

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P. NO.IB-1718(PB)/2018

IN THE MATTER OF:

Shiv Dayal Sharma & Ors.

....Petitioner(s)

Vs.

Three C Projects Pvt. Ltd.

....Respondent

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on: 28.08.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For Petitioner : Mr. Piyush Singh & Mr. Aditya Parolia,
Advs.

For Respondent :Mr. Rajnish Sinha, Mr. Nikhil Jain &
Ms. Shreya Kohli, Advocates

ORDER

M.M.KUMAR, PRESIDENT

The Petitioner(s) claiming to be financial creditor(s) have filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Three C Projects Pvt. Ltd. Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditors' are 'allottees' under a 'real estate project'.

2. The Corporate Debtor – Three C Projects Private Limited was incorporated on 09.07.2010 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U70200DL2010PTC205607.
3. The Petitioners have claimed that they booked an apartment in the residential project- LOTUS ZING being developed by the Respondent-Corporate Debtor. In pursuance of the same the Corporate Debtor issued allotment letters to the petitioners and executed identical Apartment Buyer's Agreements on various dates. The financial creditors made certain payments to the corporate debtor as per the 'construction linked payment plan' on various dates as mentioned in Part-IV of the petition. The receipts issued by the Corporate Debtor to all the petitioners have been placed on record. Ledger account of the corporate debtor- respondent in respect of all the petitioners have also

been placed on record. The details of all the financial creditors are depicted in the table below:

| Sr. No. | Name of the Petitioners | Apartment Buyer Agreement | Total Amount paid (In Rupees) |
|---------|---|---------------------------|-------------------------------|
| 1. | Shiv Dayal Sharma and Neerupa Sharma (Petitioner No. 1 & 2) | Dated – 24.01.2011 | 28,78,318/- |
| 2. | Ravindra Pratap Singh (Petitioner No. 3) | Dated – 24.03.2011 | 23,80,675/- |
| 3. | Sudhir Solanki (Petitioner No. 4) | Dated – 27.01.2011 | 32,57,135/- |
| 4. | Kapil Handa (Petitioner No. 5) | Dated – 29.01.2011 | 32,45,949/- |
| 5. | Kiran Sood & Ravindra Pratap Singh (Petitioner No. 6 & 3) | Dated – 24.03.2011 | 23,82,925/- |

4. According to Clause 5.1 of the Apartment Buyer Agreement [Annexure A(Colly)] the possession of the apartments was to be



delivered in 33 months which would fall somewhere in 2014. The possession of the apartments has not been delivered to the petitioners till date. All the petitioners have been sending e-mails to the corporate debtor to cancel the booking and seeking refund of the amount paid along with interest. The petitioners have placed reliance on Clause 28 of the Allotment Letter (Annexure E) and the same is extracted from the letter as below:

“28. The Allottee agrees and acknowledges that in the event that TCPPL is unable to allot the apartment applied for, TCPPL shall only be required to consider allotment of an alternative Apartment or refund the amount deposited by the Allottee(s) along with simple interest @ 10% p.a. and shall not be liable for any other damages/compensation on account of such inability (on part of TCPPL) to provide the apartment applied for by the Allottee.”

5. The precise case of the Petitioners is that the total amount in default due and payable by the corporate debtor to the respective petitioners is Rs. 48,00,914/-, Rs.39,32,345/-, Rs.53,82,218/-, Rs.53,93,522/- and Rs.39,35,055/- along with interest @10% p.a. A tabular chart depicting working of the



amount in default for all the petitioners is placed on record (Annexure- F, M, T, Z,GG).

6. The Financial Creditor has proposed the name of Mr. Manish Kumar Gupta as the Insolvency Professional with the address 404, 4th Floor, Laxmideep Building, 9, Laxmi Nagar District Centre, Vikas Marg, Near V3S Mall, Delhi- 110092. His registration number is IBBI/IPA-001/IP-P00225/2017-18/10424, email id is manishvivek@yahoo.com and Mobile No. is 9810771477. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration **(Page 454-456)**.

7. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the petition the Financial Creditor has also furnished the details of the amount claimed in default and the date of the default.

8. In Part-V of the Petition, the Financial Creditor has mentioned the various documents like the Apartment Buyers Agreement, endorsement letters, bank statements, receipts issued by the



corporate debtor and ledger account to substantiate that there is a default on the part of the corporate debtor and the amount has become due and payable.

