NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB)-608 (ND)/2017

In the matter of

Ms. Mamatha

W/o J. Sudharshan,

Through her POA Holder:

Mr. J. Sudharshan,

R/o 26, New No. 63,

East Anjaneya Temple Street,

Basavanagudi, Bangalore-560004 .... Financial Creditor

V/s

1. AMB Infrabuild Pvt. Ltd.
   Through its Director
   D-62, Ground Floor,
   Defence Colony, New Delhi.
2. Earth Galleria Pvt. Ltd.
   Through its Director
   100, Naraina Industrial Ara Phase-1
   Delhi
   Also at:
   A-1, C and D, Sector 16
   (Near Metro Station)
   Noida ...Corporate Debtors

SECTION: 7 of IBC, 2016

Order delivered on 12.3.2018

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)

For the Petitioner: Mr. Chayan Sarkar, Advocate

For the Respondent: Mr. Neeraj Jain, Mr. Anupam Mishra, Mr. Gautam Singh, Advocates

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The present petition has been filed by the Petitioner under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"). The Petitioner, claiming to be a Financial Creditor has prayed for initiation of the Corporate Insolvency of two Corporate Debtors. She has not been able to recover her invested amounts in a project to be developed by the Corporate Debtors as a Joint Venture.

2. As per averments, the Corporate Debtor No.1, being the owner of land situated in Sector 88, Gurgaon, Haryana, had entered into a collaboration agreement with Corporate Debtor No.2 for development of a commercial project under the name and style of "Skygate". The Corporate Debtor No.2 vide the collaboration agreement with the owner of the land i.e. Corporate Debtor No.1, undertook to develop the project and invited investments from the public. The building plans were stated to have been sanctioned.

3. The Financial Creditor initially invested Rs.90 lakhs towards the provisional allotment of an area measuring 4000 sq. feet on the 3rd floor of the complex being developed as a Cineplex for which the sale consideration was Rs.3 crores. On receipt of payment, the Corporate Debtor No.2 acknowledged the same vide issuance of receipts towards various instalments paid totalling about Rs.90 lakhs.

4. The total sale consideration also included five parking spaces to be allotted to the Financial Creditor.

5. It is submitted that the Corporate Debtor has not executed any agreement for sale in respect of the Cineplex. On a site visit, the Financial Creditor was shocked to observe that no construction work had started. On issuance of a legal notice, the Corporate Debtors agreed to remit a monthly assured return of Rs.1,76,780/0 and an MOU, being a tripartite agreement was executed between the Financial Creditor and the two Corporate Debtors. It is submitted that the Financial Creditor was lured into investing a further sum of Rs.90 lakhs. The assured returns were paid only upto February, 2017.

6. Reply to the present petition has been filed by Corporate Debtor No.1 raising various objections. It is pointed out by the Ld. Counsel that there is no privity of contract between the Financial Creditor and the answering Corporate Debtor No.1. They submit that the MOU alleged to be a tripartite agreement, relied upon is a fabricated document, for which criminal proceedings have been lodged.

7. Ld. Counsel appearing for the Corporate Debtor No.1 submits that the present petition is not filed in accordance with Rule 4 of the prescribed Rules under the Code. It is submitted that the application claimed to be in Form 1 is incomplete without any material or information as required under the Code to prove the Debt which is due from them. It is further pointed out that no amount was ever paid to the Corporate Debtor No.1 and therefore, there is no financial debt qua them.

8. Ld. Counsel for the Corporate Debtor No.1 has pointed that the Financial Creditor has suppressed various facts. The Corporate Debtor No.1 is not a party to the MOU dated 20th June, 2014 relied upon and no liability to pay the amount can be affixed on them. No amount was paid to them.

9. Submissions made by the Ld. Counsel appearing for Corporate Debtor No.1 merit consideration. The present petition suffers from several infirmities. The payment is alleged to be made to Corporate Debtor No.2 while Insolvency Resolution Process is sought to initiated against Corporate Debtor No.1 and 2. There is no provision under the Code where a petition for Insolvency Resolution Process can be initiated against two Corporate Debtors who have collaborated for a Joint Venture. Even otherwise, it is seen that this petition does not adhere to the format required under the Code. The financial creditor is bound to name the Insolvency Resolution Professional which they have not done in the present petition. This is a clear infirmity of the requirements of Clause 3 of Sub Section 3 of Section 7 of the Code.

10. In view of the various lacunae, more specifically that Corporate Insolvency Process against two Corporate Debtors on grounds of their being in a Joint Venture is not permissible. Failure to name the IRP also makes the petition liable to be dismissed. The payments were admittedly made to Corporate Debtor No.2 and therefore the factum of a financial debt qua Corporate Debtor No.1 is being highly questionable, remains unanswered.

Resultantly, the petition stands dismissed.

Sd/-
(Deepa Krishan)
Member (T)

Sd/-
(Ina Malhotra)
Member (J)