

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1094/ND/2019

In the matter of

**Mr. Rajan Kumar Bajaj,
Sole Proprietor M/s. S. S. Enterprises
Through its proprietor
Rajan Kumar Bajaj
Having office at:
C - 289, Sector - 10, Noida,
Uttar Pradesh - 201301**

...Applicant/Financial Creditor

Versus

**Homes Connect Developers Pvt. Ltd.
Having its registered office at
9/100, Shastri Gali, Vishwas Nagar,
Shahdara, Delhi - 110032;
Also at
A - 19, Sector - 64, Noida
Uttar Pradesh - 201301**

...Respondent/ Corporate Debtor

SECTION: 7 of IBC, 2016

Order delivered on: 25.10.2019

Coram:

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SMT. SAROJ RAJWARE, HON'BLE MEMBER (T)**

**Present for the Petitioner.: Mr. Ritesh Agarwal, Ms. Teejas Bhatia,
Ms. Aishwarya Adlokha and Mr. Sonal
Rishabh, Advocates**

**Present for the Respondent: Mr. Ashish Deep Verma, Mr. Anshul
Chauhan, Mr. Khushant Wadhwa and
Mr. Upendra Nagar, Advocates**

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. This petition has been filed by the Financial Creditor praying for initiation of Corporate Insolvency Resolution Process of the respondent/Corporate Debtor.
2. As per the averments made the Financial Creditor is engaged in the business of carrying out civil contracts under the name and style of M/s. S.S. Enterprises. The Corporate Debtor is in the business of construction and proposed to develop a project "Galactic City" in Greater Noida. During the course of business dealings, the Corporate Debtor approached the Financial Creditor for grant financial assistance. A loan of Rs. 50 lakhs was given on interest @ 1% per month. Again on 12.09.2018, the Financial Creditor entered into the second MOU for an additional deposit of Rs. 40 lakhs on the same terms and conditions. The Corporate Debtor also agreed to grant a construction contract worth Rs. 10 Crores to the Financial Creditor.
3. The aforesaid two MOUs were superseded by a 3rd MOU dated 13.09.2017 wherein the Corporate Debtor acknowledged the deposit of Rs. 90 lakhs and agreed to repay the same with interest @ 2% per month. A lock-in-period of 11 months was agreed between the parties, after which the financial creditor could demand back the deposit by giving one month's notice. To secure its due repayment, the Corporate Debtor



executed and delivered two post-dated cheques, guaranteeing the repayment of the amounts availed. By way of additional security the Corporate Debtor also allotted plots measuring 100 sq. yards to the petitioner on 05.09.2017 bearing unit Nos. 1, 2, 17 and 18 situated in the Galactic City.

4. It is the Financial Creditor's case that upon completion of 11 months, he demanded back the deposit along with interest in terms of the MOU. Since the Corporate Debtor failed to take any steps, the Financial Creditor presented the security cheque no. 954592 dated 5th August, 2018 for Rs. 50 lakhs drawn on IndusInd Bank, which returned dishonoured on account of Insufficient Funds. The second cheque given as security for the due re-payment of Rs. 40 lakhs also returned dishonoured. A legal notice was sent to the Corporate Debtor demanding the amount along with the interest accruing thereon, to which there was no response. The Operational Creditor has therefore filed the present petition praying for Corporate Insolvency Resolution to be initiated against the Corporate Debtor.

5. Upon appearance, the Corporate Debtor has filed its reply and seeks to resist the petition on grounds that the said transaction does not fall within the ambit of a 'financial debt'. It is their case that the said amount was a refundable security deposit given in respect of a real estate transactions and cannot give rise to proceedings under the Insolvency

and Bankruptcy Code. The endeavor of the Corporate Debtor was to link this amount as a security towards the contract for construction promised to be awarded to the petitioner, but admittedly which was not done. The prayer made in the present petition is therefore impugned on the ground that the petitioner cannot claim to be a financial creditor as the said amount was given by way of security against the construction contract to be awarded to him and against allotment of plots.

