,50,000.00	12,97,000.00
11	2604	Ulpa Shah	1,80,00,000.00	10,00,000.00	1,70,00,000.00
12	801	Mrs. Jagaruti Thakkar	2,11,47,000.00	1,98,50,000.00	12,97,000.00
13	3004	Bacon Vanijya Private Limited	1,68,00,000.00	60,00,000.00	1,08,00,000.00
14	3104	Bacon Vanijya Private Limited	1,68,00,000.00	60,00,000.00	1,08,00,000.00
		TOTAL	₹ 26,03,39,000.00	₹ 12,59,40,000.00	₹ 13,43,99,000.00

9. Despite making substantial payments to the Corporate Debtor, the Corporate Debtor has failed to deliver the apartments on time.
10. The Petitioners submits that the date of delivery of the flats are between 2018 to 2020 but the flats are not ready by the respective dates. The Corporate Debtor has failed to deliver the flats even after three years in case of few Financial Creditors and one year in case of other Financial Creditors has lapsed from the actual date of delivery.
11. Hence, due to nonpayment of debt the Petitioners file this Petition u/s 7 of the IBC as a Financial Creditor for initiating the Corporate insolvency Resolution process (CIRP) against the Corporate Debtor.

SUBMISSIONS BY THE CORPORATE DEBTOR:

12. The Corporate Debtor submits that due to Covid-19 the business of the Corporate Debtor faces a huge loss but now the Corporate Debtor with the support of its employees has been able to avert a financial crisis and slowly recovering from the global financial meltdown, the Corporate Debtor has been unable to raise funds for this project.
13. The Corporate Debtor has availed a “Term Loan” of Rs. 100 Cr. From Dewan Housing Finance Limited (DHFL) which is presently under the CIRP. The total outstanding amount that has to be paid to DHFL is ‘nil’ as of date. However, the DHFL is claiming the amount from Corporate Debtor. The Corporate Debtor mentions that DHFL has defaulted in making payments to the Corporate Debtor that has affected the cash flow of this project and DHFL.

14. The Corporate Debtor has completed the construction of Stilt+ 13 slabs. The Corporate Debtor submits that the Corporate Debtor company has sold various other flats. If this petition is admitted, the Corporate Debtor mentions it would result into stalling of the work of re-development which has gained momentum now.
15. The Corporate Debtor submits that the Petitioners claim are premature according to the revised date of completion of the said project as submitted to Maharashtra Real Estate Authority (MahaRERA) is 30.06.2023 consequently date of possession for all the allottees are extend till 30.06.2023.
16. The Corporate Debtor has acknowledged that monies have been received from each of the Petitioner and in that construction should have proceeded.
17. In view of the above the Petition filed by the Petitioners is liable to be dismissed.

FINDINGS: -

18. This Petition has been collectively filed by the Twelve Flats owners herein called after “Petitioners or “Financial Creditors” against M/s Anuradha Real Estate Developers Private Limited, herein called after “Corporate Debtor” on 04.03.2021. as per the Petition, the total amount of debt subsequent to default is Rs. 12,59,40,000/-. This Petition has been filed under section 7(1) of the Code which allows that the flat owners in real estate projects consists 100 in number or 10% of the total number of the flats one can file a Petition against the Corporate Debtor for default in their construction under the housing project. The Bench notes that the Petition has been filed by the 12% of total flat owners. Therefore, it meets the threshold level of initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

19. For the purpose of pronouncement Admission against the Corporate Debtor Section 7(1) of the Code reads as under-

(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

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:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

20. The Corporate Debtor is a Private Limited Company engaged in the business of construction and real estate, incorporated under the provisions of the Companies Act, 1956.

21.As per the Petition the Petitioners via advertisement bought flats from the Corporate Debtor on the following dates:

S.No.	Name of Applicant	Flat Nos.	Date of Booking
1.	Deepak Chheda,	1302	31.12.2013
2.	Neeta Kenny	1602	03.02.2014
3.	Nagin Parekh	903	27.01.2017
4.	Krishna Kulkarni	2201	06.02.2017
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22.The separate agreements/allotment letters have been executed between the years 2013 to 2020 and as per the agreement, the date of possession of the flats was between the years 2018 to 2020.

23.The bench notes that the Petitioners have made substantial sums of monies to the Corporate Debtor with respect to the flats but till date, the Corporate Debtor has failed to give the possessions to the flat owners.

24. The Contention of the Corporate Debtor with regard to the date of possession of the RERA website is 30.06.2023 and therefore the Petition is premature, is rejected because the Corporate Debtor unilaterally changed the date of the possession without taking the prior approval of the Flat Owners. Therefore, the change of date is not binding upon the Financial Creditors.

25. The other contentions of the Corporate Debtor that the said project could not be completed because the DHFL did not release the funds as promised in a time-bound manner affecting the cash flow of the Corporate Debtor, the Covid-19 situation and that the Corporate Debtor do not have the requisite finances to complete the project will not stand in the way of admission of the petition and hence rejected.
26. On going through the submissions made by the Learned Counsel for both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt and it can be said that the Corporate Debtor has evidently admitted the debt and default. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
27. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner.
28. Considering the above facts, we come to the conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., the existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.
29. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the

Petitioner, we are of the conscientious view that this Petition deserves **‘Admission’**.

30. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
31. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, CA Arpan Maheshkumar Shah, having registration No. IBBI/IPA-001/IP-P01847/2019-2020/12862, having address at 301, Shoppers Plaza-4, Opp. BSNL, C G Road Ahmedabad-380009, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
32. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during the Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
33. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on the appointment, as per the provisions of the Code.

34. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

35. In view of the above, the Bench “**Allows**” the Company Petition No. **481/(IB)-MB-V/2021** u/s.7 initiating CIRP against the Corporate Debtor M/s. Anuradha Real Estate Developers Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

36. Ordered Accordingly.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)