

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**C.P. (IB) No. 1605/KB/2018**

**IN THE MATTER OF:**

**An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.**

**-And-**

**IN THE MATTER OF:**

- 1. DR. S.C. AHUJA**, Son of Shri S.D. Ahuja, R/o 290, Asian Games Village Complex, New Delhi 110016.
- 2. M/S. JAIN ESTATES**, Through its Partner, Mr. Amit Jain having its registered office at A-21, Green Park, New Delhi.

**... Financial Creditors**

**-Versus-**

**IN THE MATTER OF:**

**M/S. KASHISH DEVELOPERS LIMITED**, 87, Old A.G. Colony, Kadru, Ranchi, Jharkhand – 834002, India

**... Corporate Debtor**

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**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &  
Shri Harish Chander Suri, Hon'ble Member (Technical)**

**Counsel on Record:**

1. Mr. Shourjyo Mukherjee ]
2. Mr. Vishwarup Acharyya ] For Financial Creditor

**Date of pronouncement of Order: 7 /11/2019.**

**ORDER**

**Per Harish Chander Suri, Member (Technical).**

1. This Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **(1) Dr. S.C. Ahuja and (2) M/s. Jain Estates** through its Partner Mr. Amit Jain, hereinafter jointly referred to as the "Financial Creditors" seeking orders to initiate Corporate Insolvency Resolution Process against **M/s. Kashish Developers Limited**, having its registered office at Jharkhand, hereinafter referred to as the "Corporate Debtor".
2. It is submitted that in the year 2012, the Corporate Debtor had approached the Financial Creditors seeking investment into their project "MANOR ONE" being developed by them and the Financial Creditors jointly booked a Unit in the said Group Housing Complex wherein Apartment No. C3-11A on Eleventh Floor in Block/Tower C3

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admeasuring 2325 sq.ft. (allotted Unit) for a total sale consideration of Rs. 1,52,42,725/- (Rupees One Crore Fifty Two Thousand Forty Two Lacs Seven Hundred Twenty Five Only) and an allotment letter dated 10<sup>th</sup> November, 2012 was issued to the Financial Creditor, along with an Apartment Buyer's Agreement also executed between the parties on 30<sup>th</sup> November, 2012.

3. It is submitted that a sum of Rs. 50,35,886/- (Rupees Fifty Lacs Thirty Five Thousand Eight Hundred Eighty Six Only) was paid as part payment of the allotted Unit against receipts acknowledging the aforesaid amount but, since there was no construction undertaken by the Corporate Debtor as per schedule, the Financial Creditor did not pay further amounts and the Financial Creditor was left with no option but to seek cancellation and refund of the entire amount paid towards the purchase of the said allotted Unit. Accordingly, a demand notice dated 2<sup>nd</sup> June, 2018 calling upon the Corporate Debtor to refund the aforesaid amount along with interest @ 24% per annum but neither any reply was received nor the refund was initiated by the Corporate Debtor.
4. It is submitted that as on 19<sup>th</sup> October, 2018, a sum of Rs. 1,23,18,735/- (Rupees One Crore Twenty Three Lacs Eighteen Thousand Seven Hundred Thirty Five Only) has become outstanding and payable by the Corporate Debtor to the Financial Creditor. The

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Financial Creditor has filed all the relevant documents in support of its claim which are enumerated herein below:-

<p><i>List of other documents attached to this application in order to prove the existence of Financial Debt, the amount and date of default</i></p>	<p><b><u>List of Documents:</u></b></p> <ol style="list-style-type: none"><li>1. True copies of Special Power of attorney dated 30.10.2018 in favour of Mr. Amit Jain along with registered partnership deed dated 16.12.2004 and registration certificate of partnership dated 20.04.2012. (Annexure A-1 (Colly)).</li><li>2. True copy of Master data of Corporate Debtor (Annexure A-2).</li><li>3. True copy of the Receipt no. 39 dated 19.08.2012 acknowledging receipt of Rs. 12,59,881/- for the said allotted Unit (Annexure A-3).</li><li>4. True copy of the Receipt No. 40 dated 19.08.2012 acknowledging receipt of Rs. 8,98,149/- for the said allotted Unit (Annexure A-4).</li><li>5. True copy of the Receipt No. 114 dated 20.08.2012 acknowledging receipt of Rs. 10,00,000/- for the said allotted Unit (Annexure A-5).</li><li>6. True copy of the Allotment Letter dated 10.11.2012 for the said allotted Unit (Annexure A-6).</li><li>7. True copy of the Apartment Buyer's Agreement dated 30.11.2012 signed and executed by the Parties hereto in favour of Financial Creditors for the said allotted Unit (Annexure A-7).</li><li>8. True copy of Receipt No. KDL/1027 dated 05.01.2013 acknowledging receipt of Rs.</li></ol>
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	<p>9,38,928/- for the said allotted Unit (Annexure A-8).</p> <p>9. True copy of Receipt No. KDL/1028 dated 05.01.2013 acknowledging receipt of Rs. 9,38,928/- for the said allotted Unit (Annexure A-9).</p> <p>10. True office copies of the Demand notices dated 02.06.2018 and 16.06.2018 along with postal receipts (Annexure A-10) (colly).</p> <p>11. Certified copies of Bank account statements of both the Financial Creditors for the period 01.06.2012 to 30.0-9.2018 (Annexure A-11 (Colly).</p>
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5. In support of their case the Financial Creditors have referred to clause 3 (referring to possession) of the Apartment Buyer's Agreement dated 30<sup>th</sup> November, 2012 which is reproduced as under:-

