

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) NO. 3948 OF 2019

**APPLICATION BY FINANCIAL CREDITOR TO INITIATE
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER
THE INSOLVENCY AND BANKRUPTCY CODE, 2016.**

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

In the matter of

Sumedha Fiscal Services Limited

Having its registered office at:

6A, Geetanjali 8B Middleton Street,
Kolkata, West Bengal-700071

And one of its other office at Marathon
Innova C-703, Off G.K. Marg, Lower Parel
West, Mumbai- 400013

versus

**Siddhivinayak Construction Private
Limited.**

3, Sarvamangal, College Road, Dadar,
Opposite Prabhadevi Telephonic Exchange,
Mumbai- 400028

.... Corporate Debtor

Order delivered on: 26.02.2021

Coram: Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

Appearance:

For the Petitioner: Mr. Shyam Kapadia, Advocate

Per: Shri Shyam Babu Gautam, Member

ORDER

Heard the counsel appearing for the applicant and perused the record. The respondent was set ex-parte vide order dated 19.12.2019 by this tribunal. The above company petition is filed by Sumedha Fiscal Services Limited hereinafter referred as 'Financial Creditor' in

the capacity of an allottee against the corporate debtor M/s Siddhivinayak Construction Pvt. Ltd. The brief facts of the company petition are as follows:

The applicant has, over a period of time, disbursed to the Corporate Debtor an aggregate sum of Rs. 62,50,000/- (Rs. Sixty Two Lakhs Fifty Thousand only) towards flats allotted to it as described in detail below. On failure of the Corporate Debtor to hand over possession of flats or in the alternative, refund the said amount of Rs. 62,50,000/- as promised, an amount of Rs. 2,33,45,400/- (inclusive of interest calculated on the said amount of Rs. 62,50,000/-) was promised to be paid by the Corporate Debtor to the Applicant vide MOU dated 12th June 2014. However, out of the said Rs. 2,33,45,400/- the Corporate Debtor has paid only a sum of Rs. 16,80,675/- for which due credit has been given to the Corporate Debtor. Thereafter, under letter dated 1st March 2017, the Corporate Debtor has admitted that as on 30th June 2016, the Corporate Debtor owes to the Applicant a sum of Rs. 2,81,00,000/- with interest at the rate of 15% per annum from 1st July, 2016 compounded with quarterly rest. It is on the basis of these amounts that the applicant is filing the present application.

In the light of above petition averments, the question that falls for consideration is;

Whether the above company petition filed by a single allottee in a real estate project is maintainable in view of the recent amendment to Section 7 of the Code?

Admittedly, the petitioner is an allottee in a real estate project of the corporate debtor and the above company petition is filed by the petitioner on 08.11.2019. Subsequently, Section 7 of the Code was amended through amendment which was published in Official Gazette dated 13.03.2020 prescribing minimum 100 allottees or not less than 10 percent of the total number of such allottees under the same real estate project whichever is less for filing petition under Section 7 of the code. Liberty is also given to single applicant in the pending company petitions which are pending for admission to bring the required number of remaining applicants and continue the company petition within 30 days from the date of amendment came into force. Admittedly, the above company petition is filed by a single allottee and he has not brought the required number of minimum

allottees for continuing and admission of the above company petition. In the light of the above legal position, this tribunal is left with no option except to dismiss the above company petition as withdrawn for want of required minimum number of allottees as per the amendment.

For the foregoing reasons, the above company petition stands dismissed without costs.

However, the above order does not preclude the petitioner from initiating necessary recovery proceedings before appropriate legal forum.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

Sd/-
H V SUBBA RAO
Member (Judicial)