

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH,  
KOLKATA**

**C.P (IB) No.666/KB/2020**

**In the matter of**

An application 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.

And

**In the matter of:**

**IDBI TRUSTEESHIP SERVICES LIMITED, CIN: U65991MH2001GOI131154**, a company incorporated under the Companies Act, 1956 having its Registered office at Asian Building, Ground Floor, 17,R.Kamani Marg, Ballard Estate, Mumbai-400001.

*... Financial Creditor*

Versus

**In the matter of:**

**ASHIANA LANDCRAFT REALTY, CIN U70200WB2012PTC173601**, a company registered under the Provisions of Companies Act, 1956, having its Registered Office at 5F, Everest 46/C, Chowringhee Road,Kolkata-700071.

*...Corporate Debtor*

Date of hearing : 20/12/2021

Order Pronounced on 11/ 01/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

1. Mr. Ratnanko Banerji, Sr. Adv. } For the Financial Creditor
2. Mr.Soorjya Ganguli, Adv.
3. Mr. Rishav Banerjee, Adv .
4. Mr. Somdutta Bhattacharyya, Adv.
5. Mr. Kanishk Kejriwal, Adv.
6. Ms. Kiran Sharma, Adv.

1. Mr. Rajiv K.Virman, ,Adv. } For the Corporate Debtor
2. Ms. Mamta Binani, Adv.
3. Mr. Gaurav Jain,Adv.
4. Mr. Anuj Malhotra, Adv.
5. Mr. Rohit Sharma, Adv.
6. Ms. Karan Valecha, Adv.

1. Mr. NPS Chawla, Adv. } For Intervenor, PNB Housing Finance Ltd.
2. Mr. Surekh Kant Baxit,Adv.
3. Mr. Siddhi Dhandharia, Adv.

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. This petition 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 has been filed by **IDBI TRUSTEESHIP SERVICES LIMITED**, having its Registered office at Asian Building, Ground Floor, 17,R.Kamani Marg, Ballard Estate, Mumbai-400001(hereinafter referred as the Financial Creditor) , a corporate entity through Mr. Sumit Seth, authorised by way of power of attorney dated February 26,2020 issued by the Financial Creditor in favour of IIFL Trustee Limited and Board Resolution dated July 25,2019 passed by IIFL Trustee Limited and Letter of Authority No. 4/2019-20 dated February 28,2020 seeking initiation of Corporate Insolvency Resolution Process against the **ASHIANA LANDCRAFT REALTY, CIN U70200WB2012PTC173601**, another corporate entity , having its Registered office at Asian Building, Ground Floor, 17,R.Kamani Marg,

Ballard Estate, Mumbai-400001(hereinafter referred as the Corporate Debtor).

3. It is submitted in the petition that the Corporate Debtor had issued certain non-convertible debentures and optionally convertible debentures on private placement basis, a part of which came to be acquired by IIFL Income Opportunities Fund Series- Special Situations Debenture Holder). It is further submitted that the Financial Creditor was appointed as the Debenture Trustee of the Debenture Holder. It is further submitted that non-convertible debentures and optionally convertible debentures issued by the Corporate Debtor were to be redeemed and repaid to the Debenture Holder in terms of the debenture trustee agreements / agenda executed thereto. However, the Corporate Debtor sought an extension of due date for redemption of the said debentures and for repayment of amounts due thereunder. Such extension was duly allowed by the debenture holder. It is further submitted that thereafter, redemption and repayment of amounts due under the debentures became payable on February 28,2019. The Corporate Debtor defaulted on repaying the amounts due under the debentures by the said due date. Accordingly, the Financial Creditor was constrained to issue a notice dated September 9, 2019 and November 6, 2019 claiming the due amounts. It is further submitted that despite the aforesaid demand, the Corporate Debtor has failed to regularize his dues thereby constraining the Financial Creditor herein to file the instant application.
4. The Financial has further submitted that as per the Master Data the authorised share capital of the Corporate Debtor is INR 11,11,00,000/- (Rupees Eleven Crore and Eleven Lakh only). The paid up share capital of the Corporate Debtor is INR 11,00,00,000/- (Rupees Eleven Crore only).