**" 3. POSSESSION:**

**a) Offer of possession:**

*That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement, as prescribed by the Developer, the Developer proposes to hand over the possession of the said APARTMENT within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this Agreement. It is however understood*

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*between the parties that the possession of various Blocks/Towers comprised in the Complex and also the various common facilities planned therein shall be ready & completed in phases wise and will be handed over to the allottees of different Blocks/Towers as and when the same will be completed and in a phased manner."*

6. The Financial Creditors have also proposed the name of Mr. Jugraj Singh, a Chartered Accountant who has given his letter of consent dated 22<sup>nd</sup> October, 2018 and has submitted that he is eligible to be appointed as an IRP.
7. In the reply affidavit, the Corporate Debtor has submitted that the application is not maintainable because the Home Buyers have defaulted their commitment towards payment of instalment. It is further submitted that the NBFC had failed and neglected to disburse fund which has adversely affected the completion of the project.
8. It is submitted by the Corporate Debtor that the Project was getting delayed due to several issues including scarcity of funds and that to ensure cash flow and timely delivery, the Respondent had entered into an arrangement with Land owning Company, namely, Vinman Constructions Limited to arrange and infuse funds in the Project. In this process Landowning Company obtained sanction of loan of Rs. 725 crores from an NBFC namely Dewan Housing Finance Limited. Sanction letter dated 19<sup>th</sup> March, 2018 is annexed as Annexure 'C' to the application.

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9. It is strange that the Corporate Debtor has annexed with the reply a letter from DHFL dated 19<sup>th</sup> March, 2018 with a view to submit that the project loan of Rs. 725 crores was sanctioned to Vinman Constructions Limited and its co-borrower, whereas the time of 36 months given to the buyers of the houses as agreed in the Apartment Buyer's Agreement dated 30<sup>th</sup> November, 2012, had expired on 30<sup>th</sup> November, 2015 or at the most on 31<sup>st</sup> May, 2016, even if the grace period is granted. This plea of the Corporate Debtor has no legs to stand.
10. In the rejoinder, the Financial Creditors have reiterated the facts and statements mentioned in the application and has vehemently denied all the allegations made in the reply affidavit. It is submitted that completion of the project is still far away from reality and, therefore, submitted that the prayer made in the petition might be allowed in favour of the Financial Creditors and against the Corporate Debtor.
11. We have heard the Ld. Counsel for the Financial Creditors and perused all the pleadings including the documents placed on record by the parties. We are convinced that the Financial Creditors are covered under definition of Home Buyer's and had booked the flat in the Project advertised by the Corporate Debtor which was to be completed and possession to be given to the Financial Creditors

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within 36 months or at the most 42 months with grace period, which the Corporate Debtor has completely failed to give.

12. It is further worthwhile to mention that in spite of demand notice having been issued to the Corporate Debtor, no payment was forth-coming to the Financial Creditors thereby compelling the Financial Creditors to approach this Tribunal for the default having been committed by the Corporate Debtor in refunding the amount admittedly owed by the Corporate Debtor to the Financial Creditor along with interest.
13. Since the basic essential requirements of an application under Section 7 of the Code are fulfilled and the application of the Applicant is complete in all respects, we have no other option but to admit the petition with the following directions/orders:-

### **ORDERS**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Kashish Developers Limited** is hereby admitted.

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- ii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process made and call for the submission of claims under Section 15.
- iii) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
  - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

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- iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- v) 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.
- vi) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- vii) 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 the 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.
- viii) **Mr. Jugraj Singh**, C/o. Yogesh Mittal, B-36 Jhilmil Industrial Area, Delhi - 110092 an Interim Resolution Professional having **Registration No. IBBI/IPA-01/IP-P00731/2017-2018/11208**, Email: [jb@jsba.in](mailto:jb@jsba.in), is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of

creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

- ix) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- x) The Financial Creditor is directed to deposit Rs. 3,00,000/- (Rupees Three Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar, NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR process by the IRP within One week of the date of this order.
- xi) The Registry is hereby directed under section 7(4) of the Insolvency and Bankruptcy Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.
- xii) List the matter on **09.12.2019** for filing of the progress report.

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- xiii) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member (T)**



**(Jinan K.R.)**  
**Member (J)**

Signed on this, the 7<sup>th</sup> day of November, 2019.

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