

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.67/ALD/2023

IN THE MATTER OF:

[An application under Section 7 of the Insolvency and Bankruptcy Code, 2016]

IN THE MATTER OF:

1. SANDIP BAGCHI

R/o Flat No.324, Plot No.6B,
Sector-11, Sapna Ghar,
CGHS, Dwarka, Delhi

2. KAVITA BHATIA

R/o Flat No.22/B,
Saket, New Delhi

3. PANKAJ BHATT

R/o Block-A, Shivalik Apartment
Canal Road, Kishanpur, Raipur,
Dehradun, Uttarakhand

4. ATUL DEV (NO AGREEMENT)

R/o C-19, Chander Lok Colony,
Rajpur Road,
Dehradun, Uttarakhand

5. CHANDER BATRA & ANR.

R/o B-4, Rishi Ganga Apartment,
Railway Road, Rishikesh,
Dehradun, Uttarakhand

6. AJAY SIKRI

R/o 16, Guru Road,
Near Stepping Ston School,
Dehradun, Uttarakhand

7. SUNITA SINGH

R/o 30, Jonk Swark,
Ashram Jonk
Pauri Garwal, Uttarakhand

8. MITHLESH SINGH

R/o Flat No.A-307, 3rd Floor,
Rock Valley Residency Apartment,
Main ITBP Road, Hotel Sun Park,
Dehradun, Uttarakhand

9. GURMEET KAUR

R/o 104/4-2, 1st Floor,
Chakrata Road, Ballupur
Dehradun, Uttarakhand

10. ALOKANANDA

R/o 5, Bhagirathi Puram,
Engineer Enclave Ext.
Kanwali GMS Road,
Dehradun, Uttarakhand.

....PETITIONERS/FINANCIAL CREDITORS

Versus

PUSHPANJALI REALMS AND INFRATECH LIMITED

Having its Registered Address at:
Khasra No.11, Tarla Nagal, Near Helipad Sahastradhra Road,
Dehradun, Dehradun, UR-248001

.....RESPONDENT/CORPORATE DEBTOR

Order pronounced on 25th April, 2024

Coram:

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Krishna Dev Vyas, Adv. : *For the Financial Creditor*

Sh. Rishabh Govila, Adv. : *For the Corporate Debtor*

ORDER

1. This Application has been filed on 06.10.2023 by the Financial Creditors/Allottees under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as I&B Code, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form against the Corporate Debtor i.e Pushpanjali Realms and Infratech Private Limited for a total financial debt of Rs. 4,14,69,058 (Rupees Four Crore Fourteen Lakhs Sixty-Nine Thousand Fifty-Eight Only) comprising of Rs. 3,51,43,272/- (Rupees Three Crore Fifty-One Lakhs Forty-Three Thousand Two Hundred Seventy-Two Only) being the total amount paid to the Corporate Debtor towards the allotment of units in the "Orchid Park" ("Project"), a real estate project of the Corporate Debtor i.e., Pushpanjali Realms and Infratech Limited and Rs. 63,25,786/- (Rupees Sixty-Three Lakhs Twenty-Five Thousand Seven Hundred

Eighty- Six Only) towards interest @12% p.a on the total principal amount from 01.03.2022 to 31.08.2023. The date of Default mentioned in the Part-IV is 31.03.2021.

- 2.** The Corporate Debtor is a real estate company with CIN No. L70102UR2013PLC000787 and having its registered office at Khasra no- 11 Tarla Nagal near Helipad Sahastradhra Road, Dehradun-UR 248001 and principal place of business is located at Nath House, Devpura, Haridwar- 249401.
- 3.** The Corporate Debtor initiated the group housing project named “Orchid Park” by purchasing land measuring 1.428714 Hectares in tehsil Dehradun, Distt, Dehradun ("Land"). After acquiring the said land, the promoters of the Corporate Debtor entered into a collaboration agreement with the Corporate Debtor and obtained sanction of building plan from Mussoorie Dehradun Development Authority ("MDDA") for the development of the said land for construction of the said group housing project.
- 4.** The proposed project consists of 8 towers with several apartments ranging from a) 672 Sq. Ft. 1 BHK, fully serviced apartments, b) 2998 Sq. Ft. / 2698 Sq. Ft. 3 BHK, and c) 1550 Sq. Ft. 2 BHK apartments along with several amenities

such as Swimming Pool, Gymnasium, Club House, Central Park and Play Areas, Indoor gaming zones, swings and slides for kids along with a separate sitting area for the elderly.