5. It is submitted that pursuant to a Development Agreement dated August 21,2013, Ashiana Landcraft Realty Private Limited (Corporate Debtor) acquired development rights with respect to a property situated in Village Harsaru, Sector 88A, Gurgaon ( the said property) as a residential group housing colony. In terms of the said Development Agreement dated August 21,2013, an amount of Rs.2,20,00,00,000/- (Rupees Two Hundred and Twenty Crore only) was required to be paid to the erstwhile developer i.e. Vatika Limited by the Corporate Debtor as refundable security deposit. A Copy of the Development Agreement dated August 21, 2013 is annexed as Annexure-E to this petition.
6. It is further submitted that in view of the same, the Corporate Debtor issued secured non-convertible debentures of face value of INR 1,000/- each for an aggregate amount of INR 64,44,32,700 (series-NCDs) and 10,55,556/- secured non-convertible debentures of face value of INR 1,000 each for an amount of INR 105,55,56,000/- (Series-II NCDs) on private placement basis.
7. It is submitted that the Corporate Debtor also issued 55,556 secured optionally convertible debentures carrying a face value of INR 1,000/- aggregating to INR 5,55,56,000/-and 44,444 secured optionally convertible debentures carrying a face value of INR 1,000/- aggregating to INR Rs.4,44,44,000/- (Series-II OCDs) on private placement basis.
8. It is further submitted that pursuant to the above, 10,21,806 NCDs aggregating to INR 102,18,06,000 and 58,934 OCDs aggregating to INR 5,89,34,000 came to be subscribed by the Debenture Holder through secondary market sales.
9. It is submitted that in relation to the issuance and subscription of the Debentures, multiple agreements were executed on September 03,2013.

10. The Financial Creditor has annexed various documents in support of its claim which are as under:-
- i. A copy of the Development Agreement dated August 21,2013.
  - ii. A copy of the debenture trust deed dated September 03, 2013 for secured Non- Convertible Debentures(DTAA 1).
  - iii. A copy of the debenture trust deed dated September 03, 2013 for secured Optionally Convertible Debentures (DTAA 2).
  - iv. A copy of the ledger account for the said from March 21, 2016 to April 10,2018 certified by Pritesh Mehta & Co., Chartered Accountants.
  - v. A copy of the said Supplemental Agreement dated January 31, 2014 to the DTAA-1.
  - vi. A copy of the said Supplemental Agreement dated February 20, 2014 to the DTAA-2.
  - vii. A copy of the Addendum dated June 4, 2016 to the DTAA-1.
  - viii. Working/Computation of the Amount of Default by the Corporate Debtor as on February 15,2020.
  - ix. Copies of the said letters dated March 23,2018 and March 27,2018 exchanged between the Corporate Debtor and the Debenture Holder.
  - x. Copy of letter dated March 13, 2019 declaring the failure to make payments against the same as an Event of Default addressed to the Corporate Debtor.
  - xi. Copies of notices dated September 19, 2019 issued by the Financial Creditor calling upon the Corporate Debtor to cure their default against the DTAA-1 and DTAA-2.
  - xii. Copies of notices dated November 6,2019 issued by the Financial Creditor calling upon the Corporate Debtor to cure their default against the DTAA-1 and DTAA-2.

- xiii. Memoranda of entries recording deposit of title deeds dated September 3,2013 executed by the Corporate Debtor in favour of the Financial Creditor towards the Mortgaged Properties.
- xiv. A copy of deed of hypothecation dated September 3,2013 in favour of the Financial Creditor.
- xv. A copy of the aforementioned Escrow Account Agreement dated September 3,2013 along with amendatory agreement dated December 26,2013.
- xvi. Share pledge Agreement dated September 3, 2013 creating pledge over (i)Rs.53,300/- Class A shares held by Ashiana Homes Private Limited and Landcraft Projects Private Limited in the Corporate Debtor (ii)Rs.1,09,35,000/- Class B shares held by Ashiana Homes Private Limited and Landcraft Projects Private Limited in the Corporate Debtor.
- xvii. Share Pledge Agreement dated September 3, 2013 creating pledge over 100% of the paid up equity share capital of Block Promoters Private Limited.
- xviii. Copy of unconditional and irrevocable corporate guarantee from Ashiana Homes Private Limited vide Deed of Guarantee dated September 3, 2013.
- xix. Copy of unconditional and irrevocable corporate guarantee from Landcraft Projects Private Limited vide Deed of Guarantee dated September 3,2013.
- xx. Copy of unconditional and irrevocable personal guarantee from Mr. Rohit Raj Modi vide Deed of Guarantee dated September 3,2013.
- xxi. Copy of unconditional and irrevocable personal guarantee from Mr. Manu Garg Deed of Guarantee dated September 3,2013.
- xxii. Copy of unconditional and irrevocable personal guarantee from Mr. Gaurav Garg and Mr. Lalit Kumar Jaiswal vide

Deed of Guarantee dated March 22, 2018.

