

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP (IB) – 2944(PB)/2019**

ORDER UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY
CODE, 2016 R/W RULE 4 OF THE INSOLVENCY AND BANKRUPTCY
(APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016.

IN THE MATTER OF:

PRASHANT GILL & ORS.

.....APPLICANTS/FINANCIAL CREDITORS

VERSUS

M/S ANSAL HI TECH TOWNSHIP LTD.

.....RESPONDENT/CORPORATE DEBTOR

MEMO OF PARTIES

1. MR. PRASHANT GILL

S/o SHRI ROOP CHAND GILL

*R/o A-003, BANGO PALM, OMAXE PALM GREENS, SECTOR-MU,
GREATER NOIDA-201301.*

.....FINANCIAL CREDITOR/APPLICANT NO. 1

2. MRS. PREM LATA

W/o SHRI RAM RATTAN

*R/o WARDEN-2, CB HOSTEL, JAWAHAR LAL NEHRU UNIVERSITY,
NEW DELHI.*

.....FINANCIAL CREDITOR/APPLICANT NO. 2

3. MRS. RANJANA KUMARI GILL

W/o SHRI RAJESH GILL

*R/o 80, PHASE 2, VASANT VIHAR, DEHRADUN, UTTRAKHAND-
248006.*

.....FINANCIAL CREDITOR/APPLICANT NO. 3

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VERSUS

M/S ANSAL HI TECH TOWNSHIP LTD.

HAVING ITS REGISTERED OFFICE AT:

**115, ANSAL BHAWAN 16, KASTURBA GANDHI MARG, NEW
DELHI, DELHI- 110001.**

(CIN: U45200DL2006PLC155229)

.....RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 06.02.2023

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Financial Creditor : Adv. Asmita Chaudhary,
Adv. N. Chamyal

For the Corporate Debtor : Adv. Anshuj Dhingra,
Adv. Shubhangda Singh

ORDER

PER: AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. **CP (IB) – 2944(PB)/2019** is an Application filed by the **PRASHANT GILL & 2 ORS.**, the Financial Creditors (FC)/Applicants on *02.11.2019*, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC,2016**") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("**Adjudicating Authority Rules**"), for

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initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against the Corporate Debtor (CD)/Respondent viz., **M/S ANSAL HI TECH TOWNSHIP LTD.**, on the ground that the Corporate Debtor has defaulted in repayment of Rs. 1,20,59,942.12/- (*Rupees One Crore, Twenty Lakhs, Fifty Nine Thousand, Nine Hundred, Forty Two and Twelve Paise Only*) as per the Affidavit dated 10.02.2022 filed by the Applicants.

2. The Corporate Debtor was incorporated on 06.11.2006, as a Company Limited by Share (Non- govt. Company) having CIN: U45200DL2006PLC155229, under the Companies Act, 1956. The Authorised Share Capital of the Corporate Debtor is 100,00,00,000 (*Rupees Hundred Crores only*) and the Paid-up Share Capital of the Corporate Debtor is 60,00,00,000 (*Rupees Sixty Crores only*). On the date of application, the Corporate Debtor is engaged in the Building of complete constructions or parts thereof, in the category of Civil Engineering. The Registered Office Address of the Corporate Debtor is 115, ANSAL BHAWAN 16, KASTURBA GANDHI MARG, NEW DELHI, DELHI- 110001. Therefore, this Bench has jurisdiction to deal with this application. A copy of the Company Details/Master Data of the Corporate Debtor is at **ANNEXURE 1 (Ref: Page 42 of the Application)**.

3. **Submission of the Applicants:**

- i. The Financial Creditors/Applicants No. 1, 2 and 3 are related parties, who under the misrepresentations made by the Corporate Debtor booked & purchased three Plots, jointly, in the project being developed by the Corporate Debtor under the name and style of “SUSHANT MEGAPOLIS DA-2” situated at Greater Noida.

