

**NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-II**

**(IB)-2584(ND)2019**

**IN THE MATTER OF:**

**1. Mr. Ashok Tripathi  
A-9/2, Patrakar Colony  
Near Patrakar Park,  
Allahabad-211002**

**...Financial Creditor No. 1**

**2. Mr. Saurabh Tripathi  
A-9/2, Patrakar Colony,  
Near Allahabad-211002**

**...Financial Creditor No. 2**

**VERSUS**

**M/s. Ansal Properties and Infrastructure Ltd.  
115, Ansal Bhawan  
16, K.G. Marg  
New Delhi-110001**

**...Corporate Debtor**

**Section: 7 of IBC, 2016**

**Judgment Delivered on: 17.03.2020**

**CORAM:**

**CH. MOHD. SHARIEF TARIQ, HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner : Ms. Asmita Chaudhary and  
Mr. Upmanyu Kumar, Advocates  
For the Respondent : Ms. Arti Rathore, Advocate

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## **JUDGMENT**

### **PER SHRI L. N. GUPTA, MEMBER (T)**

The present Petition is filed under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Ashok Tripathi and Mr. Saurabh Tripathi (for brevity 'Financial Creditors'), with a prayer to initiate the Corporate Insolvency Process against M/s Ansal Properties and Infrastructure Limited (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s Ansal Properties and Infrastructure Limited is a Company incorporated on 30.06.1967 under the provisions of Companies Act, 1956 with CIN No. L45101DL1967PLC004759, having its registered office 115, Ansal Bhawan, 16 K.G Marg, New Delhi-110001.

3. The Authorized Share Capital of the Respondent Company is Rs.1,50,00,00,000 and Paid-up Share Capital of the Company is Rs.78,70,24,000 as per the averments made by the Petitioner.

4. That the Financial Creditors/Applicants have jointly approached this Tribunal in the capacity of decree holder against the default of the Financial debt committed by the Corporate Debtor on



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account of the non-payment of the principal amount along with penalty as decreed by Uttar Pradesh Real Estate Regulatory Authority (UP RERA) vide Orders dated 16.11.2017 & 13.12.2018 and Recovery Certificate dated 10.08.2019.

5. It is submitted by the Financial Creditors that they have jointly booked a unit bearing No. 0073 admeasuring 3764 Sq. Ft. with the Corporate Debtor in its project namely "Sushant Golf City" develop at "High Tech Township" Sector-P, Sultanpur Road, Lucknow against the total consideration of Rs.1,62,43,133.

6. It is stated by the Financial Creditors that they have jointly applied to book the aforesaid unit on 05.08.2014 and paid an amount of Rs.8,37,300 as booking advance vide Cheque No. 606528 dated 20.08.2014 drawn at the State Bank of India, Prasar Bharti Branch, New Delhi, which was duly acknowledged by the Corporate Debtor.

7. It is further stated that the Financial Creditor No. 2 had also booked a separate unit bearing No. B7/GF/01 admeasuring 1229 Sq. Fts. on 16.07.2014 with the Corporate Debtor (Developer) in the same project at Sector 'O', Pocket-1, Sultanpur Road, Lucknow.

8. It is submitted that the Financial Creditor No. 2 has applied to book the aforesaid unit on 16.07.2014. It has been added that he had paid an amount of Rs.1,63,994 as booking advance vide Cheque No. 218856 dated 16.07.2014 drawn at the HSBC Premier Bank.

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9. It is stated by the Financial Creditors that a joint "Built Up Agreement/Builder Buyer Agreement" dated 12.09.2014 for the first unit and Flat Buyer Agreement dated 28.09.2014 for the second unit were executed between the Parties. It is further added that the allotment letters were also issued by the Corporate Debtor in the favour of Financial Creditors.

10. It is submitted by the Financial Creditors that as per the Clause 23 of the aforesaid Agreements dated 12.09.2014 and 29.09.2014, the Corporate Debtor undertook to complete the construction and give possession of the units within 2 years from the date of commencement of construction on receipt of sanctioned plans from the authority.

11. It is further submitted by the Financial Creditors that as per the project summary available on the website of the RERA, the Project start date was 22.09.2015. Therefore, as per the agreement, Corporate Debtor ought to have given the possession of the first unit to the Financial Creditor No. 1 and 2 (co-owners) latest by 22.09.2017 and the second unit within 36 months from the date of sanctioning of building plans by the authorities. However, the Corporate Debtor failed to complete the construction of the units within the stipulated time period and abandoned the project midway. They have added that till date no possession has been given. It is further submitted that though till September, 2019 there was already an inordinate delay of





5 years, the Corporate Debtor neither completed the construction of the said units nor refunded the amount.

