



**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, NEW DELHI**

Company Petition No.: IB 1498(PB) / 2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/s REDBRICS ITES INDIA PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

M/s ANSAL HOUSING LIMITED

...Respondent/Corporate Debtor

Pronounced on: 22.08.2022

CORAM:

SHRI DHARMINDER SINGH,

HON'BLE MEMBER (JUDICIAL)

SHRI AVINASH K. SRIVASTAVA,

HON'BLE MEMBER (TECHNICAL)

For the Applicant : Mr. Vinod Chaurasia, Advocate.

For the Respondent : Ms. Neha Agrawal – AR of Ansal Housing Limited, Mr.

Vikas Tiwari, Kumar Deepraj, Rishab Bharadwaj,

Advocate.

MEMO OF PARTIES

M/s REDBRICS ITES INDIA PRIVATE LIMITED



(Now known as Clicbrics Technologies Private Limited w.e.f. 12.10.2021)

CIN: U74999DL2017FTC313244

Having its office at:

H. no. 66, 3rd Floor, Vasant Marg,

Vasant Vihar – I, New Delhi – 110057

...Applicant/Operational Creditor

VERSUS

M/s ANSAL HOUSING LIMITED

(Formerly known as Ansal Housing & Construction Limited)

CIN: L45201DL1983PLC316821

Having its registered office at:

606, 6th Floor, Indra Prakash 21,

Barakhamba Road, New Delhi – 110001

...Respondent/ Corporate Debtor

ORDER

PER- AVINASH K SRIVASTAVA MEMBER (TECHNICAL)

1. The present application has been preferred by Authorized Representative on behalf of M/s. Redbrics Ites India Private Limited (Now known as Clicbrics Technologies Private Limited w.e.f. 12.10.2021) (hereinafter referred to as “Operational Creditor”) under Section 9 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 to initiate Corporate Insolvency Resolution Process against Ansal Housing Limited (hereinafter referred to as “Corporate Debtor”).

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2. As per the Ld. Counsel for Operational Creditor, a principal amount of Rs.14,70,943.90/- (Rupees Fourteen Lacs Seventy Thousand Nine Hundred and Forty-Three Only) was the debt due from Corporate Debtor to the Operational Creditor on 10.10.2018, towards payments for real estate brokering commission.
3. The Ld. Counsel for Operational Creditor further submits that:
 - i. Pursuant to a Memorandum of Understanding (hereinafter referred to as MOU) signed between Corporate Debtor and Operational Creditor on 09.07.2018, it was proposed to engage the Operational Creditor as the exclusive real estate agent of the Corporate Debtor for brokering the sale/purchase of the units at their various projects. A copy of the MOU is annexed to the petition as Annexure-1. The Operational Creditor raised timely invoices of brokerage to the Corporate Debtor, however, the Corporate Debtor stopped making the payments from October 2018 without providing any reason for the same.
 - ii. As per the terms of the MOU, the Operational Creditor was supposed to sell plots and apartments of Ansal Town, Meerut and the Corporate Debtor would pay a brokerage for the same.
 - iii. On 27.03.2019 the Operational Creditor sent a Demand Notice as per section 8 of Insolvency and Bankruptcy Code, 2016 (Code). Corporate Debtor replied to the same on 09.04.2019. A copy of the Demand Notice and the

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Corporate Debtor's Reply is annexed to the petition and marked as Annexure-2.

- iv. Copy of the invoices issued by the Operational Creditor along with the corresponding ledgers issued by the Corporate Debtor to the end customers is annexed with the petition and marked as Annexure-3.
- v. That the Corporate debtor has purposely withheld the payment of the Operational Creditor without any specific reason.

4. In response to the Petition filed by the Operational Creditor, the Ld. Counsel for Corporate Debtor appeared and submitted the following:

- i. The present petition is filed by a company namely "Redbricks Ites India Pvt. Ltd." whose existence cannot be traced on the website of the Ministry of Corporate Affairs.
- ii. That the Operational Creditor was acting as a real estate agent to the Corporate Debtor, wherein it was agreed that the Operational Creditor shall provide allottees to the real estate project of the Corporate Debtor, and the Operational Creditor was entitled to a commission, however, the disbursement of the same was solely dependent upon the payment by the respective real estate allottees (Ref. Sl. No. 3 (Table) of Memorandum of Understanding at page number 19 of the Petition).
- iii. The MOU was alive only for a period of six months, i.e. from 10.07.2018 - 31.12.2018, which means that the

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Operational Creditor can get allottees during these six months and the commission qua these allottees shall be paid as and when the allottees make their respective payments to the Corporate Debtor. Getting the payment from the allottees was sine quo non to the commission of the Operational Creditor.