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ii. The details of the plots purchased is enumerated below:

OWNER	PLOT NO.	TOTAL SALE PRICE
Prashant Gill & Prem Lata (Applicant No. 1 & 2)	232	Rs. 30,98,882/-
Ranjana Kumari Gill & Late Smt. Sudesh Kanta (Applicant No.3)	233	Rs. 30,98,882/-
Prem Lata & Ranjana Kumari Gill (Applicant No. 2 & 3)	234	Rs. 30,98,882/-

iii. The booking of the aforesaid plots was done under a special scheme whereby, the applicants had to make complete advance payments against the plots purchased. That owing to the same, the advance payments were made by the Applicants, the details of which are as follows:

For Plot No. 232 (Applicant No.1 & 2)

DATE	AMOUNT	MODE
25.10.2010	Rs.3,00,000/-	Cheque No. 704416, Syndicate Bank
30.10.2010	Rs.12,00,000/-	Cheque No. 054160, Syndicate Bank
30.10.2010	Rs.15,00,000/-	Cheque No. 851669, Syndicate Bank
30.10.2010	Rs.98,882/-	Cash
TOTAL	Rs.30,98,882/-	

For Plot No. 233 (Applicant No.3)

DATE	AMOUNT	MODE
20.10.2010	Rs.3,00,000/-	Cheque No. 031370, State Bank of India
30.10.2010	Rs.27,00,000/-	Cheque No. 554364, State Bank of India
30.10.2010	Rs.98,882/-	Cash
TOTAL	Rs.30,98,882/-	

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For Plot No. 234 (Applicant No.2 & 3)

DATE	AMOUNT	MODE
26.10.2010	Rs.3,00,000/-	Cheque No. 006596, Indian Overseas Bank
30.10.2010	Rs.98,000/-	Cheque No. 414726, Syndicate Bank
30.10.2010	Rs.22,000/-	Adjustment received
30.10.2010	Rs.15,00,000/-	Cheque No. 554363, State Bank of India
30.10.2010	Rs.98,882/-	Cash
TOTAL	Rs.30,98,882/-	

- iv.** After receiving the advance payments, the Corporate Debtor executed the Booking agreement with the Applicants individually for plot nos. 232, 233 and 234. That as per Clause 16 of the Booking agreement dated 08.11.2010, the Corporate Debtor had to handover the possession within 24 months from the date of booking, after which the Applicants can claim refund of the advance amount. Thus, the date of possession as assured by the Corporate Debtor was 26.12.2012.
- v.** After much requests and persuasion from the side of the Applicants, the Corporate Debtor executed the Plot Allotment Agreement with the Applicants against Plot Nos. 232 & 233 on 30.05.2013 and for Plot No. 234 on 28.05.2013.
- vi.** However, the Corporate Debtor failed to handover possession even after executing the plot allotment agreement and issuing the allotment letter. Further, the Corporate Debtor despite taking advance payment consideration of the total value of the plots, has failed miserably and thus defaulted.
- vii.** The co-applicant Mr. Ankur Gill in Plot No. 232, gave up his share in the plot and transferred the same in the name of his

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Aunt i.e., Mrs. Prem Lata, Applicant No. 2 on 11.06.2015. That the transfer was duly acknowledged by the Corporate Debtor by transfer letter dated 13.10.2015 issued in the name of Applicant No.1 and 2.

viii. The Applicant No.2 feeling aggrieved by the malicious attitude of the Corporate Debtor filed a complaint against the Chairman, Mr Sushil Ansal and Vice Chairman, Mr. Pranav Ansal of the Corporate Debtor under Section 406/420 of the Indian Penal Code, 1860 against the fraud committed with them, which was registered as FIR No.8/2018 dated 19.01.2018 with Barakhamba Road Police Station, New Delhi. However, even after investigation, no positive outcome could be arrived at.