5. The Corporate Debtor persuaded a number of individual allottees to apply for units at its proposed project through its extensive marketing and advertisements. As a result, a number of people applied for the project under the Corporate Debtor's promises and representations. Additionally, Allotment Agreements ("Agreement") were signed between the individual allottees and the Corporate Debtor in response to the latter's payment of a booking amount. The relevant terms in one such agreement is enumerated below:

"

B. *The Owners, in Owners, in collaboration with the M/s. Pushpanjali Realms and Infratech Ltd. (Hereinafter referred as "Developer"), obtained sanction of building plan for two projects adjacent to each other, from Mussoorie Dehradun Development Authority, Dehradun, via map no. (R-0415/15-16) dated 14th Jul 2015 & (R-0416/15-16) dated 14th Jul 2015, for development of the Said Land for construction thereon a Group Housing Project, namely, "ORCHID PARK" (hereinafter referred as "Project"), and entered into a collaboration agreement with M/s Pushpanjali Realms & Infratech Ltd., for the purpose of carrying out the development and construction of the project on the said land in accordance with the sanctioned building plan.*

The developer has applied/received necessary licenses with the concerned authorities for construction and development of a complex called "ORCHID PARK" on the said LAND.

The developer hereby assures and declare that they are and exclusive have rightful the sole, absolute, rights and are fully development and marketing competent possessing all rights and power to allot the same.

The Developer has represented that it shall complete the construction of the said complex tentatively by March 2020 in all respects and shall make the building ready for occupation & possession unless the construction is stopped or delayed on account of factors beyond the control of the developer, as stipulated in the later part of this agreement.

The developer, relying on the confirmations, representations and assurances of the Allottee to faithfully abide by all the terms, conditions and stipulations contained in this Agreement has accepted in good faith his/her application to allot as described in Table-A (hereinafter referred as "UNIT") and is now willing to enter into this agreement on the terms and conditions appearing hereinafter. It is made clear that the "Allottee" after taking over possession from the "Developer" shall not engage itself, any of its nominee or any future Allottee to whom Allottee, transfer for the purpose other then as specified in Table-A."

Copy of the Allotment Agreement executed between the Financial Creditors and the Corporate Debtor has been annexed as **ANNEXURE A-5(Colly)** with the application.

6. It is further submitted here that after the execution of the Agreement between the Corporate Debtor and the Financial Creditors/Allottees, the Allottees have duly complied with the

conditions stipulated in the payment plan and paid all the payments as per the demands raised by the Corporate Debtor invoking the payment plan. It is stated in the application that any such funds which were raised by the Corporate Debtor pursuant to the payment by the Allottees, were used towards the construction of the units for the Allottees, as assured by the Corporate Debtor and therefore, the Allottees displayed no hesitancy while dispersing the funds to the Corporate Debtor.

7. Following the execution of the Agreements between the Financial Creditors/Allottees and the Corporate Debtor, the Allottees complied with the terms outlined in the payment plan, and they made all of the payments in accordance with the demands made by the Corporate Debtor in order to invoke the payment plan. Copy of the receipts held by the Allottees against making the required payments to the Corporate Debtor has been annexed as **ANNEXURE A-6 (Colly)** with the Application.
8. Financial Creditors/Allottees have alleged in the application that the Corporate Debtor has completely failed to give ownership of the units in accordance with the Builder-Buyer

Agreements, even though it has been receiving the majority of the payments from the project's allottees since 2015. Furthermore, a physical inspection of the project site revealed that the Corporate Debtor had abandoned the remaining portions of the project, and was only able to build one of the eight towers that had been promised.

- 9.** It is also alleged in the application that if the Corporate Debtor had developed the flat, apartment, or unit entirely, the individual Allottees would have been constrained to pay the full consideration amount up front. However, by paying the Corporate Debtor in installments in accordance with the payment plan and by not defaulting in paying the installment amount as demanded by the Corporate Debtor during the project's development, the time value of money as defined by the Financial Creditors/Allottees is met. Furthermore, the advance given to the corporate debtor by the financial creditors/allottees was utilized to finance the project, as the corporate debtor guaranteed, and so meets the requirements for time value of money.
- 10.** Now, it is a settled position of law that Home Buyer qualifies as a Financial Creditor as defined in the I &B Code,2016 in

terms of judgements passed by the Hon'ble Supreme Court. The Hon'ble Supreme Court of India, in the matter of Manish Kumar and Ors. Vs. Union of India & Ors., (Writ Petition No. 26 of 2020) in para 163 of the judgement held that: -

"...we also find merit in the contention of the Union that the Association of allottees has to be formed under the mandate of the law it is expected to play an important role. Information will certainly be forthcoming in regard to allotments upon the allottees becoming members of the Association as required. We cannot ignore the role of the association in the matter of becoming the transferee of the common areas, being clothed with the right of first refusal within the meaning of section 7 of the Act and also the right to complain otherwise under the Act. This aspect of the association of allottees is not a matter of mere trifle. The allottees cannot truly possess and enjoy their properties be it an apartment or building without their having right of common areas. The promoter is bound under Section 17 to transfer title to the common areas to the association. Section 19(9) of RERA makes it a duty on the part of the allottee to participate towards the formation of the association or cooperative society or the federation of the same. The possession of the common areas is also to be handed over to the association of the allottees. The law giver has therefore created a mechanism, namely, the association of allottees through which the allottee are expected to gather information about the status of the allotments including the names and addresses of the allottees."

