

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI**

IBA/471/2019 filed 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 **M/s. Sabari Realtors Private Limited**

Mr. Rakesh P. Sheth

... Financial Creditor

-vs-

M/s. Sabari Realtors Private Limited

... Corporate Debtor

Order delivered on 30th of September, 2019

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : Mr. Nithyaesh Natraj
for M/s. L.Narasimha Varman, Counsel

ORDER

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under Adjudication is IBA/471/2019 that has been filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code,

2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. As seen from the record, on 02.05.2019, the Registry was directed to issue notice to the Corporate Debtor and the Financial Creditor was also permitted to take private notice on the Corporate Debtor and the case was posted to 23.07.2019. On 23.07.2019, the notice sent to the Corporate Debtor returned with endorsement 'unclaimed', and therefore, the Financial Creditor was directed to take notice by way of newspaper publication and the case was posted to 27.08.2019. On 27.08.2019, the Financial Creditor has filed proof of paper publication, yet there was no representation on behalf of the Corporate Debtor.

Hence, the Corporate Debtor was proceeded *ex-parte* on 27.08.2019.

3. Heard the Counsel for the Financial Creditor and perused the record placed on file.

4. The Financial Creditor has claimed an amount of Rs.30,20,283/- as outstanding against the Corporate Debtor as on the date of filing of the Application.

5. The brief facts of the case are that both the Financial Creditor and Corporate Debtor entered into an Agreement of Sale dated 25.10.2010 for purchase of Flat No. 904, at Tower Ashoka in the complex belonging to the Corporate Debtor. The Agreement provided the period for execution of UDS in favour of the Financial Creditor as three months from the date of agreement. As per the Construction Agreement dated 25.10.2010, the time period for completion was 24 months, with a grace period of 3 months.

6. Pursuant to the said Agreements, the Financial Creditor has made payment of Rs.13,90,100 /- to the Corporate Debtor on 02.07.2011. The Financial Creditor has placed on record the statement of account issued by the Corporate Debtor as on 02.07.2011 at page 10 of the typed set filed with the Application wherein the details of the property allotted to the Financial Creditor including the initial payment made to the Corporate Debtor are reflected.

7. It is stated that the construction which was effected by the Corporate Debtor was moving at an extremely slow pace and was not meeting the timelines as agreed between the parties. Therefore, the Financial Creditor has sent a letter dated 17.03.2012 to the Corporate Debtor to cancel the flat which was allotted to the Financial Creditor and a request was made to the Corporate Debtor to refund the amount paid by him at the earliest, copy of letter dated 17.03.2012 is placed at page 11 of the typed set filed with the Application, to which the Corporate Debtor has sent a

communication dated 08.12.2016 enclosing therewith a Cheque dated 30.11.2016 for a sum of Rs.1,00,000/-, being the part of refund.

8. The Financial Creditor has sent the Lawyer's Notice dated 31.01.2018 to the Corporate Debtor calling upon the Corporate Debtor to pay the balance amount of Rs.12,90,100/- along with interest, copy of notice is placed at pages 14 to 17 of the typed set filed with the Application, to which the Corporate Debtor vide its communication dated 10.02.2018 has replied that in view of the financial constraints, the Corporate Debtor shall make arrangement to settle the amount due to the Financial Creditor within 6 months from that date. Copy of reply dated 10.02.2018 is placed at page 18 of the typed set filed with the Application.

9. The Financial Creditor has placed on record the Master Data of the Corporate Debtor at page 20 of the typed set filed with the Application which reflects the status of the Corporate Debtor as active. The interest calculation sheet is

placed at page 21 of the typed set filed with the Application which shows that after deducting Rs.1 Lakh received by the Financial Creditor, the total outstanding amount due from the Corporate Debtor is shown as Rs.30,20,283/-, as on 30.11.2016.

10. The Financial Creditor has placed on record the certified copy of bank statement for the period from 01.12.2016 to 07.03.2019 at pages 22 to 43 of the typed set filed with the Application.

11. The Financial Creditor has fulfilled all the requirements of law. The Financial Creditor has also proposed the name of IRP after seeking consent in Form-2. The documentary evidence placed on record is sufficient to ascertain the default on the part of the Corporate Debtor. Therefore, the Application is admitted. The commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

12. Mr. Swarnamani Ramasamy, is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as reflects from Form-2. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

13. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is hereby ordered to prohibit all of the following, namely:

- (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 (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.

14. The supply of essential goods or services of the Corporate Debtor/Guarantor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

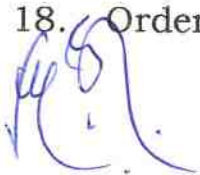
15. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The Directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

16. The Financial Creditor and the Registry are also directed to send the copy of this Order with immediate effect to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016. The address details of the IRP are as follows: -

Mr. Swarnamani Ramasamy,
Reg.No. IBBI/IPA/002-IP-N-00560/2017-18/11701,
D6, Dev Apartments,
32, Kalakshetra Road,
Lakshmipuram, Thiruvanmiyur,
Chennai – 600 041
Email ID: ramasamy41@gmail.com

17. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor with immediate effect.

18. Order is pronounced in open court.



(ANIL KUMAR B)
MEMBER (TECHNICAL)



(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)

P.ATHISTAMANI