12. To substantiate existence of the financial debt, the Financial Creditors have annexed the Orders dated 16.11.2017 & 13.12.2018 and Recovery Certificate dated 10.08.2019 issued by "UP RERA" wherein liability of the Corporate Debtor is adjudicated to the tune of Rs.73,35,686.43. The Recovery Certificate issued by "UP RERA" is reproduced below :

### उ0प्र0 भू-सम्पदा विनियामक प्राधिकरण

नवीन भवन, राज्य नियोजन संस्थान,  
कालाकांकर हाउस, पुराना इंदिरावाट, लखनऊ 226007

संख्या: 6033 / भू.पी. रे.स / वसूली / 2019-20

दिनांक 10 अगस्त, 2019

#### वसूली प्रमाण-पत्र

(अन्तर्गत धारा 40 भू. सम्पदा (विनियमन एवं विकास) अधिनियम, 2016)

प्रेमक,

सचिव,  
उ0प्र0 भू-सम्पदा विनियामक प्राधिकरण,  
लखनऊ।

सेना में,

जिलाधिकारी,  
लखनऊ।

महोदय,

उ0प्र0 भू. सम्पदा विनियामक प्राधिकरण द्वारा भू-सम्पदा (विनियमन एवं विकास) अधिनियम, 2016 की धारा 31 के अन्तर्गत संस्थित नाम/शिकायत संख्या 8201/2011 श्री अशोक त्रिपाठी/श्रीरम त्रिपाठी बनाम मसारी अंसल प्रॉपर्टीज एण्ड इन्फ्रास्ट्रक्चर लि. में पारित आदेश दिनांक 16.11.2017 में उल्लिखित है कि "विपक्षी उक्त जमा वसूलाश्रय में जमाने के डेढ़ माह की प्रत्येक किश्त समेत 06 किश्तों में कर, इस हेतु कुल 09 माह का समय प्रदान किया जाता है। प्रथम किश्त की गणना 01 दिसम्बर से होगी।" उक्त आदेश में जमाने पर उल्लिखित नहीं थी, अतएव धारा 39 के अन्तर्गत मा0 रे.स पीठ द्वारा जमाने पर अमान्यता जर्जिकि निर्धारित करने के आदेश दिनांक 25.02.2019 को पारित किये गये हैं। निम्नानुसार विपक्षी आदेश का अनुपालन करने में असफल जाता है, जो भू-सम्पदा (विनियमन एवं विकास) अधिनियम, 2016 की धारा 40 के प्रस्ताव-1 में उल्लिखित व्यवस्था के अनुसार दण्डनीय भू-संपत्ति के विकास की गति विपक्षी से वसूल की जायेगी। विपक्षी प्रमाणित प्रत्येक माह का अनुपालन नहीं किया गया है। शिकायतकर्ता/आवेदक श्री अशोक त्रिपाठी/श्रीरम त्रिपाठी ने दिनांक 01.12.2018 को प्रार्थना-पत्र देकर आदेश का विनियमन करने का अनुरोध किया है।

भू. सम्पदा (विनियमन एवं विकास) अधिनियम, 2016 की धारा 40 में प्राविधानित है कि यदि कोई प्रकृतिक या आवंटित अथवा भू सम्पदा अधिकारी, जैसा मामला हो, इस अधिनियम के अन्तर्गत निर्मित नियमों तथा विनियमों के अधीन व्यावसायिक अधिकारी या विनियामक प्राधिकरण अथवा अपील अधिकरण, जैसा मामला हो, द्वारा उस पर अनिवार्य किया गया या शारित अथवा अधिपूर्ति का शुल्कान करने में असफल रहता है, तब ऐसे प्रकृतिक या आवंटित अथवा भू सम्पदा अधिकारी से ऐसी रकम जो निहित की जा सकेगी, भू संपदा न्याय के रूप में उसकी वसूली की जायेगी।

अतः उ0प्र0 भू. सम्पदा विनियामक प्राधिकरण द्वारा अधिनियम की धारा 40 के अन्तर्गत प्रवृत्त शक्तियों का उपयोग करते हुये आवंटित शिकायतकर्ता का दण्ड वसूलाश्रय की वसूली निम्न

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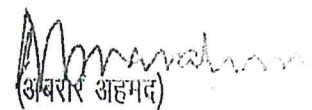
प्रोमोटर/विकासकर्ता मेसर्स अंशल प्रापर्टीज एण्ड इन्फ्रास्ट्रक्चर्स लि0 से भू-राजस्व के बकायों की भौति कराने का निर्णय लिया गया है।