- 11.** The present application has been preferred by ten percent of the total number of such Financial Creditors/Allottees under

the same real estate project. Further, as per the information available with the Allottees, the Corporate Debtor has been able to allot a total number of 62 units in the 'Orchid Park' project and therefore the present petition is maintainable under section 7(1) of the Code.

- 12.** The present application is not barred by limitation and the default is continuous in nature the Financial Creditors/Allottees are still without possession of their units causing an irrational delay. The instant application does not fall under the period specified under section 10A of the Code. The date of default occurring during the period falling under section 10A of the Code stands excluded for the purpose of determining the exact date of default i.e. 31.03.2021.
- 13.** During the Course of hearing on 03.01.2024 Ld. Counsel of the Financial Creditor submitted that Notice was issued to the Corporate Debtor on 15.12.2023. Affidavit of service was filed informing that notice sent was returned back with the remark of incomplete address of the Corporate Debtor. After this, Corporate Debtor was served with substituted mode of service by advertising in English and Hindi newspaper which was circulated at the place where the registered office of the

Corporate Debtor is situated. Ld. Counsel representing the Corporate Debtor submitted during the hearing held on 11.03.2024 that he has no latest instructions on behalf of the Corporate Debtor to file reply or defend the case of the Corporate Debtor as except for one Director of the Corporate Debtor none are available. There is no validly passed resolution by the Corporate debtor.

- 14.** Ld. Counsel representing the Corporate Debtor however, sought time to file written submission in this matter. This tribunal vide order dated 11.03.2024 granted 10 days to file written submissions on behalf of the Corporate Debtor.
- 15.** In compliance with the order dated 11.03.2024, one of the Directors of the Respondent Corporate Debtor has filed Written Submission on 02.4.2024 wherein it is averred that the Corporate Debtor initially was under the management of 6 directors. However, due to certain unforeseeable circumstances, four out of six directors resigned in the year 2020, which left the company with 2 directors, namely, Mr. Deepak Mittal and Mr. Rajpal Walia.
- 16.** As per the records of the Corporate Debtor the following units have been allotted to the Financial Creditors:-

S. No.	NAME OF THE APPLICANT	ALLOTTED UNITS
1.	Sandip Bagchi	S-701
2.	Kavita Bhatia	V-304
3.	Pankaj Bhatt	S-303
4.	Chander Batra	F-503
5.	Ajay Sekhri	I-404
6.	Sunita Singh	F-406
7.	Mithilesh Singh	D-501
8.	Gurmeet Kaur Chawla	T-302
9.	Aloknanda & Kunal Niyogi	P-403

- 17.** The Project “the Orchid Park” entailed the development of eight towers comprising 339 flats on a total land area of approximately 24 Bigahs (17952.74 square meters) in Tarla Nagal, Sahastradhara Road, Dehradun. However, by 2021, only 80 flats had been partially constructed. All 90 allotments were made by one director, Mr. Deepak Mittal, who, in his capacity as Managing Director at that time, signed all builder-buyer agreements with these allottees.
- 18.** Furthermore, the land on which the project was partially built is solely owned by one of the directors of the Respondent-Corporate Debtor, who provided it to the Corporate Debtor for the said project development. However, due to syphoning off funds amounting to approximately Rs. 15,00,00,000 (Rupees Fifteen Crores) by the managing director, Mr. Deepak Mittal, the project faced significant delays and could not be completed within the stipulated timeframe.

- 19.** It is stated by the Mr. Rajpal Walia, one of the directors of the Corporate Debtor that due to the said alleged syphoning off of funds by Mr. Deepak Mittal, the erstwhile director of the Corporate Debtor, several homebuyers filed criminal complaints against the Corporate Debtor. In the meantime, Mr. Deepak Mittal fled the country in the year 2020-2021. Later on, Mr. Rajpal Walia one of the Directors of the Respondent-Corporate Debtor was arrested by the Enforcement Directorate (ED) in the year 2023 on account of being the only other director of the Corporate Debtor.
- 20.** Even though the Director Mr. Rajpal Walia herein had no key role in the said Project, the ED attached all the assets of the Corporate Debtor along with personal assets of the Director herein, due to which the said project could not be completed and possession could not be delivered even to these 10 allottees/ Financial Creditors in a class who have approached this Hon'ble Tribunal by filing the present petition. The Director Mr. Rajpal Walia is in the custody of the ED since 2023, and proposed to settle the matter with the allottees /applicants before this tribunal.

