



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI (COURT NO. III)**

**Company Petition No. IB-20(ND)/2022**

**(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)**

**IN THE MATTER OF:-**

M/s. Leena Batra ..... **Applicant/Financial Creditor**

**Versus**

M/s. Ferrous Infrastructure Private Limited ..... **Respondent/Corporate Debtor**

**Pronounced on: 02.02.2023**

**CORAM:-**

**DR. BINOD KUMAR SINHA**  
**MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS**  
**MEMBER (JUDICIAL)**

**PRESENT:-**

For the Applicant : Mr.Sahil Sethi, Samridh Bindal, Ramya Aggarwal (Advocates)

For the Respondent : Mrs. Namitha Mathews, Pulkit Malhotra,  
Ashish Singh Panwar (Advocates)

For the Intervener : Mr.Udit, Diwaker Kumar (Advocates)

**ORDER**

**Per: Shri Bachu Venkat Balaram Das, Member (J)**

1. The present petition under Section 7 of IBC, 2016 has been filed by 170 Applicants who are the Home Buyers and Financial Creditors seeking to initiate CIRP against the Corporate Debtor i.e., M/s Ferrous Infrastructure Private Limited.

2. The Corporate Debtor was allotted the land situated at Revenue Estate of Village Tikkawali, Sector 89, Faridabad. The Corporate Debtor invited applications for allotment of residential units in the project "Ferrous City 1". The present Applicants are the allottees in the same Real Estate Project Ferrous City – 1, which is being developed by the Corporate Debtor and therefore fall under the requisite ambit of the proviso of the amended Section 7(1) of the Code which shows that minimum threshold requirements of atleast 100 allottees or 10% of the allottees should be there to support the application under Section 7 of IBC. According to Builder Buyer Agreement, the



allotted units were to be delivered within 36 months from the date of the start of the construction of the tower in which the said premises is located or from the date of execution of the agreement whichever is later. However the Corporate Debtor failed to hand over possession of the subject apartments within the promised time despite timely and substantial payments of the installments towards the sale consideration of their respective residential units have been made by the Applicants. Further the Corporate Debtor is also not in a position to return the money paid by the Financial Creditors, hence the present application under Section 7 of IBC seeking initiation of CIRP against the Corporate Debtor. The total amount debt as claimed by the Applicants in Part IV of the present application is Rs. 37,94,44,524/-.

3. The Corporate Debtor filed its reply affidavit wherein a preliminary issue with regard to the maintainability of the present petition under Section 7 of IBC, has been raised stating therein that the applicants have failed to establish the threshold limit as per the amendment to Section 7 of IBC which requires that an application for initiating CIRP against the Corporate Debtor shall be filed jointly by not less than 100 of such creditors in the same class or not less than 10% of total number of such creditors in the same class whichever is less. The second proviso of Section 7 IBC reads as follows: -

*“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:”*

4. The Corporate Debtor raised objection to the maintainability of the application on the following grounds: -

I. There are 42 joint allottees in their respective flats and the said allottees are to be construed as a single allottee in the light of the judgment passed in Manish Kumar versus Union of



India reported in 2021 [5 SCC 1]. In effect, there are 128 Financial Creditors who have filed the present application.

**II.** There are 22 Financial Creditors who have taken possession of their respective flats and therefore no default exists qua those Financial Creditors. Further out of the said 22 Financial Creditors 6 Financial Creditors have given their flats on rental basis to third parties and therefore no default exists between the Financial Creditors and the said Corporate Debtor.

**III.** The Real Estate Regulatory Authority (RERA), Haryana has allowed the complaints of 12 Financial Creditors and directed to refund of money to these 12 Financial Creditors and therefore any grievance qua these 12 Financial Creditors stands satisfied.

**IV.** The Corporate Debtor has cancelled the allotment of flat of one Ms. Munilal Yadav i.e., Financial Creditor No. 144 on account of non-payment of dues, which has been concealed by the Applicants in the present application. Therefore no default remains pending between the Corporate Debtor and the said Financial Creditor No. 144.

**V.** The Financial Creditors Nos. 49, 58, 61 and 88 are guilty of forum shopping, as they have approached the Real Estate Regulatory Authority (RERA) and National Consumer Disputes Redressal Commission (NCDRC) on the same cause of action. The Financial Creditors Nos. 3 and 4 have taken possession of their flats and also approached the NCDRC and therefore no dispute is pending between the Financial Creditors Nos. 3 and 4 and the Corporate Debtor. The Corporate Debtor stated that in view of the above reasons, there are only 89 Financial Creditors left and therefore the present application is liable to be dismissed as not maintainable.

**5.** The Corporate Debtor has submitted that it has paid a substantial sum of Rs. 116,27,65,650/- to M/s. Triveni Ferrous Infrastructure Pvt. Ltd. (licensee company of the land) and the Department of Town and Country Planning, Haryana ("DTCP") to comply with its obligations under the Memorandum of Settlement dated 04.05.2015.