- xxiii. Form CHG-9 filed by the Corporate Debtor for creation of charge upon the Escrow Account in respect of the receivables from the Gurgaon Project, in favour of the Financial Creditor, with regard to the NCDs, dated November 12, 2014.
- xxiv. Form CHG-9 filed by the Corporate Debtor for creation of charge upon the Escrow Account in respect of the receivables from the Gurgaon Project, in favour of the Financial Creditor, with regard to the OCDs, dated December 22, 2014.
- xxv. Certificates of creation of charge issued by the RoC, Kolkata to the Corporate Debtor with regard to the NCDs and the OCDs , both dated December 22,2014.
- xxvi. Form CHG-9 filed by the Corporate Debtor for modification of charge upon the Escrow Account in respect of the receivables from the Gurgaon Project, in favour of the Financial Creditor, with regard to the NCDs, dated January 8,2015
- xxvii. Forms CHG-9 filed by the Corporate Debtor for modification of charge upon the aforementioned Escrow Account in respect of the receivables from the Gurgaon Project, in favour of the Financial Creditor, with regard to the NCDs, dated June 28,2016.
- xxviii. Certificates of modification of charge issued by the ROC, Kolkata to the Corporate Debtor, dated January 8, 2015 and June 28,2016.
- xxix. Form CHG-9 filed by the Corporate Debtor for modification of charge upon the Escrow Account in respect of the receivables from the Gurgaon Project, in favour of the Financial Creditor, with regard to the OCDs, dated January 8,2015.

- xxx. Forms CHG-9 filed by the Corporate Debtor for modification of charge upon the aforementioned Escrow Account in respect of the receivables from the Gurgaon Project, in favour of the Financial Creditor, with regard to the OCDs, dated June 28,2016.
- xxxii. Share Subscription Agreement dated September 3,2013, executed by an between the Investor, Landcraft Projects Private Limited, Ashiana Homes Private Limited, Mr. Rohit Raj Modi, Mr. Manu Garg and the Corporate Debtor.
- xxxiii. Shareholders Agreement dated September 3, 2013, executed by and between the Investor, Landcraft Projects Private Limited, Ashiana Homes Private Limited, Mr. Rohit Raj Modi, Mr. Manu Garg and the Corporate Debtor.
- xxxiv. Copy of Addendum dated June 4, 2016 to the DTAA-2
- xxxv. Copy of Addendum dated March 22, 2018 to the DTAA-1
- xxxvi. Addendum dated March 22, 2018 to the DTAA-2
- xxxvii. Copy of the Bank Statements of the Debenture Holder for the period from March 2016 to August 2016 evidencing subscription of the Debenture Holder to the Debentures issued by the Corporate Debtor.
- xxxviii. A copy of the statement of holdings as on February 18, 2020 issued by National Securities Depository Limited, reflecting Debenture Holder as the beneficiary
- xxxix. Audited Balance Sheet of the Corporate Debtor as on March 31, 2019 reflecting the financial debt on the books of the Corporate Debtor.
11. It is submitted that the total amount claimed to be in default by the Corporate Debtor as on February 15, 2020 is Rs.139,99,00,000/- inclusive of Principal amount and redemption premium. The computation of the aforesaid amount has been annexed as Annexure-L. The date of default as mentioned in the petition is 31<sup>st</sup> March, 2018. It is

submitted that on 23<sup>rd</sup> March, 2018 the Corporate Debtor had addressed a letter to the debenture holder requesting to extend the due date till February 28, 2019. On 27<sup>th</sup> March, 2018, the fund manager of the Debenture Holder addressed a letter to the Corporate Debtor consenting to extend the due date till February 28,2019. Since no amounts were forthcoming from the Corporate Debtor towards the outstanding amount on NCDs and OCDs, the fund investment manager for the debenture holder issued a letter dated March 13, 2019 declaring the failure to make payments against the same as an event of default under Clause 23 of the Debenture Agreement. The Financial Creditor issued two notices both dated September 19, 2019 calling upon the Corporate Debtor to cure their default since no payment has been received by the Financial Creditor/ debenture holder despite expiry of such 90 days cure period on February 3, 2020. To secure its claim, the Financial Creditor had created various securities/mortgage as regards immovable property/ movable property, pledge, guarantee, personal guarantee etc, which form part of the record.

