

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

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In the matter of

**M/s. Gulshan Sethi
R/o G-116, Preet Vihar
Delhi-110092**

.....Operational Creditor

V/s

**M/s. Alisa Infratech Pvt. Ltd.
LGF-119, (B-7) World Trade Centre
Babar Road, Connaught Place,
New Delhi-110001**

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on 3rd January, 2019

Present:

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)**

Present:

**For the Petitioner: Mr. Gaurav Jain, Mr. Rajiv Virmani, Mr. Videh
Vaish and Mr. Arjun Agarwal, Advocates**

**For the Respondent: Mr. Vaibhav Gaggar, Mr. Adarsh Chamoli, Mr.
Aditya Vijaya Kumar and Mr. Arjun Kant,
Advocates**

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioner has invoked a provision of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a Code) on grounds of its inability to liquidate the financial debt.



2. As per averments, the petitioner had booked commercial units with the Corporate Debtor, a company engaged in the business of developing real estate projects. The Financial Creditors paid a total sum of Rs. 1 crore and was allotted 5 studio apartments bearing nos. 901 to 905 in a project to be developed as 'Oh My God' in Sector 129, Noida Gautam Budh Nagar, UP. The financial creditors also booked 5 more units bearing nos. 1001 to 1005 on 28.12.2013 against payment of another Rs. 1 core. The Corporate Debtor assured the Financial Creditor that the construction would be completed within 3 years and possession delivered. In the event of a default, the Corporate Debtor undertook to pay damages @ Rs. 1000 per day. However, it is alleged that no construction has taken place till date which gave rise to filing of a criminal complaint against the Directors of the Corporate Debtor. During these proceedings, the Corporate Debtor issued a cheque of Rs. 1 Crore towards the agreed damages, which needless to state returned dishonoured with reasons of the Account being closed.

3. In the reply filed by the Corporate Debtor, they seek rejection of the petition on grounds of suppression of facts. It is their case that the petitioner is indulging in forum shopping as they have already approached RERA for redressal of their grievance in not getting delivery and possession of the units. It is also submitted that the Financial Creditor has filed an FIR with the Station House Officer, Barakhamba Road, Police Station, New Delhi, an application under Section 156(3) of CRPC in the Court of CMM, New Delhi and a complaint with the Economic Offences Wing, New Delhi. Ld. Counsel for the Corporate Debtor submits that the proceedings before RERA are still sub judice and the petitioner herein cannot be permitted to agitate his grievance before this forum. It is argued that as the factum of filing a complaint



with RERA was not disclosed in the present petition, the petitioner is guilty of suppression of facts.

4. Notwithstanding the above, the Ld. Counsel for the Corporate Debtor seeks to justify the dishonour of the cheque given by way of damages on grounds that the period of delay for which Rs. 1crore has been given has not yet expired and therefore the amount has not fallen due. Ld. Counsel also wishes to justify the delay in construction on grounds of unavoidable circumstances, being restrain orders from the NGT and that the construction and development of the project had been endorsed to another company called Beyer.

5. On the appraisal of the facts of the case, it is not disputed that the project has not been constructed and the Corporate Debtor is in no position to handover possession. This is evident from the Action Taken Report submitted by the police to the Ld. CMM which reveals that no construction has commenced till date. Under such circumstances, notwithstanding the damages, the petitioner is entitled to his refund. The factum of filing criminal complaints or proceedings before RERA are independent and not a bar to bring about a motion for corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate its debt. We also do not find any merit in the submission that the petition suffers from suppression of facts. The factum of pendency for RERA is a separate remedy and not a relevant factor for considering initiation of CIR proceedings against the Corporate Debtor. It therefore does not amount to suppression of fact nor does it amount to forum shopping. The prayer made herein is entirely on a different footing and cannot be avoided on grounds of the matter being under consideration before the criminal court or RERA. It cannot be expected that the petitioner should wait indefinitely for construction to be carried out over years only because of lodging the complaint before RERA where



they may at best be awarded interest on account of delayed possession. If the petitioner desires return of his money on grounds of non-adherence to the time line for handing over possession, he is entitled to a refund. As the Corporate Debtor has not come forth with any proposal, the financial creditor is entitled to the relief prayed herein.

6. The aforesaid decision is based only on grounds of the Corporate Debtor's inability to return the principal amount and is not based on the dishonour of the cheque which was tendered by way of liquidated damages.

7. In view of the above observations, the prayer of the Financial Creditor merits consideration. The Petition is accordingly Admitted.

8. A moratorium in terms of Section 14 of Code comes into effect forthwith, staying:

"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.

Further,

(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.

(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."

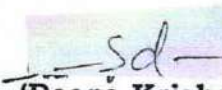
9. The Operational Creditor has proposed the name of Mrs. Monika Agarwal, Registration No. IBBI/IPA-001/IP-P01137/2018-2019/11866, Address: 205, Chopra Complex, 8, Preet Vihar, Community Centre, New Delhi-110092, Email: cacsmonika.agarwal@gmail.com to be appointed as the

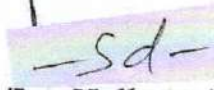


IRP. His consent and certificate of eligibility are on record. We therefore confirm Mrs. Monika Agarwal as the IRP in this case. She is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21. The IRP shall file her report within 30 days as per statutory requirements.

10. Copy of the order be communicated to both the parties as well as to the IRP.

11. To come up on 13th February, 2018 for further consideration.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)



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DD/DR/AR Court Officer
National Company Law Tribunal
New Delhi


व.वि.चं. राजू V.V.B. RAJU
उप पंजीयक / DEPUTY REGISTRAR
राष्ट्रीय कम्पनी विधि अभिकरण
NATIONAL COMPANY LAW TRIBUNAL
Block-3, 6th Floor, CGO COMPLEX
LODHI ROAD, NEW DELHI - 110003