ix. The Applicants thereafter approached the Hon'ble Uttar Pradesh Real Estate Regulatory Authority for the redressal of their grievances and filed three complaints under Section 31 of the Real Estate (Regulation & Development) Act, 2016 for the separate plots against the Corporate Debtor. The details of the complaints are as under:

6201812537	Filed by Applicant No. 1 and 2
6201812540	Filed by Applicant No. 2 and 3
6201812544	Filed by Applicant No. 3

x. Soon after the registration of the FIR and filing of the complaint, the Corporate Debtor approached the Applicants and proposed for settlement. That as per the proposal, the Corporate Debtor offered credit notes to the Applicants worth Rs. 84,14,320/- [Rupees eighty four lakhs fourteen thousand three hundred twenty only] for each plot, which is the double the default amount until date along with the delay penalty interest,

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and against the same offered units in the project Migsun Ultimo. The Applicant No. 1 and 2, accepted the settlement in Complaint No.-6201812537 and entered into settlement agreement dated 20.08.2018, whereby against the credit notes the Applicant Nos. 1 and 2 were allotted Flat No. 1501 and 1701, Sun 2 admeasuring 1395 sq. fts. in Migsun Ultimo, Plot No.-GH03, Sector Omicron-III, Greater Noida. However, the other two Complaints, Complaint No.6201812540 and 6201812544 were not settled.

- xi.** Unfortunately Late Smt. Sudesh Kanta expired on 29.08.2018 and thus the entire share and authority of Plot No. 233, devolved in the name of Applicant No. 3.

- xii.** Taking cognizance of the wrong committed by the Corporate Debtor, the Hon'ble Uttar Pradesh RERA was pleased to pass an order dated 27.05.2019 in the favor of the Applicants in Complaint Nos. 6201812540 and 6201812544; whereby it directed the Corporate Debtor in view of the defaulted possession, to refund the principal amount paid by the Applicants along with delay interest @ 9.75%, within 45 days from the date of the order.

- xiii.** Consequently, the total debt due upon the Corporate Debtor till date comes to Rs.2,08,02,809/- [Rupees two crores eight lakhs two thousand eight hundred nine only] which has been defaulted by the Corporate Debtor. The details of debt separately for the Applicants, as per their plots is being enumerated herein below, for the kind consideration of this Hon'ble Tribunal:

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APPLICANT	DEBT DUE	DATE OF DEFAULT
1 and 2	Rs.93,67,328/-	20.08.2018
3	Rs.58,10,674/-	11.07.2019
2 and 3	Rs.56,24,807/-	11.07.2019
TOTAL	Rs.2,08,02,809/-	

xiv. The above stated debt falls under the definition of Financial Debt, as stated under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, for the following reasons:

- a.** A Financial Debt means a debt along with interest, if any, which is disbursed against the consideration of the time value of money.
- b.** Since the above stated debt is carrying interest @9.75%, i.e., time value of money for every delay after the lapse of the date of settlement and 45 days from the date of the order dated 27.05.2019 passed by the Hon'ble Uttar Pradesh Real Estate Regulatory Authority, Greater Noida.
- c.** Further, without prejudice to the above, the said agreement is carrying commercial effect of borrowing as covered by Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016.

xv. The Applicants placed the following documents on record:

- a)** True Copy of the booking agreement dated 08.11.2010 executed between Applicant No. 1 & Mr. Ankur Gill and the Corporate Debtor. **ANNEXURE-2 (Ref: Page 43-47 of the Application).**
- b)** True Copy of the Allotment Letter dated 26.12.2013 in the name of Applicant No. 1 and Ankur Gill. **ANNEXURE-3 (Ref: Page 48-52 of the Application).**
- c)** True Copy of the Plot Allotment Agreement dated 30.05.2013 executed between Applicant No. 1 & Mr. Ankur Gill and the

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Corporate Debtor. **ANNEXURE-4 (Ref: Page 53-77 of the Application).**