12. In the reply affidavit, the Corporate Debtor has denied each and every averments and contention raised by the Financial Creditor in its application and stated that the application is not maintainable as both in law and on facts. It is submitted that the Financial Creditor has not approached this Adjudicating Authority with clean hands and has concealed material facts and information and hence the present application deserves to be dismissed.
13. It is stated by the Corporate Debtor that the application is defective as it has been filed without any authority. It is stated that Mr. Sumit Seth is authorized to sign and submit the present application, for which, a Power of Attorney dated 26.02.2020 has been allegedly issued by the Financial Creditor in favour of the M/s IIFL Trustee Limited, which is a stranger and IIFL Trustee by virtue of the Board Resolution dated

25.07.2019 passed by IIFL Trustee and Letter of Authority No. 4 of 2019-20 dated 28<sup>th</sup> February,2020 has authorized Mr. Sumit Seth. It is stated that the said authorization in favour of Mr. Sumit Seth is invalid and cannot be used for signing and submission of the present application.

14. It is submitted by the Corporate Debtor that in view of the specific provision in the Trust Deed on delegation of power only to the 'Officer or Officers of the debenture Trustee', the delegation of authority by the applicant IDBI Trustee is in violation of its duties under the Trust Deed. It is stated that the IIFL Trustee, being a company cannot be considered as an 'Officer of the debenture Trustee' as contemplated in the Trust Deed. It is further submitted that the aforesaid Power of Attorney is claimed to be issued by the application on the basis of authorization /approval/ consent received from the debenture holder.
15. It is stated that the since the above defect in the present application is inherent defect, it cannot be rectified in terms of Section 7(5) of the Code. It is, therefore, submitted that the issuance of the power of attorney dated 26.02.2020 in favour of IIFL Trustee is bad being contrary to law and instrument of trust itself and therefore, the authority issued by IIFL Trustee in favour of Mr. Sumit Seth who has signed the present application is void and non-est.
16. It is submitted that the present application is liable to be dismissed for want of proper verification of the application and supporting affidavit.
17. It is submitted that the application is incomplete and wrong. It is submitted that the applicant which is merely a debenture trustee, has provided its own details in Part-I of the instant application instead of the details of IIFL being the Financial Creditor. A debenture Trustee can file an application under the Code for and on behalf of the Financial Creditor but it has provided the details of the Financial Creditor on whose behalf

the application is being filed. Therefore, the details of the Financial Creditor as provided in the present application are wrong and incorrect.

18. It is submitted by the Corporate Debtor that the Corporate Debtor is infrastructure company doing a group housing real estate project wherein 100 home buyers have purchased their home. It is stated that the project is at advance stage of construction nearing completion. It is submitted that the existing lenders to the Corporate Debtor are not providing any financial support for completion of project and that after substantial efforts, the Corporate Debtor received in-principal-approval for the last mile funding of about Rs.100 Crores for completion of the project from two prospective buyers i.e. Asia Pragati Strategic Investment Fund – Honkong based USD 35 billion Fund and Swamith Investment Fund I- Government of India sponsored Real Estate Stress fund of Rs.25,000 Crores.
19. It is stated that the Corporate Debtor has not been able to get disbursement of the fund due to lack of consensus amongst the existing lenders of the Corporate Debtor including IIFL. It is stated that in the present case, the lenders of the Corporate Debtor are solely and exclusively responsible for the present financial situation of the Corporate Debtor.
20. It is submitted by the Corporate Debtor that the Financial Creditor has concealed that the Corporate Debtor had met the officials of IIFL on 02.02.2020 with a proposal to settle for a payment of Rs.10 Crores and allotment of 85,000 sq.ft. area in the project of the Corporate Debtor in lieu of the debentures issued to IIFL and that the settlement terms were even accepted by IIFL through an email dated 04.02.2020 resulting into a binding settlement agreement which in turn had the effect of altering the terms of redemption of debentures as originally provided by way of mutual consent and consensus *ad idem*.

