



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CP (IB) - 457(PB)/2022**

*Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with  
Rule 4 of the Insolvency and Bankruptcy (Application to adjudicatory  
authority) Rules, 2016*

**IN THE MATTER OF:**

**LT. COL RETD. SPS AURORA & ORS .... Applicant/Financial Creditors**

**VERSUS**

**SENIOR BUILDERS LIMITED .... Respondent/Corporate Debtor**

**Clarification Order delivered on: 05.01.2023**

**CORAM:**

**SHRI RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SHRI AVINASH K SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**CLARIFICATION ORDER**

1. This is an application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") by financial creditors who have booked a total of 26 units (twenty-six) in the real estate project namely "**Senior Builder Mall, Sector-32 NOIDA**" for initiation of CIRP against the corporate debtor (CD) viz., Senior Builders Limited, for the dues of principal amount of **Rs. 11,94,29,229/-** (Rupees Eleven Crore Ninety-

AKS



Four Lakh Twenty-Nine Thousand Two Hundred Twenty-Nine Only) principal amount without interest.

2. The matter was heard and reserved on 14.10.2022.
3. On perusal of the documents, we find that the corporate debtor in his reply on page 2 paragraph 5 has stated that the land of the project in question is on lease taken by M/S MMT Amusement Park Pvt. Ltd., which has not been impleaded as a party in the present petition. Further, Corporate Debtor in his reply also submits that the completion certificate of the project could not be obtained as NOIDA Authority cancelled the lease deed executed in favour of M/S MMT Amusement Park Pvt. Limited.
4. In order to ascertain the correct facts in regard to the present status and ownership of the land of the project, this Adjudicating Authority has certain queries which need to be answered for proper adjudication of the matter. Therefore, this Adjudicating Authority seeks clarification from the financial creditor(s) and corporate debtor on the following points:

5. **Clarification Questions for the Financial Creditor(s)**

- i. Are the allottees aware of the fact that the lease of the land in question has been cancelled by the NOIDA authority?
- ii. How do the financial creditors propose to obtain their relief against the corporate debtor if the lease of the land in question has been cancelled by the NOIDA authority? And if the lease of the land in question was not in favour of the corporate debtor?
- iii. Whether this project pertaining to year 2006-08 has been registered with the RERA authority or not in terms of section 3 of the Real Estate (Regulation and Development) Act, 2016 which is also extracted below:

**3. Prior registration of real estate project with Real Estate Regulatory Authority-** *No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or*

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*building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*

***Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act***


- iv. If the project is not registered with RERA Authority, then will the petitioners come under term “allottee” for the purpose of filing section 7 petition under IBC, 2016? Justify how the petitioners (allottees) will come under the definition of Section 5(8)(f) of IBC?

**6. Clarification Questions for the Corporate Debtor**

- i. The Corporate debtor is hereby directed to submit before this Adjudicating Authority the copy of the Property Development Agreement as entered into between the Corporate Debtor viz., M/S Senior Builders Limited and M/S MMT Amusement Parks Private Limited. Also does the lease agreement entered into between M/S Amusement Park Pvt. Limited with NOIDA allow the lessee to enter into such a property development agreement.
- ii. In the Builder Allottee Agreements enclosed with the petition, it is stated that the building plan was sanctioned by the NOIDA Authority vide letter No. **NOIDA/BC/BP/BPR/IV-623/120 dated 07.01.2003**. The relevant portion of the builder allottee agreement is extracted below:

*Whereas M/s MMT Amusement Park Pvt Ltd. has acquired 90 years leasehold rights in respect of the land measuring*

*Rs*



4332 sq. mts. situated at Plot No. 55, Block BW, City Centre, Sector 32, NOIDA, 201301, Uttar Pradesh by a duly executed lease deed in its favour as document No. 2190-91 in additional book No. I, Volume No. 322 on pages 647 to 666 dated 26/08/2000 in the office of the Sub Registrar, NOIDA (hereinafter called the SAID PROPERTY). **The building plans have been sanctioned by NOIDA Authority, vide letter no. NOIDA/BC/BP/BPR/IV-623/120 on 07-01-2003.**

AND WHEREAS M/s MMT Amusement Parks Pvt. Ltd. and M/s Senior Builders Ltd. entered into a Property Development Agreement on Jan 12<sup>th</sup>, 2004 for development of Multiplex-cum-Commercial/ Shopping Complex on the said portion of land. As per this agreement the DEVELOPER has all rights to sell, lease, mortgage entire area in this shopping complex.

The Corporate Debtor is required to produce a copy of the sanctioned building plan.

- iii. What is the present status of the project and land in question?
- iv. The corporate debtor on page Pg-2 Para 5 of his reply stated that a litigation of M/s MMT Amusement Park Pvt. Ltd with the NOIDA Authority is already pending before the Hon'ble High Court of Allahabad in **WRIT(C) No.- 56336 of 2005** titled as **MMT Amusement Parks Pvt. Ltd Versus State of U.P.** We find that the said writ petition has already been disposed of **by Hon'ble Allahabad High Court vide order dt 21.08.2018, the order of Hon'ble High Court is extracted below:**

*Case has been called out in the revised list. None appears on behalf of the petitioner to press this petition even in the revised call. However, learned Standing Counsel and Sri R.P.Singh, learned counsel appearing for the respondents*

*Rs*



and Sri V.D.Chauhan, learned counsel appearing for the Intervenor are present.

*It appears that the petitioner has lost interest in pursuing the case. Even otherwise also the writ petition appears to have become infructuous. **It is, accordingly, dismissed. Interim Order, if any, stands vacated.***

The corporate debtor is required to provide the list of pending litigations (if any) of the project including the present status of the above-mentioned case in Hon'ble Allahabad High Court-whether any appeal has been filed?

- v. The corporate debtor is directed to provide the reasons behind the cancellation of lease deed by NOIDA Authority. Also, whether any steps have been taken by the Corporate Debtor or MMT to restore/renew the lease.
7. The reply to the above queries shall be placed by way of an affidavit by both the parties within a period of three weeks from today, with a copy served on the counsel of the other side.
8. List the matter on 06.02.2023 for further consideration.

**(RAMALINGAM SUDHAKAR)  
PRESIDENT**

**(AVINASH K SRIVASTAVA)  
MEMBER, TECHNICAL**