9. A reply to the petition has been filed and the cause of the petitioners has been opposed. In the Reply the Respondent-Corporate Debtor has raised various objections. A preliminary objection raised is that there is no 'default' on the part of the corporate debtor and hence the petition is not maintainable. On that basis it is sought to be argued that there is no amount due and payable to the Petitioners in whole or in part.

The submission made by the respondent- corporate debtor is wholly unsustainable. The maximum period of 33 months has already expired either in 2013 or early 2014. The possession as per stipulation has not been handed over till date. The alternative provided in Clause 28(supra) is the refund of the amount along with interest @10% p.a. The petitioners have sought the refund along with interest as indicated in Part IV of the petition. The email cancelling the booking is dated 31.10.2018 and therefore the amount would become 'due and payable'. In that regard reference may be made to Clause 5.1 of



the Apartment Buyers Agreement which provides for the possession of the Apartment within a period of 33 months commencing from the date of the agreement which as mentioned in the table in preceding paras. Admittedly the period of 33 months came to an end in late 2013 or early 2014 and the construction was not complete. It has not been disputed before us that no amount has been paid which was due and payable. It is pertinent to mention that Clause 5.2 postulated that where there was a delay in possession due to the reasons specified in the said clause the corporate debtor was to be entitled to a reasonable extension of time for handing over the possession. The clause cannot be given a literal meaning to mean that till eternity the corporate debtor-respondent would defer possession and the financial creditor-petitioner are bound to wait. A reasonable construction of any such clause would be to grant maximum period of one year. Even then the possession should have been delivered in 2015.

10. Further the corporate debtor- respondent states that there has been delay in the progress of the project and the reason for it is imputed to some of the *force majeure* conditions such as –
Demonetization, Order of the NGT, farmer's unrest and



agitation. Learned Counsel for the corporate debtor has placed reliance on Clause 5.2 of the Apartment Buyer Agreement in this regard.

The objection concerning Demonetization would not require any detailed consideration. The demonetization was announced on 08.11.2016 and the Buyers Agreement was executed somewhere in 2011. As per the schedule of payment in the agreement all the payments are required to be made through the Banking Transactions and the same was duly paid through cheques. The NGT order was only passed in the year 2013 whereas the Agreement was executed in 2011. Therefore those orders of NGT would not be attracted nor would have the cover of *force majeure*.

11. The vague averments made by the corporate debtor-respondent hardly need to be discussed. These objections like water supply interruption, farmers' agitation are merely lame excuses to deny the claim of the Financial Creditor. These objections lack content as no details have been furnished in material particulars as to how the progress of the project was



retarded. Therefore we do not find any force in the objections raised and the same are hereby rejected.

12. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled.

13. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in our Order dated 27.11.18 rendered in the case of ECL Finance Ltd vs Digamber Buildcon Pvt Ltd. (IB-1039(PB)/2018).

14. After a reading of Section-7 of the Code along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there is no disciplinary proceedings pending against the proposed Interim Resolution Professional.



15. As a sequel to the above discussion, this petition is admitted and Mr. Manish Kumar Gupta is appointed as the Interim Resolution Professional.

16. The judgment in this matter could not be pronounced earlier as the issue concerning Constitutional validity of explanation to sub section 8 (f) of Section 5 of the Code, 2016 was subject matter of challenge before Hon'ble the Supreme Court in a bunch of petitions. In the lead case titled as Pioneer Urban Land and Infrastructure Limited and Another v. Union of India &Ors. (Writ Petition (Civil) No. 43 of 2019) the judgement has now been pronounced on 09.08.2019. We have gone through the judgement and find that the directions issued by Hon'ble the Supreme Court do not in any manner advance the case of the Corporate Debtor and the petition deserves to be admitted. It may also be noticed that at no stage possession has been offered to the petitioner and that question of denial of possession would not arise.



17. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.

18. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

19. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy




Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

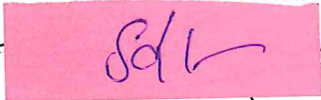
20. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in their knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

21. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of

claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

22. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. Petitioner is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.


(M.M.KUMAR) 28.08.2019
PRESIDENT


(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

28.08.2019
(VIDYA)