21. It is submitted that the present application has been filed in breach of the settlement terms and therefore the basic requirement for entertaining an application under section 7 of the Code is not specified. It is submitted that the new settlement terms constituted novation of contract by way of alteration as contemplated in Section 62 of the Indian Contract Act, 1872 and therefore, application under section 7 of the Code could have been maintained only after default of the agreed settlement terms between the parties and consequently no default has occurred which is a pre-condition under section 7 (5) of the Code for admission of any application for initiation of the CIRP against the Corporate Debtor.
22. The Corporate debtor has submitted that it entered into a development agreement dated 19.09.2013 with Vatika Ltd. for acquisition of development rights in a land at Gurgaon and development of a residential group housing colony, thereupon. In terms of which, the Corporate Debtor was required to pay Rs.2,20,00,000/- to Vatika Ltd. as refundable security deposit. The Corporate Debtor issued the debentures referred to in the petition.
23. It is submitted that two separate debenture Trustee Appointment Agreement cum Trust Deeds dated 3<sup>rd</sup> September, 2013 were signed between the Corporate Debtor, its promoters and the Financial Creditor . In addition to the debentures, Indiareit also holds 11,700 Class A Equity Shares having voting rights in the Corporate Debtor, equivalent to 18% equity stake therein and exercise significant control in its affairs and business decisions by virtue of the share holders agreement dated 03.09.2013 and the Articles of Association of the Corporate Debtor which includes right to appoint a Director in its Board of Directors. Similarly, IIFL also has right to appoint a director in the Corporate Debtor. It is submitted by the Corporate Debtor that Indiareit and IIFL are acting in concert, as both these entities have common debenture trustee and common Directors on the Board of the Corporate Debtor.

24. The Corporate Debtor has submitted that even after the filing of the present application by the Financial Creditor on behalf of IIFL, the Corporate Debtor and IIFL continued negotiations for settlement of the dues and signed a Terms of Closure. The terms of closure signed by the Corporate Debtor and the debenture holders in March,2020 are annexed as Annexure-R/32. It is submitted that pursuant to the settlement arrived at between the parties vide email dated 4<sup>th</sup> February, 2020 and crystallized by the Terms of Closure, IIFL withdrew a sum of Rs.2,86,00,000/- from the retention account of the Corporate Debtor.
25. While dealing with the averments in the application, the Corporate Debtor has submitted that the IIFL had already agreed to a settlement in terms of Settlement Terms by way of emails exchanged on 4<sup>th</sup> February, 2020 which information the Financial Creditor has suppressed and fraudulently filed the instant application alleging a default of payments due in terms of DTAAAs. It is submitted that the Financial Creditor has not been able to demonstrate that the Corporate Debtor has committed default and since the application is not complete and is defective application suffering from various inherent defects and since no default has occurred on the part of the Corporate Debtor, this application should be rejected.
26. It is submitted that the present proceedings have been initiated by the Financial Creditor with malicious intent and not with a bona fide intention of the CIRP of the Corporate Debtor.
27. It is submitted that it is pertinent to mention that in the meeting held on 15.10.2019 between the Corporate Debtor, Indiareit, IIFL and PNBHFL, it was agreed that “....No legal enforcement action/notice etc. shall be initiated by any party for next 120 days or as mutually extended”. However, the Financial Creditor in complete violation of this understanding issued notices dated 06.11.2019 claiming that the Corporate Debtor has committed default by not paying the amounts

demanded under the notices dated 19.09.2019”.

28. It is submitted by the Corporate Debtor that the petition has been filed with a malicious intent to pressurize the Corporate Debtor to revisit the IIFL Settlement terms and offer more favourable terms to IIFL and that it has been filed in violation of Section 65 of the Code. It is submitted that the Operational Creditor deliberately concealed material facts.
29. It is submitted that the default amount has been falsely stated to be Rs.139,99,00,000/- which is contrary to the **default amount of Rs.46,35,37,100/-** specified in two notices dated 11.02.2020 and 12.02.2020 issued by the applicant under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. It is stated that the Financial Creditor has deliberately submitted the selective bank statements for the period from June 2016 to August ,2016 and therefore, failed to submit copies of entries of any payment made by the Corporate Debtor to IIFL and that the purported default claim of Rs. 139,99,00,000/- is completely arbitrary, unsupported and misconceived.
30. It is submitted that it is a matter of record that about 280 homebuyers have already invested large sums of money in the said Project, which is under construction by the Corporate Debtor. Many homebuyers have already invested 50-80% of the entire consideration. CIRP of the Corporate Debtor will cause grave prejudice and irreparable harm to the homebuyers in the said Project and the process will inevitably delay the construction of the said Project, particularly, when a resolution plan in the form of last mile funding is already available to the Corporate Debtor. The process will cause physical and mental strain to such homebuyers who will have to participate in the resolution process through a representative, and would also expose the homebuyers to the risks of liquidation of the Corporate Debtor, which would cause them to

lose large amount of their investment. Hence, the process will be directly detrimental to public interest.

