

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI COURT – VI**

**ITEM NO. 1**  
**CP IB 505/PB/2020**

**IN THE MATTER OF:**

**M/s. Japan Estates Pvt. Ltd. Vs. M/s. Rudra Buildwell Projects  
Pvt. Ltd.**

**Order under Section 7 of Insolvency and Bankruptcy Code, 2016**

**Order delivered on 07.06.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS,  
HON'BLE MEMBER (JUDICIAL)  
SHRI RAHUL BHATNAGAR,  
HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

CP IB 505/PB/2020 stands allowed.

**Sd/-**

**(Rahul Bhatnagar)  
Member Technical**

**Sd/-**

**(Bachu Venkat Balaram Das)  
Member Judicial**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-505/(PB)/2020**

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

**In the matter of:**

**M/S JAPNA ESTATES PVT. LTD.**

**Having its Registered Office at:**

Khasra No 1080, Bhalaswa Village,  
Delhi- 110033

...Petitioner/  
Financial Creditors

**Versus**

**M/S RUDRA BUILDWELL PROJECTS PVT. LTD**

**At:** D-53, Okhla Industrial Area,  
Phrase 1, New Delhi- 110020

...Respondent/  
Corporate Debtor

**Coram:****Shri. Bachu Venkat Balaram Das, Member (Judicial)****Shri. Rahul Bhatnagar, Member (Technical)**

**Counsel for Petitioner:** Mr. P. Nagesh, Sr. Adv., Mr. Rahul Malhotra and Ms. Tripti Kapoor, Advs,

**Counsel for Respondent:** Mr. Akshat Gupta, Mr. Pranav Jain and Ms. Sakshi Tikmany, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER**  
**(JUDICIAL)**

**Date: 07.06.2023**

1. This petition has been filed by M/s Japna Estate Pvt. Ltd, through Authorised Signatory of Financial Creditor, Mr. Sharan Pal Singh Sethi, duly authorised vide Board Resolution dated 13.01.2020 to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. M/s. Rudra Buildwell Projects Pvt. Ltd under Section 7 of the Insolvency and Bankruptcy Code 2016



(hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of debt of Rs. 1,17,18000/- (Rupees One Crore Seventeen Lakh Eighteen Thousand) as on 01.10.2019 and further interest rate of 23.17% per annum. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Corporate Debtor approached the Financial Creditor in the month of September, 2017 and represented that it is developing a high-end residential township at Plot No. GH-02B, Sector 1, Greater Noida, Uttar Pradesh on a land measuring approximately 33,538square meters. The project was named as Raudra Palace Heights' (hereinafter referred to as the "Project")
- ii. That the Financial Creditor expressed its desire to purchase residential units/flats in the project of the Corporate Debtor. Accordingly, the Financial Creditor and the Corporate Debtor entered into and executed Master Apartment



Purchase Agreement dated 27.02.2017 whereby the Financial Creditor purchased residential flats/units having super area of 11,310 square feet at the rate of Rs.1,800 per square feet.

- iii. The Financial Creditor paid the entire sale consideration of Rs 2,03,58,000/- towards purchase of the said flats by way of cheque bearing No. 363758 dated 01.07.2017
- iv. The Corporate Debtor was under an obligation to handover the physical possession of the duly constructed and completed flats within a period of four months in terms of Clause 6 of the Master Apartment Purchase Agreement.
- v. That in terms of the Clause 5(iv) of the Master Apartment Purchase Agreement, it was agreed that the Corporate Debtor shall pay a sum of Rs.4,00,000/- per month for a period of four months till the time the flats are handed over to the Financial Creditor in terms of the Clause 6 of the aforesaid Agreement. The Corporate



Debtor accordingly issued post-dated cheques towards payment of the said fixed monthly payments. The Corporate Debtor duly honoured the commitment to pay the said fixed monthly payments

- vi. That upon expiry of the period of four months stipulated in the Agreement, the Corporate Debtor expressed its inability to handover the flats to the Financial Creditor in terms of the stipulations in the Agreement and proposed to terminate the Agreement and further remit back the consideration paid by the Financial Creditor towards the purchase of the flats under the Agreement. However, the Corporate Debtor expressed its inability to remit back the entire consideration in sum of Rs.2,03,58,000/- immediately and sought time from the Financial Creditor for a period of six months to repay the said amount.



vii. Accordingly, a Termination Agreement dated 07.07.2017 was entered into and executed between the Financial Creditor and the Corporate Debtor, whereby the Agreement was terminated; the Corporate Debtor admitted the default on its part to handover the flats; expressed its inability to remit back the consideration of sum of Rs.2,03,58,000/- immediately; the Corporate Debtor agreed to pay interest in form of fixed monthly payments on the outstanding dues of Rs.2,03,58,000/- by way of post-dated cheques of sum of Rs.4,00,000/- every month. Accordingly, time value for consideration was fixed between the parties in form of fixed monthly payments in sum of Rs.4,00,000/- every month to be paid by the Corporate Debtor to the Financial Creditor. The Corporate Debtor honoured its commitment to the extent that it remitted amounts towards the fixed monthly payments for a period of six



months in terms of the Termination Agreement dated 07.07.2017.