- iv. However, the invoices raised by the Operational Creditor were for 100% commission, which is payable by the Corporate Debtor only once the real estate allottees make a payment of 35% of the total consideration of their respective bookings.
- v. In general parlance, the allottees do not make the payment in one go, and the payments are made as per the stage of completion of construction, which usually takes 3 to 4 years.
- vi. It is further submitted that the Operational Creditor has failed to prove that despite receiving the payment from the real estate allottees, the Corporate Debtor has withheld the payments.
- vii. Therefore, the invoices that were issued by the Operational Creditor were pre-matured and the same objection was taken by the Corporate Debtor in its reply to the demand notice which is on page number 66 of the Petition.

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- viii. Also, some real estate allottees, whose bookings were made by the Operational Creditor, had cancelled their bookings. Hence, in such cases, the Operational Creditor was not liable to receive any commission.
- ix. Admittedly, an amount of Rs. 4,32,668.74 (Rupees Four Lacs Thirty-Two Thousand Six Hundred Sixty-Eight and Seventy-Four Paise only) was due and payable by the Corporate Debtor to the Operational Creditor, as on the date of filing the reply.
- x. It is submitted that a cheque of Rs. 4,32,668.74 (Rupees Four Lacs Thirty-Two Thousand Six Hundred Sixty-Eight and Seventy-Four Paise only), was drawn and tendered in favor of the Operational Creditor. However, the Operational Creditor denied taking the same. The same is also recorded in the Order of this Adjudicating Authority dated 11.12.2019.
- xi. Subsequently, in the month of September, 2021, when the Operational Creditor became entitled for an amount of Rs. 8,40,073/- (Rupees Eight Lacs Forty Thousand Seventy-Three only), after the Corporate Debtor received further sale proceeds from the real estate allottees, the Corporate Debtor again attempted to make the payment and sent the cheques to the Operational Creditor via post. However, the cheques were returned with the postal remarks "Left". The Corporate Debtor couldn't attempt

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any further payment as there was no company in existence in the name of the Operational Creditor as per the Ministry of Corporate Affairs website.

5. On perusal of the contentions raised by both the parties, we are of the opinion that:

- i. It is pertinent to note the Operational Creditor filed an additional affidavit on 19.05.2022, on the NCLT e-filing portal, placing on record, a “Certificate of Incorporation pursuant to change of name”, dated 12.10.2021, issued by the Ministry of Corporate Affairs, certifying the change of name of the Operational Creditor, the old name being Redbrics Ites India Private Limited and new name being Clicbrics Technologies Private Limited.
- ii. The above stated document was filed after two weeks from the date of the Order being reserved for final judgment, which is beyond a reasonable time. However, in the interest of justice, we are inclined to take the same on record.
- iii. On perusal of documents placed on record and the order passed by this Adjudicating Authority dated 11.12.2019, the bonafide and solvency of the Corporate Debtor can be clearly affirmed by its intention to make payment to the Operational Creditor.
- iv. It is seen that the Corporate Debtor has already issued two cheques of Rs. 4,32,668.74/- (Rupees Four Lacs Thirty-Two Thousand Six Hundred Sixty-Eight and Seventy-Four Paise

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only) and Rs. 8,40,073/- (Rupees Eight Lacs Forty Thousand Seventy-Three only) summing up to an amount of Rs. 12,72,741.74/- (Rupees Twelve Lacs Seventy-Two Thousand Seven Hundred Forty-One and Seventy-Four paise only) in favor of the Operational Creditor. However, the Operational Creditor denied acceptance of the first cheque whereas the second cheque could not be delivered.

- v. Even during the arguments, the Operational Creditor did not indicate any willingness to accept this amount.
- vi. It appears that the Operational Creditor has approached this Adjudicating Authority with a malafide intention and not for genuine resolution.
- vii. At this juncture we would like to rely on a recent Judgement passed by the Hon'ble Supreme Court in the matter of **M/s S.S. Engineers versus Hindustan Petroleum Corporation Ltd., Civil Appeal No. 4583 of 2022**, the relevant paragraphs of which are reproduced below:

“ 31. The NCLT, exercising powers under section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency or bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.

32. There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and



initiation of CIRP by an operational creditor. On a reading of Section 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and default in the payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed”

- viii. In the light of the above facts and circumstances, the present petition is **dismissed**. File be consigned to record.

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)

22/8/22

DHARMINDER SINGH
MEMBER (JUDICIAL)