31. It is submitted that the IIFL in collusion with Indiareit misused their position as the promoter and related party of the Corporate Debtor and withdrew the money from redemption of their debenture while raising additional capital for the Corporate Debtor.
32. It is submitted that in 2018, the Corporate Debtor was constrained to issue a fresh round of NCD's to raise working capital for the Corporate Debtor and its Project. However, IIFL and , Indiareit, being a controlling promoter of the Corporate Debtor, permitted to raise additional funds for the Corporate Debtor with a pre-condition that a large sum of funds shall be used for redemption of the debentures of IIFL. Both IIFL and , Indiareit exploited their influence and controlling position in the Corporate Debtor to fraudulently withdraw Rs.35,00,00,000/- from the amount raised by it instead of allowing the Corporate Debtor to utilize the same for completion of the said Project. This led to worsening of the financial condition of the Corporate Debtor for no fault of its own. Therefore, IIFL and, Indiareit abused their position of influence in the Corporate Debtor with an intent to take undue advantage and as such, both IIFL and, Indiareit are liable for fraud under Section 447 of the Companies Act, 2013.
33. It is submitted that the application lacks particulars of Financial Creditor. It is submitted that the debenture Trustee can file an application under the Code for an on behalf of the Financial Creditor but the debenture Trustee must provide the details of the Financial Creditor on whose behalf. It is submitted that there is no default by the Corporate Debtor under the Code. It is denied by the Corporate Debtor that on 15.02.2020 an amount of Rs.139,99,00,000/- was due and payable by the Corporate Debtor to the IIFL. The Corporate Debtor has denied the

averments of the application and has prayed for dismissal of the application under section 7 of IBC.

34. It is submitted by the Financial Creditor that as per the notification of the Ministry of Corporate Affairs dated February 27,2019 a debenture Trustee may file an application for initiating the Corporate Insolvency Regulation Process against the Corporate Debtor . Therefore, the present application is very much maintainable and this position of law has also recognized in the order dated 29<sup>th</sup> June, 2020 passed by NCLAT Mumbai Bench in the matter of **IDBI Trusteeship Services Limited vs. Ornate Spaces Pvt. Ltd. Paras 18(c), (d) and 20,which are as under:-**

**“ 18(c)- Upon conjoint reading of Section 7 and the recent notification of Central Government, we are of the opinion that right of parties to seek CIRP by Financial Creditor or Operational Creditor cannot be subjected to technicalities and formalities. The petitioner being Debenture Trustee has sought to file this petition with a power of attorney to enforce the rights of debenture holder under the Debenture Trust Deed. The Debenture Trustee is not a financial creditor and is acting on trust/security Trustee for the Debenture holder having requisite authorization under the Debenture Trust Deed and power of attorney as well.**

**(d) The notification only clarifies that Debenture Trustee can file a petition under section 7 and the defect pointed out by the Corporate Debtor and since the default took place in December 19/January 2019, the petitioner cannot take advantage of the subsequent notification is absolutely untenable. The procedural formality regarding obtaining written consent from the Debenture holders does not take away the statutory rights of seeking initiation of CIRP under the I & B Code, 2016. The Corporate Debtor has not challenged or disputed the execution of Debenture Trust Deeds and rights of Debenture holders under such Debentures issued by them.**

**20. The Adjudicating Authority in summary proceedings under I & B Code is not bound by civil procedure code and technicalities prescribed therein and thus a petition under section 7 by the financial creditor can be admitted if there is a debt and default. In the instant case, the bench is of the opinion that the petitioner has sought to enforce the rights of the Debenture holder under the Debenture Trust deed dated 29<sup>th</sup> June, 2016, the Corporate Debtor has defaulted in payment of the said sum due there under. Hence**