- d) True Copy of the settlement agreement dated 07.08.2018 executed between Applicant No. 1 & 2 and the Corporate Debtor. **ANNEXURE-8 (Ref: Page 84-92 of the Application).**
- e) True Copy of the Computation Sheet of default for Applicant No.1 & 2. **ANNEXURE-10 (Ref: Page 94 of the Application).**
- f) True Copy of the Computation Sheet of default for Applicant No. 3. **ANNEXURE-16 (Ref: Page 145 of the Application).**
- g) True Copy of the Computation Sheet of default for Applicant No. 2 & 3. **ANNEXURE-21 (Ref: Page 194 of the Application).**
- h) Brochure of the project ‘Sushant Megapolis’. **ANNEXURE C (Ref: Page 81 of I.A. 1935/2022 IN CP (IB) 596 (PB)/2021).**

4. In the present case, the CD has not filed any reply or written submission till now. The application was served on the Corporate Debtor’s Registered Office Address *vide* courier and speed post on 20.11.2019 and on 22.11.2019. Thereafter in compliance of this Adjudicating Authority’s order, the Corporate Debtor was served notice on 27.11.2019 via email and on 28.11.2019 *via dasti*. The counsel appearing on behalf of the Corporate Debtor on several occasions sought time to file a reply. But, despite several adjournments, the Corporate Debtor has chosen not to contest this application by not filing the reply. Hence, the present matter has proceeded ex-parte against the Respondent/Corporate Debtor.

5. **Affidavit by the Financial Creditor dated 10.02.2022**

- i. The Financial Creditors/Applicants No. 1, 2 and 3 are related parties, who under the misrepresentations made by the

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- Corporate Debtor booked & purchased three Plots, jointly, in the project being developed by the Corporate Debtor under the name and style of “SUSHANT MEGAPOLIS DA-2” situated at Greater Noida.
- ii.** It is submitted that taking cognizance of the wrong committed by the Corporate Debtor, the UP-RERA was pleased to pass an order in the favour of Applicant No. 2 and 3, whereby it was held that the Corporate Debtor in view of the defaulted possession, directed the Corporate Debtor to refund the principal amount paid by the Applicants along with delay interest @9.75% within 45 days from the date of the order.
- iii.** It is submitted that the Corporate Debtor has settled /compromised with Applicant No. 1 and further submitted that the Corporate Debtor had not settled the matter with the Applicant No. 2 and 3 hence, the outstanding debt due on 11.07.2019, which was defaulted by the Corporate Debtor, even which is continuing even till date, as the Corporate Debtor did not comply with the order passed by the UP-RERA and thus the grievances of the Applicants have not been redressed.
- iv.** It is further submitted that the Recovery Certificate by the UP-RERA in favour of the Applicant No. 3 in complaint no. 6201812544 is pending, when it becomes available with the Applicant No. 3 the same would be produced before this Hon'ble Tribunal. However, a copy of the order dated 27.05.2019 passed in complaint no. 6201812540 in favour of the Applicant No. 2 and 3 along with Recovery Certificate for an amount of Rs.62,49,295.12/- (Rupees Sixty Two Lakh Forty Nine Thousand Two Hundred and Ninety Five and Twelve Paise Only) is annexed herewith and marked as **ANNEXURE-A3 (COLLY)**, **Ref.: Page 19-53 of the Affidavit dated 10.02.2022.**

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- v. It is submitted that for the convenience of this Hon'ble Tribunal, the status of the UP-RERA proceedings are as under: -

S.NO.	PARTICULARS	ALLOTTED UNIT	RC ISSUED	SETTLED/ OR NOT	AMOUNT (IN RS.)
1.	Applicant No.1 (Prashant Gill)	232	-	Settled	-
2.	Applicant No. 2 (Prem Lata)	234	Issued	Not Settled	62,49,295.12
3.	Applicant No. 3 (Ranjana Kumari Gill)	233	Pending	Not Settled	58,10,647.00
TOTAL					1,20,59,942.12

- vi. It is submitted that with respect to the present petition, on 04.08.2021, the Hon'ble Supreme Court passed an order /judgment in the matter of "**Dena Bank (now Bank of Baroda) Versus C. Shivakumar Reddy and Another**" held that there is no bar in law to the amendment of pleadings in an application under Section 7 of I & B Code, or to filing an additional documents, apart from those initially filed along with application under Section 7 of I & B Code, 2016. for the kind convenience of this Hon'ble Tribunal, the relevant para as under:-

"143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate

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Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.