6. The Corporate Debtor has also submitted that the litigation is going on for over a period of 7 years. In case the present application is admitted, grave prejudice and irreparable harm would be caused to 296 homebuyers, who have already taken possession of the flats and more so because the Corporate Debtor has already paid a huge amount of Rs. 116,27,65,650/- to M/s. Triveni Ferrous Infrastructure Pvt. Ltd. (licensee company of the land) and the Department of Town and Country Planning, Haryana ("DTCP").

7. The Corporate Debtor has further submitted that the construction of the tower did commence within time and the Corporate Debtor duly complied with its contractual obligations and completed the construction of the said Project by 2013, however, due to the force majeure conditions, which were beyond the control of the Corporate Debtor, the Corporate Debtor was not in a position to obtain the Occupancy Certificate from the DTCP. The Corporate Debtor has invested a huge sum of Rs. 246.37 Cr. in the Project and has only received a sum of Rs. 200.70 Cr. from its allottees including the Financial Creditors, which establishes the grave financial distress caused to the Corporate Debtor. The Corporate Debtor also submitted that though construction was completed, the Corporate Debtor was unable to obtain the Occupancy Certificate due to force majeure conditions which are as follows: -

**I.** M/s. Triveni Infrastructure Pvt. Ltd. ("TFIPL"), M/s. Ferrous Alloys Forging Pvt. Ltd. and Mr. Sumit Mittal had applied for granting license for development and construction of a Group Housing Colony over 48 .038 acres of land in Sector 89, Faridabad, Haryana. License Nos. 34 to 36 of 2007 was granted by the DTCP

**II.** Upon obtaining license, 5 Agreements were executed by TFIPL, wherein, the CD was assigned rights to construct, develop and market over 14.80 acres of land.

**III.** Sister concern of TFIPL, M/s. Triveni Infrastructure Development Co. Ltd. ("TIDCO") owned certain portions of land in 48.038 acres. The Hon'ble High Court of Delhi passed an Order dated 17.10.2012 in Co. Petition. No. 39/2009, wherein, TIDCO was directed to



be wound up. As license was not renewed, CD and 2 other companies approached the Hon'ble High Court for division of license.

**IV.** TFIPL and TIDCO were owned by Mittal Group, comprising of Mr. Sumit Mittal and Mr. Madhur Mittal. Various F.T.R.'s was lodged against the directors of the CD, which led to the filing of W.P. (Crl.) No. 5/2015 and W.P. (Crl.) No. 11/2015 before the Hon'ble Supreme Court. The parties with the intervention of Justice (Retd.) Mr. R. V. Raveendran entered into a Memorandum of Settlement dated 04.05.2015 ("MOS"), which led to the passing of Order dated 05.05.2015.

**V.** Meanwhile, an Association of the homebuyers of the project Ferrous City Association approached the Hon'ble High Court of Punjab and Haryana by way of CWP No. 25082 of 2015 in relation to the grievance with respect to their flats. The Hon'ble Court directed the DTCP to consider the representation of the Association. The DTCP passed an Order dated 22.04.2016, wherein, the Association contended that the constructions of the flats are almost complete. The DTCP directed the CD to apply for Occupation Certificate. Consequently, the CD applied for Occupation Certificate vide Application dated 25.04.2016.

**VI.** Mr. Prabhat Kumar, claiming to be an alleged allottee of the Project, filed a Petition before the Hon'ble High Court of Punjab and Haryana bearing C.W.P. No. 7606/2022 to stall the grant of Occupation Certificate. The Hon'ble Court, vide Order dated 26.04.2016, refrained the CD from handing over the possession to its allottees. The DTCP before the Hon'ble Court vide its Status Report dated 15.10.2018 has stated that the CD has completed the construction of the Project. This Petition was finally dismissed on 15.10.2018

**VII.** The DTCP before the Hon'ble Supreme Court also stated that the CD has completed the construction of the Project. The non-compoundable violations have also been rectified now.



VIII. As the Mittal Group failed to comply with the MOS, the director of CD filed a Contempt Petition (C.) No. 34 of 2016. The Hon'ble Supreme Court finally in the year 2020 held the Mittal Group in Contempt of Court.

8. Learned Counsel appearing for both the parties vehemently argued on the issue of maintainability of the present application under Section 7 of IBC, 2016. Learned Counsel appearing for the Corporate Debtor contended that due to the Force Majeure conditions which have been enumerated in the previous paragraphs, the Corporate Debtor could not apply for the occupation certificate and therefore the Financial Creditors were not coming forward to take the possession of the flats.

9. Learned Counsel appearing for the Corporate Debtor also submitted that the Corporate Debtor has 2 more Projects in addition in the instant Project, which are Beverly Homes situated at Sector 89, Faridabad, Haryana and Ferrous City situated at Dharuhera, comprising of 801 allottees who shall be gravely affected in case, the present Application is admitted and the CIRP initiated against the Corporate Debtor. Learned Counsel has relied upon the judgment of the Hon'ble Supreme Court of India in the case of "Vidarbha Industries Power Ltd. v. Axis Bank Ltd" wherein the Hon'ble Supreme Court has held that Section 7 (5) (a) of IBC, confers discretionary powers on the Adjudicating Authority to admit an Application of a Financial Creditor. The relevant paras of the said judgment is quoted below:-

*"Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.*

*The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate*



*Debtor, the Awarded/Decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realization. The example is only illustrative.”*

**10.** Learned Counsel therefore prayed that the Corporate Debtor should be afforded an opportunity and be given time to hand over possession of the flats to the Home Buyers/Applicants.