***the objection about material defects is untenable.”***

35. It is submitted that Ashiana Landcraft Realty Pvt Ltd, the Corporate Debtor herein, issued Secured Non-Convertible Debentures (“**NCDs**”) for an aggregate amount of about Rs.170 Crore and Secure Optionally Convertible Debentures (“**OCDs**”) For an aggregate amount of about Rs.10 Crore.
36. It is stated that in respect of the above NCDs and OCDs, the Corporate Debtor entered into two Debenture Trustee Appointment Agreements cum Trust Deeds both dated September 3, 2013 (“**the DTAAs**”), *inter alia*, to appoint IDBI Trusteeship Services Limited, the Financial Creditor herein, as the Trustee for the OCDs and NCDs issued by the Corporate Debtor.
37. M/s IIFL Income Opportunities Fund Series – Special Situations Fund (“**the Debenture Holder**”) subscribed to NCDs for an amount of Rs.102,18,06,000 and OCDs amounting to Rs. 5,89,34,000.
38. The Financial Creditor has filed the following documents in support of its case:-
- a. Copy of Bank Statement of Debenture Holder for the period from March 2016 to August 2016 evidencing the subscription to the Debentures issued by the Corporate Debtor.
  - b. Copy of the statement of holdings as on February 18, 2020 issued by NSDL, reflecting the NCDs and OCDs issued by the Corporate Debtor and held by the Debenture Holder.
  - c. Audited Balance Sheet of the Corporate Debtor as on March 31, 2019 reflecting the outstanding financial debt in the form of NCDs and OCDs.
39. It is stated that under the DTAAs, the NCDs, and OCDs has a particular stipulated repayment schedule which was amended by way of Supplemental Agreements on January 31, 2014 and February 20, 2014, and finally again by way of an Addendum on June 4, 2016.
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40. It is further submitted that under the Addendum dated June 4, 2016, the Corporate Debtor was to make payment of 15% of principal amount of NCDs outstanding, alongwith interest due and the redemption premium **on or before March 31, 2018.**
41. However, by a letter dated March 23, 2018 the Corporate Debtor requested the Debenture Holder to extend the due date to February 28, 2019 but no later than March 5, 2019 on certain terms. By letter dated March 27, 2018 the Debenture Holder consented to extend the due date to February 28, 2019, no later than March 5, 2019 on the proposed terms.
42. It is further stated that thereafter on March 13, 2019, having not received the amount due under the NCDs and OCDs, the Debenture Holder declared an “Event of Default” by issuing a notice to the Corporate Debtor and demanding the entire sum due and payable under the NCDs and OCDs, held by the Debenture, Holder, to be paid within 7 days of the notice i.e. by March 20, 2019.
43. It is submitted that the Corporate Debtor failed and neglected to pay the due amounts, and on September 19, 2019 and November 6, 2019, IDBI Trusteeship Services Limited/Financial Creditor herein, being the Debenture Trustee, issued several notices to the Corporate Debtor recording the default of the Corporate Debtor and demanding payment of the amounts due, payable and outstanding under the NCDs and OCDs.
44. It is submitted that total amount claimed to be in default is Rs.139,99,00,000 (Rupees One Hundred Thirty Nin-e crores and ninety-nine Lakh only) inclusive of principal amount, coupon amount and redemption premium. A computation of the amount claimed in default is available at Annexure L.

45. The date of default is March 31, 2018, the date for repayment of the outstanding amounts under the Debentures held by the Debenture Holder. The CP was filed on March 2, 2020, well within time of limitation.
46. It is submitted that the Applicant/Financial Creditor has proposed Mr. Jayesh Natwarlal Sanghrajka, having registration number IBBI/IPA-001/IP-P00216/2017-2018/10416 to be the interim resolution professional in respect of the Corporate Debtor. He has also provided his registration certificate and consent by way of written communication under Form-2.
47. The Authorisation for Assignment (AFA) has been uploaded to the e-portal separately.
48. It is stated that as per notification of the Ministry of Corporate Affairs dated February 27, 2019, a debenture trustee may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority. Therefore, the present application is maintainable.
49. This has also been recognized in the order dated 29.06.2020 by NCLT Mumbai in the matter of *IDBI Trusteeship Services Limited vs Ornate Spaces Pvt Ltd.*
50. Two alleged financial creditors of the Corporate Debtor viz. Sanjeev Ahuja (HUF) and M/s PNB Housing Finance Limited (“**the Interveners**”) have sought to intervene in the present proceedings to oppose the application of the Financial Creditor and thus the admission of the Corporate Debtor to Corporate Insolvency Resolution Process.
51. It is submitted that the Interveners have no *locus* to maintain such intervention as the IBC does not have a provision for hearing of any party apart from the Applicant and the Corporate Debtor, at the stage of admission of application under Sections 7 and 9.