144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with the application under Section 7 of the IBC in Form-I. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is an inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal.

145. For the reasons discussed above, the impugned judgment and order is unsustainable in law and facts. The appeal is accordingly allowed, and the impugned judgment and order of the NCLAT is set aside."

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6. Analysis and Findings

- i. We have perused the affidavit submitted by the Applicant. For admitting the claim under Section 7 of the Code, the petition has to be filed by a threshold number of homebuyers/allottees. Having a decree from RERA does not change the original nature of the homebuyers/allottees. Originally, the Applicants were allottees and as per our analysis, their nature will not change. To maintain the application under Section 7 of the Code, the applicants must satisfy the requirement of minimum no. of allottees/homebuyers that is 100 in number or 10 percent whichever is less. The Applicants have relied upon the judgment in the matter of **Dena Bank (Bank of Baroda) v. C. Shivakumar Reddy & Anr., (2021) 10 SCC 330** to prove this claim. We may point out here that the issue of law which had arisen in Dena bank (supra) is different from what the applicants have interpreted. The relevant portion of the judgment is extracted below:

“25. Another question which arises for the consideration of this Court is, whether a final judgment and decree of the DRT in favour of the Financial Creditor, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action to the Financial Creditor to initiate proceedings under Section 7 of the IBC within three years from the date of the final judgment and decree, and/or within three years from the date of issuance of the Certificate of Recovery.”

“138. A final judgment and order/decree is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decree, upon adjudication,

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and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.”

“143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

From the above extracted judgment of the Hon’ble Supreme Court, it is clear that the issue it dealt with is w.r.t. the question of limitation and does not in any manner comment upon the nature of the transaction. It only decides that *“the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment”*

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- ii. Further, we may like to cite another relevant judgement in the facts of the present case. In the matter of **Sunitha Venkatesh vs. Oragadam City Developers Private Limited 2022 SCC OnLine NCLT 19** dated 11.02.2022, Chennai Bench of National Company Law Tribunal, it was held that:

“18. An award passed by the Arbitrator under the Arbitration and Conciliation Act, 1996 would also qualify to be a ‘decree’. However, merely because a person has obtained a ‘decree’, the same would not change the nature of transaction over which the decree was passed. It is significant to note here that a ‘decree’ can be obtained both for an ‘operational debt’ and also for a ‘financial debt’. A ‘decree’ of a court can be relied on as supporting document in order to prove that the amount is due and payable, however it cannot at any point of time be relied on to show that a person is an ‘Operational Creditor’ or ‘Financial Creditor’. Further, a ‘decree’ cannot change the essence and nature of a transaction.”

“19. In the present case, from the order obtained from RERA it is evident that the Applicant herein is an ‘allottee’ of a Real estate project and the Applicant herein under the pretext that he is a ‘decree’ holder is trying to get away from the glitches of an ‘allottee’. Further, an application for initiating Corporate Insolvency Resolution Process against the Corporate Debtor by allottees under a Real Estate Project is required to satisfy provisos of Section 7(1) of IBC, 2016”.