viii. That upon expiry of six months as agreed upon in the Termination Agreement dated 07.07.2017, out of the total consideration of Rs.2,03,58,000/-, the Corporate Debtor remitted back a sum of Rs.1,00,00,000/- only by way of two cheques bearing No. 037380 dated 06.01.2018 and No. 037381 dated 15.01.2018 of Rs.50,00,000/- each. The Corporate Debtor failed to remit the balance outstanding of Rs. 1,03,58,000/-

ix. That the Corporate Debtor expressed inability to repay the balance outstanding of Rs.1,03,58,000/- and sought an extension of six months to repay the said amount. The Corporate Debtor agreed to pay interest on the outstanding dues to the Financial Creditor in form of fixed monthly payments for a period of six months at the rate of Rs.2,00,000/- each month. Towards



payment of the said monthly fixed payments, the Corporate Debtor issued post-dated cheques in favour of the Financial Creditor after deduction TDS of sum of Rs.20,000/-. Further, the Corporate Debtor agreed to repay the entire balance outstanding in sum of Rs.1,03,58,000/- at the expiry of six months period, i.e. 01.08.2018. The said understanding between the parties was recorded by way of the letter dated 07.02.2018 issued by the Corporate Debtor and acknowledged by the Financial Creditor.

- x. The Corporate Debtor again expressed inability to repay the balance outstanding in sum of Rs. 1,03,58,000/- and sought an extension of eight months to repay the said amount. The Corporate Debtor agreed to pay interest on the outstanding dues to the Financial Creditor in form of fixed monthly payments for a period of eight months at the rate of Rs.2,00,000/- each month.



Towards payment of the said monthly fixed payments, the Corporate Debtor issued post-dated cheques in favour of the Financial Creditor after deduction TDS of sum of Rs.20,000/-. Further, the Corporate Debtor agreed to repay the entire balance outstanding in sum of Rs. 1,03,58,000/- at the expiry of eight months period, i.e., 01.04.2019. The said understanding between the parties was recorded by way of the letter dated 06.08.2018 issued by the Corporate Debtor and acknowledged by the Financial Creditor.

xi. The Corporate Debtor again failed to repay the aforesaid amount and sought extension for repayment of balance amount till 01.10.2019 as recorded in letter dated 04.04.2019 but failed to repay the same despite various requests, reminders and communications.

xii. That towards payment of the principal amount, the Corporate Debtor had handed over a cheque



bearing No. 000534 dated 01.10.2019 drawn on HDFC Bank, Gautam Budh Nagar Branch of sum of Rs. 1,03,58,000/- to the Financial Creditor. The Financial Creditor presented the above-mentioned cheque with its banker, viz. Punjab and Sind Bank, Gujranwala Town Branch. However, the cheque was returned by its banker with the remarks "*Funds Insufficient*" vide return memo dated 24.12.2019.

xiii. That in light of the foregoing facts and circumstances, the Financial Creditor filed the present application praying for initiation of the corporate insolvency resolution process in respect of the Corporate Debtor as it has failed to repay the outstanding dues in terms of the Termination Agreement dated 07.07.2017 read with subsequent letters issued by the Corporate Debtor, lastly on 04.04.2019, of Rs.1,17,18,000/- being aggregate of Rs.1,03,58,000/- towards the principal



outstanding dues; Rs.9,20,000/- towards the fixed monthly payment for the months of July, 2019, September, 2019 and November, 2019, December, 2019 and January, 2020; and Rs. 4,40,000/- towards TDS for the period from 01.04.2018 to 01.01.2020. The Financial Creditor is further entitled to interest on the principal amount at the rate of 23.17% per annum w.e.f. 01.02.2020 on sum of Rs. 1,03,58,000/- till the date of its realization.

**2.** Consequent to the notice issued by this Tribunal, the CD filed its reply in which the following contentions were made:

- i. That the present application filed by the Financial Creditor/Flat Buyer is not maintainable as per the provision of the Insolvency & Bankruptcy Code, 2016 which reads as under: -

***Sec 7: Initiation of corporate insolvency resolution process by financial creditor.***

.....



*“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.”*

- ii. That the petitioner is a flat purchaser and the amount due as per the case of the petitioner was given against the flat booking.
- iii. That, the applicant in Para 1 of the Part IV of the Form 1 has shown the default amount as 1,17,18,000/- and to prove the same it has relied upon ledger account of the respondent maintained in its book of accounts, annexed with the application as Annexure 14. Whereas the outstanding balance shown in this ledger account statement is only 1,12,78,000/-. Hence, this application deserves to be dismissed on this ambiguity alone, as the applicant is not even sure of even the amount of default.