**11.** This application was listed for clarification on 09.12.2022 to receive confirmation from the Corporate Debtor about the status of their application for Occupation Certificate. However, there was no such confirmation forthcoming on behalf of the Corporate Debtor. It transpired during the hearing that even the RERA registration of the Project has been refused vide order dated 29.07.2022 of HRERA and which clearly adduces that RERA registration to the project has been refused and further specifically mentions that the Promoter of the Corporate Debtor has made a statement on record that they do not have any money to satisfy the decrees/orders passed in the favour of the allottees directing refund of the money paid by such allottees along with interest. Furthermore, the Ld. HRERA Authority has directed attachment of the bank accounts as well as unencumbered assets of the Corporate Debtor to satisfy the decrees/orders. Further, there is no clarity as to whether the Corporate Debtor has taken any further steps for obtaining the occupation certificate.

**12.** In view of the facts and circumstances enumerated above and having heard the rival submissions and contentions of the Learned Counsels appearing for both the parties we are of the considered view that the Corporate Debtor has admitted its liability and defaulted in handing over the possession of the flats in question. As regards the contention against the maintainability of the instant application filed U/s 7 by 128 real estate allottees / homebuyers, it is pertinent to note that



according to the Corporate Debtor itself there are 128 unique allottees who have filed this application jointly. Since this application admittedly has been filed by 128 such allottees/homebuyers, the threshold mentioned in 2<sup>nd</sup> proviso of section – 7 (1) is clearly met. The argument of the Corporate Debtor that some of the Applicants have already settled with the Corporate Debtor or that some of them have been given possession etc., are not to be considered as an impediment to proceed with the matter, as the threshold is to be seen at the time of the filing of the application and not thereafter, subject to the condition that such joint applicants are able to meet the pecuniary threshold of Rs. 1 crore as provided in Section – 4 of the Code. This principle is also laid down by Hon’ble Supreme Court in paras 141 and 143 of their judgment in **Manish Kumar v/s Union of India writ petition(c) no.26 of 2020**. The same is reproduced below for reference:-

“ THE POINT OF TIME TO COMPLY WITH THE THRESHHOLD REQUIREMENTS

*141. The question, then arises, as to the alleged lack of clarity about the point of time, at which the requirements of the impugned provisos, are to be met. Is it sufficient, if the required number of allottees join together and file an application under Section 7 and fulfil the requirements, at the time of presentation? Or, is it necessary that the application must conform the numerical strength, under the new proviso, even after filing of the application, and till the date, the application is admitted under Section 7(5) **There can be no doubt that the requirement of a threshold under the impugned proviso, in Section 7(1), must be fulfilled as on the date of the filing of the application.***

*143. In the matter of presentation of an application under Section 7, if the threshold requirement, under the impugned provisos, stands fulfilled, the requirement of the law must be treated as fulfilled. The contention, relating to the ambiguity and consequent unworkability and the resultant arbitrariness, is clearly untenable and does not appeal to us. **If an allottee is able to, in other***



*words, satisfy the requirements, as on the date of the presentation, the requirement of the impugned law is fulfilled.”*

13. We find that the instant petition is filed in the proforma prescribed under Section 7 of the Code, 2016 read with Rule 4(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. We are satisfied that there is a debt of more than Rs.1 crore i.e., above the threshold limit as envisaged under Section 4 of the Code, 2016 and the same is in default. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Petitioners are financial creditors and are therefore, entitled to move the application against the Corporate Debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. We are therefore of the considered view that the present petition filed under Section 7 of IBC should be admitted and CIRP should be initiated against the Corporate Debtor. Accordingly, we hereby admit the instant Application IB No. - 20(ND)/2022 and order to initiate CIRP proceedings against the Corporate Debtor.

14. The Financial Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Narender Kumar Sharma having Regn. No. (IBBI/IPA-002/N00125/2017-2018/10294). Written Consent and IBBI registration certificate of IRP is taken on record. The Authorization for Assignment attached with the application is valid. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.



15. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is 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's 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.
- e. The explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that



there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

**16.** The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

**17.** The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

**18.** The Financial Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect so that the IRP could take charge of the Corporate Debtor’s assets etc., and make compliance with this order as per the provisions of IBC, 2016.

**19.** Further, the Financial creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks’ time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

**20.** The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA site of Ministry of Corporate Affairs for information of all concerned.



21. The order is pronounced by this Adjudicating Authority in Open Court.

22. The instant Application bearing IB-20/ND/2022 stands *admitted*.

SD/-

**(DR. BINOD KUMAR SINHA)**  
**MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**