52. It is further stated that the National Company Law Appellate Tribunal (“**the Hon’ble NCLAT**”), on several occasions, has held that except the applicant and the corporate debtor, no other party is to be heard at the stage of admission. It has been further held that no creditor of the corporate debtor, not being a member/shareholder of the corporate debtor, has any right to intervene to oppose admission of an application under Section 7 of the IBC.
53. The Powers-of-Attorney Act, 1882 does not prohibit a body corporate from being the executant of a power of attorney. A body corporate, being the power-of-attorney holder may act only through its authorised representative. In the present case, IDBI Trusteeship Services Limited, the Financial Creditor herein empowered IIFL Trustee Limited by way of a special power of attorney dated February 26, 2020 (“**the power of attorney**”) to perform the acts, deeds and things as required under the DTAAAs and related agreements. The Board of Directors of IIFL Trustee Limited empowered two specified persons to be able to authorise an employee of IIFL Trustee Limited, not below the grade of Senior Manager to do all acts required to file applications such as the present insolvency proceedings under Section 7 of the IBC. There has been no deviation from the terms of the Power of Attorney, read with board resolution dated February 24, 2020 of IIFL Trustee Limited and the Letter of Authority dated February 28, 2020.
54. We noticed that there are two intervention applications, one is by Punjab National Bank and the other by HUF. The HUF never pursued till date. Punjab National Bank has not rectified the defects. These intervention applications have not been pursued by any of the parties and thus the intervention applications are to be dismissed, we order accordingly.
55. It would be seen that even though in the reply affidavit, the Corporate Debtor had denied each and every averment mentioned in the petition and raised certain other objections as well opposing the admission of the petition, but at the outset of his arguments in court, the learned counsel

for the corporate debtor submitted that the Corporate debtor has tried its best to settle the matter but the settlement talks have not yielded any result and finally he would concede that since the corporate debtor has not been able to make the payment, the Corporate Debtor may be allowed to undergo CIRP. On instructions, he submits that they have tried to convince the Financial Creditor but have not been successful in doing so.

56. During the course of arguments on 22<sup>nd</sup> November, 2021, Ld. Counsel appearing for the Financial Creditor was heard in brief only when the Ld. Counsel for the Corporate Debtor Mr. Rajiv K.Virman and Mr. Gaurav Jain submitted that they want to submit on instructions from the Corporate Debtor that since the Corporate Debtor has tried its best to make settlement and tried to convince the Financial Creditor for a settlement but nothing has worked out and since the Corporate Debtor is not in a position to pay the outstanding financial debt, so the prayer of the financial creditor may be allowed and their petition be admitted, initiating CIRP against the Corporate Debtor. Ld. Counsel for the Corporate Debtor repeated their statement that they have conceded and made the statement responsibly and on instructions that the company may go into CIRP as it has not been able to pay its financial debt of more than Rs. 139 Crores and admittedly there is a default in making the payment.
57. The Financial Creditors has suggested the name of **Mr. Jayesh Natvarlal Sanghrajka**, as the IRP, in case the order of admission is passed in the present case. Mr. Jayesh Natvarlal Sanghrajka has also filed Form 2, addressing the NCLT, Kolkata Bench that he agrees to accept the appointment as the IRP, if an order admitting the petition is passed. He also affirmed that there are no disciplinary proceeding pending against her with the Board or Indian Institute of Insolvency Professional ICAI.

58. The application is complete in all respects.
59. Having gone through and considered the petition, reply affidavit and all other documents placed on record by both the parties, particularly the statement made by the Ld. Counsel for the Corporate Debtor in court, we are satisfied that the petition deserves to be admitted and consider it to be a fit case for admission and initiation of CIRP in respect of the Corporate Debtor. We therefore pass the following orders:

**ORDERS**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including

execution of any judgment, 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 (54 of 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority

approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- ix) **Mr. Jayesh Natvarlal Sanghrajka** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00216/2017-2018/10416** Email [jayesh@sandco.in](mailto:jayesh@sandco.in) hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs. 5,00,000/- (Rupees Five Lakhs Only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

- xiii) List the matter on 21/03/2022 for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**( Rohit Kapoor.)**  
**Member (Judicial)**

Order signed on, this 11<sup>th</sup> day of January , 2022

Pj