- iv. That admittedly a termination agreement was signed, however the respondent agreed to pay, as it has not been able to refund the entire amount paid by the flat buyer. In this regard it is worthwhile to mention here that the entire transaction was based entirely upon the Master Apartment Purchase Agreement dated 27.02.2017 and it was the sole basis for entire transaction/dealings between the parties.
- v. That the time limit for refund of the remaining cost of the flats was extended as per the mutual understanding between the parties.
- vi. The time limit for refund of the remaining cost of the flats was further extended as per the mutual understanding between the parties and undertaking given by the respondent.
- vii. That the respondent could not arrange the funds due deep recession in the real estate market.
- viii. That the present application may be under the period of limitation; however, it does not meet the



other requirements of the law as prescribed under the IBC and deserve to be dismissed.

- 3.** We have gone through the Rejoinder and have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on behalf of the parties.
- 4.** The Corporate Debtor, in its reply, has admitted that there was a disbursal of debt, which is also reflected in the ledger account of the Corporate Debtor. The Corporate Debtor has not disputed the default, as it admitted in its reply that due to the deep recession in the real estate market, it could not arrange the funds.
- 5.** The defense taken by the CD is that the petitioner is a flat purchaser, and the amount due was given against the flat booking. The Petitioner has failed to fulfill the 2nd Proviso of Section 7, which states 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 100 of such allottees under



the same real estate project or not less than 10% of the total number of such allottees under the same real estate project.

6. We are not satisfied with the submission made by the CD. In the present case, there was also a termination agreement dated 07.07.2017, by which the Petitioner had ceased to be a flat buyer. It is pertinent to refer to the relevant clause of the Termination Agreement, which is reproduced below: -

**1. TERMINATION**

Parties mutually understand and agree that the MAPA and all negotiations, correspondence, agreements, understandings, duties or obligations, whether exist in written or decided orally or otherwise, among the Parties hereby stand terminated and cease to subsist on and from the Execution Date.

**2. CONSEQUENCES OF TERMINATION**

2.1 The following consequences follow pursuant to the termination:

- (i) **Refund of Sale Consideration:** Notwithstanding anything contained in the MAPA, the Developer hereby agrees and undertakes to refund the entire sale consideration of INR 2,03,58,000/- paid by the Buyer under the MAPA, to the Buyer within six months from the Execution Date hereof. The Developer has issued the following cheques in favour of the Buyer for meeting its obligation under this Agreement:

S.No.	Cheque No.	Dated	Drawn on	Amount
1	391340	01/01/2018	Axis bank	2,03,58,000



- (ii) **Continuation of payment of fixed monthly amount:** The Developer hereby agrees and undertakes to pay the fixed monthly amount of INR 4,00,000/- (Rupees Four Lakhs only) gross of TDS to the Buyer in accordance with Clause 4(v) of MAPA till the time the sale consideration is not refunded in terms of sub clause (i) above. The payment of the said fixed monthly amount shall remain in effect retrospectively from the date of expiry of the Development term i.e. June 27, 2017. The Developer has issued the following cheques in favour of the Buyer for meeting its obligation under this Agreement:

S.No.	Cheque No.	Dated	Drawn on	Amount
1	391334	01/08/2017	Axis bank	3,60,000/-
2	391335	01/09/2017	Axis bank	3,60,000/-
3	391336	01/10/2017	Axis bank	3,60,000/-
4	391346	01/11/2017	Axis bank	3,60,000/-
5	391338	01/12/2017	Axis bank	3,60,000/-
6	391339	01/01/2018	Axis bank	3,60,000/-

- 2.2 Save as otherwise provided herein, on and from the Execution Date, none of the Parties shall be entitled to any right/claims or obligations which they may have under the MAPA the Applicable Law prior to the Execution Date.
- 2.3 The Parties agree that they shall not, at any time in the future, raise any claim against the other Parties in respect of any obligation or any kind of liability arising out of MAPA.

It is clear from a plain reading of Clause 1 read with 2.2 of the Termination Agreement that all the rights and obligations of the parties under MAPA stand terminated. Hence, the parties will be governed by the terms and conditions of the Termination Agreement. Nowhere in the aforementioned Termination Agreement does it



stipulate that the FC is an allottee. Therefore, the Petitioner cannot be treated as a Homebuyer.

- 7.** A mere reading of the provision under Section 7 of the IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication regarding the occurrence of default before admitting the application. The material on record clearly shows that there was a debt, and the CD has committed a default in the repayment of the outstanding debt amount.
- 8.** We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.



9. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

10. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Sanyam Goel for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00138/2017-2018/10397. The Proposed IP has a valid AFA which is valid upto 01.11.2023. Accordingly, this Adjudicating Authority, hereby appoints Mr. Sanyam Goel (Email – goelsanyam@gmail.com), to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.



**11.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

**12.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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 Securitization 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.”

**13.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f.



06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

**14.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution



Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

**15.** The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.



Let copy of the order be served to the parties.

**Sd/-**

**Rahul Bhatnagar)**  
**Member (Technical)**

**Sd/-**

**(Bachu Venkat Balaram Das)**  
**Member (Judicial)**