6. Upon hearing the argument advanced by the Id. counsel, an inference about the real nature of the transaction appears to be grant of financial assistance attracting interests, even though it may be couched in terms of a "security deposit" against a proposed construction contract of Rs. 10 crores to be given.

7. The Corporate Debtor had agreed to pay interest @ 2% per month on the deposit made by the petitioner. These facts are not disputed. The transfer of Rs. 90 lakhs is not only evidenced by the Banking Transaction, but is also acknowledged by the Corporate Debtor as having been received. To secure the due re-payment of the amount and in acknowledgment of the terms and conditions of the MOU, the Corporate Debtor had tendered a cheque No. 954592 for Rs. 50 lakhs. Cheque towards payment of interest, net of TDS, were also tendered in terms of their agreement. The terms of the second agreement dated 12.09.2017 were identical to the First MOU. Vide this MOU, the petitioner had

deposited a sum of Rs. 40 lakhs with the respondent/Corporate Debtor. The aforesaid two MOUs were novated by the 3rd MOU dated 13.09.2017. As per the said terms the amount was consolidated to 90 lakhs. It was also agreed that there would be a lockin period of 11 months during which the period the petitioner would not demand back this amount back. The said amount was also secured by allotment of plots bearing unit Nos. 1, 2, 17 and 18 situated at Galactic City to be developed on Plot No. 6, Knowledge Park 5, Greater Noida West. To secure the timely payment of interest, 11 post-dated cheques were tendered. Legal notice issued by the petitioner is on record demanding back the aforesaid amount.

8. From the submissions made, it is apparent that financial assistance of Rs. 90 lakhs was given to the Corporate Debtor on terms and conditions inviting interest @ 2% per month. The Corporate Debtor has failed to remit the interest as well as the principal amount. The cheques given in discharge of the Principal loan liability were dishonoured on presentation, as were the cheques given for interest.

9. The Corporate Debtor tends to seek benefit of the word "security deposit". While the MoU may have been worded as such, one has to go to the intent of the parties which clearly gives rise to the surmise that same was given by way of financial assistance attracting interest payable thereon. The fact that the amount was secured, not only by cheques but



also by allotment of plots, would not change the nature of the financial claim. Reliance is sought to be made on the terms of the MoU which provides that in the event of default, the petitioner would be entitled to the 4 plots. Admittedly the possession of these plots was never offered and the same is more by way of an option to secure the debt. As per the terms and conditions the amount was payable on demand. The Corporate Debtor's failure to return the same has given rise to a default. Under such circumstances, where the claim of Rs. 90 lakhs and the interest due thereon remains unpaid, the financial creditor is entitled to the prayer made herein.

10. The submissions made by the Corporate Debtor is that the said amount is only a security and does not amount to a financial claim is misplaced as the entire intent is apparent from the terms and conditions of the MOU. The fact that the repayment of the loan was secured by offer of cheques and proposed allotments of plots cannot demolish the case of the Financial Creditor that a financial debt has occurred and the Corporate Debtor has defaulted in repayment of the same.

Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Code comes into effect forthwith, staying: *"(a) the institution of suits or continuation of any pending legal proceedings transferring or disposing of any asset of the Corporate Debtor, for closure or enforcement of any security or*

recovery of any property by the owner of lessor of the property occupied or in possession of the Corporate Debtor. In terms of Section 14 of the Code, the supply of essential goods or services shall not be terminated. The moratorium in effect till completion of the CIR Process.

11. The Operational Creditor has proposed the name of IRP. Accordingly, we appoint Mr. Ranjeet Kumar Verma, Registration No. IBBI/IPA-02/IP-N00301/2017-2018/10589, Resident of: SC - 53, 1F, Ansal Plaza, Sector 1, Vaishali Ghaziabad, UP - 201010 duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and file her report.

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

13. To come up on 2nd December, 2019.

-Sd-

(Saroj Rajwara)
Member (T)

-Sd-

(Ina Malhotra)
Member (J)