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iii. Another relevant order in the similar issue has been delivered by this Adjudicating Authority in the matter of **M/s Jones Lang Lasalle Building Operations Private Limited vs. M/s Celebration City Projects Private Limited 2022 ibclaws.in 825 NCLT** dated 26.09.2022 in an application filed by the real estate allottee to the Corporate Debtor, whose claim was rejected by the Resolution Professional on the ground that she ceases to be a real estate allottee on account of Arbitral award passed in her favour. Further, this Adjudicating Authority relied upon the Judgement of Hon'ble NCLAT in the matter of **Mukul Agarwal vs. Royale Resinex Private Limited in Company Appeal (AT) (Insolvency) No.777 of 2020** and held that:

“the transaction prima facie has to be considered for the purpose of adjudicating the claim and the decree of the Court is a measure of debt and that would be the manner in which it should be heard.”

“the present petitioner should be treated as the real estate allottee/creditor in class and dealt with accordingly.”

Relevant portion from the judgement of **Mukul Agarwal (supra)** is extracted below:

“11. Thus, the claim of the Operational Creditor was in respect of provisions of goods, that is, supply of poly propylene. The mere fact that when the Corporate Debtor did not pay the amount, suit for recovery was filed in the year 2016 by Operational Creditor, which was also Decreed on 08.09.2016, does not in any manner effect the transaction out of which the amount fell due. The fact that amount was

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***adjudicated and a Decree was passed, in no manner
take away the nature of ‘operational debt.’***

Applying the same analogy in present facts and circumstances of the case, the Applicants originally were allottees, and the mere fact of they being the decree holders, does not in any way alter the original nature of homebuyers/allottees. Placing reliance on the judgment of Mukul Agarwal (supra), Sunitha Venkatesh (supra) & M/s Jones Lang (supra), passing of decree/recovery certificate does not change the nature of debt. If originally the Applicants were allottees, they will remain allottees & to maintain their application under Section 7 of the code, they have to meet the threshold criteria embodied under Section 7 of the Code.

- iv.** It is noted that on 13.03.2020, the Government of India passed the Insolvency and Bankruptcy (Amendment) Act, 2020 (No.1 of 2018) wherein by virtue of Section 3 of Amending Act, 2020 the proviso was added to Section (7) of Code:

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

“7. (1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred”.

.....

The 2nd proviso to Section 7(1) states 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

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under the same real estate project or not less than ten percent of the total number of such allottees under the same real estate project, whichever is less"

It is pertinent to note that the constitutional validity of Section 3 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 has been duly upheld by the Hon'ble Supreme Court in **Manish Kumar v. Union of India, Writ Petition(C) No. 26 of 2020**, decided on 19.01.2021.

- v. Further, Section 5(8) of IBC defines Financial Debt which includes Section 5(8)(f) along with its explanation and the same is extracted below: -

Section 5: Definitions

.....

"(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause,

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]"

- vi. In the present case, from the order obtained from the UP-RERA, it is evident that the applicants herein is an 'allottee' of a Real Estate Project and the applicants herein under the pretext that they are 'decree holder' is trying to get away from the glitches of

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CP (IB) – 2944 (PB)/2019

an 'allottee'. Further, an application for initiating CIRP against the CD by allottees under a Real Estate Project is required to satisfy the second proviso of Section 7(1) of IBC, 2016.

- vii.** It is clear that a minimum threshold limit has been laid down for taking cognizance of an application under Section 7 of IBC, 2016 for triggering CIRP, when such an application is relatable to a Real Estate Project. In the present application, it is seen from the records that no documents have been filed by the applicant to satisfy that they have the minimum threshold limit as laid down in the second proviso to Section 7(1) of IBC, 2016.
- viii.** On the analysis of the legal position, the Applicants have not been able to establish that they satisfy the threshold limit of 10% or 100 numbers whichever is less, as required by law.
- ix.** In this view of the matter, we hold that the petition is not maintainable and is required to be rejected. Hence, we are inclined to **dismiss this petition.**

7. **Order**

In light of the above facts and circumstances, the Application bearing **CP(IB) – 2944 (PB)/2019** filed by the Applicants/(FC), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the Respondent/(CD), is **dismissed**.
No order as to costs.

-sd-
(RAMALINGAM SUDHAKAR)
PRESIDENT

-sd-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)