

Through Videoconference

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 3574/MB/2019

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

IN THE MATTER OF

- 1. INDRANIL DAS,**
[PAN NO. AFMPD9635F]
Anamitra A/1303, Prakruti Park,
Azad Nagar, Thane (West),-400 607.
- 2. Mrs. NANDITA DAS,**
Anamitra A/1303, Prakruti Park,
Azad Nagar, Thane (West),-400 607.
.....Petitioners

Versus

M D Devcon Private Limited
[CIN: U45400MH2011PTC225356]
A Company incorporated under the
Companies Act, 1956 Having its
Registered office at :- 501, 5th Floor,
Prime Plaza, Next to Asha Parekh
Hospital, S.V.Road, Santacruz,
Mumbai- 400 054.
.....Respondent

Order Delivered on : 27.05.2021

Coram:

Hon'ble Member (Judicial) : Mr. Harihar P. Chaturvedi
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances:

For the Petitioner : Mr. Rahul Karnik, a/w Ms.
Jinal Rathi, Advocates
For the Respondent : Mr. Sahil Mahajan, Advocate

Per: H.P. Chaturvedi, Member (Judicial)

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) seeking to initiate Corporate Insolvency Resolution Process (CIRP) by **Mr. INDRANIL DAS and Mrs. NANDITA DAS**, (hereinafter "the Petitioners") **against M D Devcon Private Limited** (hereinafter "the Respondent") alleging default in payment of a Financial Debt.
2. The case of the Petitioners is as follows: -
 - (a) The Respondent is carrying on business of construction and development and was incorporated on 23.12.2011. The Petitioners had jointly approached the Respondent for purchase of Flat at the Respondents upcoming residential project known as "SAVANNAH", Kanjur Marg (East), Mumbai.

- (b) The Petitioners submit that vide letter of allotment dated 25.08.2019, the Respondent agreed to sell the Flat No. 1504 on the 15th Floor (being 13th residential floor above 2 podiums) of proposed residential building to be known as “SAVANNAH” being constructed on land bearing CTS No. 1285 A/E, Kanjurmarg (East), to the Petitioners. The Petitioners had paid part-payment of Rs. 19,00,000/- (Rupees Nineteen Lakhs only) to the Respondent. Even after the receipt of the amount paid, the Respondent had failed to start the project. The date of default is 25.08.2016.
- (c) The Petitioners submit that vide the letter dated 08.09.2016, the Petitioners sent the terminated Letter of Allotment to the Respondent and requested the Respondent to refund the amount with Interest.
- (d) The Respondent vide its letter dated 10.11.2016 confirmed the receipt of amount of Rs.19,00,000/- received from the Petitioners and assured to complete the project.
- (e) The Petitioners vide their letter dated 13.12.2016 had sent the final termination letter of allotment and requested the Respondent to refund the amount with interest. The Petitioners further submit that in Clause 9 of the Allotment Letter, it was clearly mentioned that if the Respondent fails to execute the agreement for sale or fails to start the construction, then the Petitioners had the right to terminate the letter of allotment and

claim the refund amount paid under the allotment letter along with interest @ 15% p.a.

- (f) The Petitioners submit that the Respondent again by its letter dated 12.02.2017 confirmed the receipt of amount of Rs. 19,00,000/- and informed the Petitioners that the Company is facing difficulties due to economic slowdown in real estate and assured to refund the money. The Petitioners further submit that the Respondent failed to start the project and many purchasers of the project has filed criminal complaints against the Respondent and its Directors.
- (g) The Petitioners submit that a FIR was registered, and the matter is under investigation by Economic Offences Wing. One of the Directors of the Respondent Company was arrested and was granted bail recently by the Hon'ble Metropolitan Magistrate, 47th Court, Mumbai. There has been unambiguous admission of the outstanding dues by the Respondent on a number of occasions.
- (h) The Petitioners submit that till date no refund/re-payment of the debt is made by the Respondent and hence the Petitioners are entitled for claiming the outstanding dues from the Respondent.
- (i) The Petitioners submit that the total amount of Debt payable by the Respondent is as follows :-

Sr. No.	Amount paid	Interest @ 15% p.a. from 24.09.2019 (i.e. date of filing the petition)	Amount due up to date of filing of petition
1.	Rs. 19,00,000/-	Rs. 8,78,750/-	Rs. 27,78,750/-
		Total	27,78,750/-

Further the above amount is excluding the further interest @ 15% p.a. from 24.09.2019 up to date of realization.