वसूली की जाने वाली धनराशि तथा पक्षकारों का पूर्ण विवरण निम्नवत् है:-

1. शिकायतकर्ता का नाम व पता: श्री अशोक त्रिपाठी/श्री सौरभ त्रिपाठी,  
पता:-ए9/2, पत्रकार कालोनी, अशोक नगर,  
इलाहाबाद-211001।
2. कम्पनी/व्यक्ति (डिफाल्टर) का नाम: मेसर्स अंशल प्रापर्टीज एण्ड इन्फ्रास्ट्रक्चर्स  
लिमिटेड।
3. पता जिससे वसूली की जानी है:- 115, अंशल भवन, 16 करतूरबा गौधी मार्ग,  
स्थायी पता: नई दिल्ली-110001।  
स्थायी पता: द्वितीय तल, शॉपिंग स्ववायर 2, सेक्टर 2,  
सुशान्त मॉलक सिटी, सुल्तानपुर जिला,  
संलग्नक-226030।
4. कम्पनी के चेयरमैन तथा लायरेक्टर धनराशि चुकाने के लिये विधि अनुसार उत्तरदायी  
हैं।
5. जमा मूल धनराशि : ₹0 50,74,945.00
6. वसूली योग्य धनराशि :  
i. मूल धनराशि: ₹0 50,74,945.00  
ii. व्याज: (दि0-20.08.14 से 31.08.19 तक आगणित) ₹0 22,60,741.43
7. वसूली हेतु कुल धनराशि (जमा) ₹0 73,35,686.43
8. उपरोक्त आगणन दिनांक 31.08.2019 तक का है अतएव दिनांक 01.09.2019 से जमा  
मूल धनराशि ₹0 50,74,945.00 पर 9.60 प्रतिशत साधारण व्याज देय होगा।
9. वसूल धनराशि के सापेक्ष नियमानुसार संग्रह व्यय वसूल किया जा सकेगा।

अतः वसूली प्रमाण-पत्र तीन प्रतियों में भेजते हुये अनुरोध है कि उपरोक्त वर्णित कुल  
देय धनराशि ₹0 73,35,686.43 (रुपया तिहत्तर लाख पैंतीस हजार छः सौ छियासी एवं  
पैसा-तैंतालीस मात्र) विपक्षी कम्पनी/उत्तरदाता मेसर्स अंशल प्रापर्टीज एण्ड इन्फ्रास्ट्रक्चर्स  
लि0 से भू-राजस्व के बकायों की भौति वसूल कराकर सम्पूर्ण धनराशि उ0प्र0 भू-सम्पदा  
विनियामक प्राधिकरण के नाम बैंक ड्राफ्ट के माध्यम से, जो लग्ननक में देय होगा, सहित  
वसूली प्रमाण-पत्र पूर्ण विवरण सहित उपलब्ध कराने का कष्ट करें।

भवदीय,

  
(अनवर अहमद)  
सचिव

13. The Corporate Debtor has filed its reply on 05.12.2019 and averred the following :

*“3. That the project/construction work has been severely affected due to unforeseen market crash and subsequent slowing down of the real estate market, which created hurdles in the development of the said project. Owing to these circumstances the supply of cement and steel and other raw material was severely disrupted.*

*4. That under the terms of agreement, specifically as per clause 23 of the Built UP Agreement, in the event where the handing over the possession of the said Residential project is delayed because of reasons beyond the control of the company including Force Majeure circumstances, the Respondent shall be entitled to a reasonable extensions of time for completion of construction of the said Unit equivalent to the period of delay. Thus, it is submitted that under the terms of agreement the Respondent is not liable to pay any penalty since the delay in handing over the possession of the unit was caused due to Force Majeure circumstances. The aforementioned clause 23 of the Built UP Agreement is reproduced herein below:”*

*“.....the buyer agrees that the sale of the unit is subject to force majeure clause which inter alia include delay on account of non-availability of steel, cement or any other building materials, or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the DEVELOPER, civil commotion or by reason of war, or enemy action or earthquake or any act of God, delay in certain decisions/clearances from statutory bodies, or if non-delivery of possession is as a result of any notice, order, rules or notification of the Government and/or any other public or Competent Authority or for any other reason beyond the, control of the Developer and any of the aforesaid event, the DEVELOPER shall be entitled to a reasonable corresponding extension of time of*



*delivery of possession of the said plot on account of force majeure circumstances....”*

14. During the course of hearing, a number of opportunities were sought by the Corporate Debtor/Parties specifically on 04.12.2019, 13.12.2019, 06.02.2020 and 03.03.2020 to settle the matter with the Financial Creditors. However, no settlement was reached between the Parties.