- 21.** It is further stated that all 90 allottees of the project lodged complaints before the Real Estate Regulatory Authority (RERA) in the years 2020 and 2021. Following these complaints, the Director, Mr. Rajpal Walia appeared before the authority and even submitted a proposal to RERA to enlist another builder for completing the project, thereby ensuring the delivery of flats to prospective buyers. However, before the proposal could be finalized, the property and the project were seized by the Enforcement Directorate. Mr. Rajpal Walia also provided consent before RERA, stating that if the authority allowed him or his proposed builder to proceed with the project, he would have no objection.
- 22.** During the RERA proceedings, the project underwent valuation by a government valuer, which revealed that expenses incurred on the project up to August 2021 amounted to Rs. 34,87,97,000/-.
- 23.** Mr. Rajpal Walia, one of the directors of the Respondent - Corporate Debtor approached different builders for submitting proposal before RERA for completion of the project. He states that on the date of filing the present written submission, two out of the proposed eight towers in the said

project are about 70%. Therefore, Director on behalf of the Respondent contends to dismiss the instant applicant filed under section 7 of the IBC, 2016.

FINDINGS AND ORDER

- 24.** We have heard the learned counsels for the applicant as well as Ld. Counsel appearing on behalf of the Respondent and perused the material available on record submitted by both the parties. The one of the Directors of the Respondent-Corporate Debtor in its written submission has admitted that in paras 3,5,8 and 12 that Project could not be completed. It is an admitted fact that Corporate Debtor has failed to deliver the possession of the units as per the Builders Buyer Agreements despite receiving the payment from the Allottees.
- 25.** The total default amount as stated in Part-IV of the Application is Rs.4,14,69,058/-. It includes the interest @ 12% p.a on the principal amount from 01.03.2022 to 31.8.2023 15.06.2023 of Rs. 63,25,786. The date of default is 31.03.2021.
- 26.** Considering the above, we are of the considered view that there exists financial debt which is payable and there is a default on the part of the respondent. The same is also

admitted and acknowledged by the respondent. The debt is more than the threshold limit of Rs. 1 crore as per Section 4 of the I&B C, 2016. This application is filed within limitation and as such the application deserves to be admitted.

27. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the “*debt*” and the “*default*”, which is more than the threshold limit of one crore rupees and hence, the application u/s 7 is found to be fit for initiation of the CIRP against the Corporate Debtor. The Application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

28. In Part III of Form 1, the Financial Creditor has proposed the name of Mr. Anurag Nirbhaya, as Interim Resolution Professional (hereinafter referred as “IRP”). His Registration Number is No. IBBI/IPA-001/IP-P00870/2017-2018/11468, and address is 204, Sagar Plaza, Plot No. 19, District Centre, Laxmi Nagar, New Delhi, National Capital Territory of Delhi-110092, Email: anurag@canirbhaya.com. He has duly given

the consent in Form No.2 dated 14.09.2023 annexed as **Annexure A-7** with the Application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Anurag Nirbhaya, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 01 June 2024. After considering these details, we appoint Mr. Anurag Nirbhaya, Registration No. IBBI/IPA-001/IP-P00870/2017-2018/11468, as Interim Resolution Professional (IRP).

29. In view of our above findings, we are satisfied that the present application under Section 7, has been found fit to be admitted as per Section 7(5)(a) of the I & B Code, 2016 and hence, the application is admitted in terms of Section 7(5)(a) of the I & B Code, 2016 against the Corporate Debtor, M/s, Pushpanjali Realms and Infratech Limited and accordingly, moratorium is declared in terms of Section 14 of the I&B, Code 2016.

30. The IRP is directed to take steps as mandated under section 13 and 15 of the I&B C,2016 for making public announcement about the commencement of CIRP against the

Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of I & B Code, 2016.

- 31.** The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors (hereinafter referred as ‘CoC’) and shall file a report certifying the CoC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the CoC within seven days of filing the report of CoC.
- 32.** As a necessary consequence of the moratorium in terms of Section 14, 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 judgement, 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.
 - e.** It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
 - f.** The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- 33.** The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process (CIRP) or until this Bench approves the

resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

- 34.** The CoC shall appoint a Resolution Professional as per section 22 of the I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within the timeline as prescribed under the provision of section 12 of the I & B Code, 2016.
- 35.** We direct the Financial Creditor to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.
- 36.** A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution

Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

37. List the matter on 27.05.2024 for further proceedings.

-Sd-

(Ashish Verma)

Member (Technical)

Date- 25th April, 2024

-Sd-

(Praveen Gupta)

Member (Judicial)