3. In its reply dated 09.03.2021, the Corporate Debtor has set up the following defence: -
 - (a) The Respondent is engaged in business of Development and Construction of real estate projects.
 - (b) The Respondent submits that due to heavy recession in the Real Estate Industry, steep rise in constructions costs viz labour, cements, premiums to BMC, financing cost, unclear government policies for real estate, delay in Government approvals, the project could not progress and the business of the Respondent collapsed.

- (c) The Respondent submits that FIRs were registered against the Director of the Corporate Debtor. The Director of the Corporate Debtor was arrested and was in Arthur Road Central Prison for more than 19 months and was released on bail by the Hon'ble Metropolitan Magistrate, Esplanade, Mumbai.
- (d) The Respondent submits that due to aforementioned reasons, the Respondent is unable to refund the amount of the Petitioner as there is no flow of money and the Respondent is not in a position to pay the claim amount of the Petitioner.**
4. The Petitioners has proposed the name of Mr Kedar Mulye, Registration No. IBBI/IP-P-01365/2018-19/12282, having address at 1301, Chaitanya Residency, JayPrakash Nagar Road No. 2, Goregaon (E), Mumbai – 400063, email :- kmulye@hotmail.com as the Interim Resolution Professional of the Respondent. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
5. We have gone through the above stated contentions made by the parties stated in their respective pleadings and perused the documents annexed therewith. It is now admitted and undisputed fact that the Petitioner had made a part payment of Rs. 19,00,000/- (Rupees Nineteen Lakhs only) as the amount of consideration for the purchase of Flat.

6. The Respondent even after the receipt of the part payment towards purchase of flat from the Petitioners did not start construction work of Housing project. Therefore, the Petitioners on various occasions terminated the letter of allotment and asked the Respondent to refund the money, but the Respondent failed to refund the amount.
7. It is also pertinent to mention that during the Court of hearing on 26.03.2021, Ld. Counsel appearing for the Respondent submitted that the Respondent has filed an Affidavit dated 09.03.2021 by admitting such facts that the Respondent Company is in financial crunch and not in a position to pay its debts to the Petitioners because the business of builder has collapsed.
8. **As the Respondent is expressing its inability to repay its Debts and for making refund of the money, to the Petitioners paid towards the purchase of the Flat. Hence the Petition deserves to be admitted on the basis of admission made by the Respondent. Because there are many flat purchasers whose money are not refunded nor the construction project could be started/completed. Thus, it is evident that the Respondent has failed to perform its contractual obligation. The Debt is established and default has occurred. The present IB petition is found complete as per the provision of**

IBC, Rules, Regulations made thereunder. Since the defaulted amount is more than Rs. One Lakh, the CIRP can be triggered in respect of Corporate Debtor.

9. Therefore, for the aforesaid reasons, this Adjudicating Authority admits the present IB petition and orders for initiation of CIRP against the Corporate Debtor namely M D Devcon Private Limited with following Order/Directions :-
- (a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Respondent.
- (b) Notwithstanding the above, during the period of moratorium: -
 - (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 of the IBC or passes an order for Liquidation of Respondent under section 33 of the IBC, as the case may be.
- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (e) This Adjudicating authority hereby appoints hereby appoints **Mr. Kedar Mulye**, Registration No. IBBI/IPA-001/IP/P-01365/2018-2019/12282, residing at 1301, Chaitanya Residency, Jay Prakash Nagar Rod No. 2, Goregaon (East), Mumbai-400 063, E-Mail – kmulye@hotmail.com as Interim Resolution Professional (IRP) of the Respondent to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC and shall submit periodical report regarding the progress of CIRP as stipulated in the Code, Rules, Regulations etc.
- (f) During the CIRP Period, the management of the Respondent shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Respondent shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (g) The Petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (h) The Registry is directed to communicate this Order to the Petitioner, the Respondent and the IRP by Speed Post and email immediately.
- (i) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Respondent.

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)
27.05.2021
aakashi

Sd/-
H. P. CHATURVEDI
Member (Judicial)