15. That during the final arguments, the Ld. Counsel appearing for the Corporate Debtor submitted that the Financial Creditors being ‘allottees/home buyer in a project’ are hit by the Ordinance dated 28.12.2019. He further added that the petition is not maintainable as the same has not been filed by the requisite number of allottees and, moreover, status quo has been ordered by the Hon’ble Supreme Court.

16. In response, the Ld. Counsel for the Financial Creditors submitted that they are not covered under the definition of an allottee by virtue of the Order dated 16.11.2017 & 13.12.2018 and the Recovery Certificate 10.08.2019 passed/issued by UP RERA in the complaint filed by the Financial Creditors against the Corporate Debtor. Hence, their case is in no way affected by the Ordinance, since they have a ‘decree’ in the form of Recovery Certificate issued in their favour by “UP RERA”.





17. The Financial Creditors have further submitted that in compliance to the Order dated 13.12.2018 of UP RERA, the Corporate Debtor has paid a sum of Rs.3,89,229 in two instalments in the month of March and June, 2019. Again, in December, 2019 the Corporate Debtor has paid a sum of Rs.3,00,000 in the account of the Financial Creditor/Applicant No. 2. He further argued that by doing so, the Corporate Debtor has accepted the fact of its default but failed to pay the entire decretal amount.

18. The Ld. Counsel for the Financial Creditors have also placed reliance on the Judgment of the Hon'ble NCLAT passed in the matter of V. R. Hemantraj Vs. Stanbic Bank Ghana Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 213/2018.

*“12. The decree passed by High Court of Justice, Queens Bench Division, Commercial Court of England, can be challenged only before the Court of Competent jurisdiction. The same cannot be assailed before the Adjudicating Authority, till its existence is denied.”*

19. After hearing submissions of both the parties, the main issue which emerges before this Bench for consideration is whether the case of the Financial Creditors is hit by the Ordinance dated 28.12.2019 or not.



20. To adjudicate this issue, it is felt appropriate to refer first to the definition of 'Claim' as provided under Section 3(6) of IBC, 2016, which is reproduced below :

*"Section 3 : Definitions*

*(6) "Claim" means -*

*a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*

*b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;"*

21. Now, we refer to the definition of 'Creditor' as provided under Section 3(10) of IBC, 2016, which is reproduced below :

*"Section 3 : Definitions*

*(10) "Creditor" means -*

*"Creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;"*

22. In view of the above, this Bench is of the view that the 'Claim' of the Financial Creditors having been arisen out of the Orders and Recovery Certificate issued by "UP RERA", which being an 'adjudicated debt' determined by an authority of appropriate jurisdiction, the case

of the Financial Creditors is not hit by the Ordinance dated 28.12.2019. Moreover, from perusal of the Order dated 16.11.2017 of UP RERA, it is evident that the Corporate Debtor has agreed to refund the amount and the fact that part payment of the decretal amount has already been made by the Corporate Debtor, Financial Creditors have succeeded in establishing their case.

23. Further, the Hon'ble NCLAT in the matter of M/s Ugro Capital Limited Vs. Bangalore Dehydration and Drying Equipment Co. Pvt. Ltd. in Company Appeal (AT) (Insolvency) 984 of 2019 has recognized the claim of Financial Creditor on the basis of an existence of a Decree. The Hon'ble NCLAT has observed that :

*“.....Based on the decree of the Court this petition was filed U/ S 7 of the Code. Since the definition of word creditor in I&B Code includes decree-holder, therefore if a petition is filed for the realisation of decretal amount, then it cannot be dismissed on the ground that applicant should have taken steps for filing execution case in Civil Court....”*

24. In the given facts and circumstances, the present Petition being complete and having established the default in payment of the Financial debt for the default amount being above Rs.1,00,000, the Petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1)

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(a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry :

- “(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.”*

25. As proposed by the Financial Creditor, this Bench appoints Mr. Amarpal as an IRP having IBBI Registration No. IBBI-/IPA-001/IP-P01584/2018-19/12411 (Email: amarpal@icai.org.), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.



26. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will 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.

27. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to the IBBI for their records.

—Sd—

**(L. N. GUPTA)**  
**MEMBER (T)**

—Sd—

**(CH. MOHD. SHARIEF TARIQ)**  
**MEMBER (J)**