IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

C.P. (IB) No.210/BB/2020
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

Mr. Keshava Gupta
1053, Avon Tower, Prestige,
Kensington Gardens,
HMT Complex, Jalahalli,
Bangalore – 560 013. & 22 Others ... Petitioners/Financial Creditors

VERSUS

Shri Diya Projects Pvt. Ltd.
(Shri Diya Ornate)
No.180, I Floor, 8th Cross,
14th Main Rd., 06th Sector,
HRS Layout,
Bangalore – 560 102. ... Respondent/Corporate Debtor

Order delivered on 21.04.2022

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioners : Mr. S.K. Ravi

For the Respondent : None

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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. This present Company Petition has been filed by Mr. Keshava Gupta and 22 Others (for brevity 'Petitioners/Financial Creditors') under Section 7 of the IBC, 2016, r/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Shri Diya Projects Pvt. Ltd. **(Shri Diya Ornate)** (hereinafter called as 'Respondent /Corporate Debtor'), on the ground that it has committed default for total amount of Rs.9,85,90,118/- (Rupees Nine Crore Eighty Five Lakh Ninety Thousand One Hundred and Eighteen Only).
2. **Mr. Keshava Gupta** (hereinafter called as 'Petitioner No.1 /Financial Creditor) son of Shri Ishwar Saran Gupta, registered office at 1053, Avon Tower, Prestige, Kensington Gardens, HMT Complex, Jalahalli, Bangalore - 560013.
3. **Shri Diya Projects Pvt. Ltd. (Shri Diya Ornate)** (hereinafter called as 'Respondent /Corporate Debtor) is a Company limited by Shares registered under the Company Act, 1956 on 07.09.2010 bearing CIN:U70109KA2010PTC055085. The Authorised Capital of the Company is Rs.5,00,000/- (Rupees Five Lakh only) and Paid up Capital is Rs.5,00,000/- (Rupees Five Lakh only). The Company is a leading Bangalore-based developer of residential and property.
4. Heard Mr. S.K. Ravi, learned Counsel for the Petitioners/Operational Creditors and none for the Respondent/Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder.
5. In spite of service of notice and in spite of paper publication there was no representation for the Respondent/Corporate Debtor and no reply/statement of objections filed by the Respondent/Corporate Debtor opposing the C.P.
6. The Hon'ble Supreme Court in "*Innoventive Industries Ltd. vs. ICICI Bank and Anr.* – (2018) 1 SCC 407", relevant portion of which is extracted below: -

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"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not

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payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

7. The Hon'ble Supreme Court in Manish Kumar Vs. Union of India[1] extensively dealt with various issues involving with the insolvency petitions filed by home-buyers and observed as under:-

   i. The buyers have to file the case before the NCLT in a group by way of a joint application and the group should have either 10% of the total allottees of the real estate project or 100 buyers from the same project, whichever is lesser.

   ii. All the members of the group of buyers filed the case have to be from the same real estate project of the debtor real estate company.

   iii. If more than one person (friends, family members etc.) buy one property jointly, they will be treated as a single allottee and not multiple allottees. The allottee status is calculated unit wise and not person wise. The same person may be considered more than one allottee depending on the number of units he/she holds, that is if a person holding three properties in a project will be considered three allottees for calculating 10% (both in numerator and denominator).

   iv. If the total debt amount defaulted exceeds rupees one crore, it is sufficient to maintain a case. It is not necessary that individual allottees need to show individual default in excess of rupees one crore.

8. In the present case, as per the documents produced by the Petitioners the subject project i.e., Shri Diya Ornate is consisting of a total number of 80 flats whereas the

[1] 2021 SCC OnLine 30

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Petitioners in C.P. are 23 members and accordingly satisfied the threshold limit condition.

9. The other issue to be examined is whether the C.P. is within the period of limitation. As per the documents of the Respondent/Corporate Debtor itself the project has to be completed and the flats are required to be delivered as on 31st August, 2018. Since the C.P. is filed on 12.10.2020, the same is within the period of limitation. The remaining issue to be examined is whether the debt and default thereof are proved. The various documents filed along with the C.P. including the record of financial information issued by the NESL in respect of the Petitioners confirm the debt and default thereto. The Agreement of Sale executed between the parties coupled with the receipts issued by the Respondent/Corporate Debtor confirm the various payments made by the Petitioners. The Principal amount itself is Rs.6,16,42,923/-(Rupees Six Crore Sixteen Lakh Forty Two Thousand Nine Hundred Twenty Three Only) i.e., more than the threshold limit of Rs.1 Crore. In view of the same, the C.P. is liable to be admitted.

10. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/-, the petition is admitted in respect of "**Shri Diya Ornate**" project of Shri Diya Projects Pvt. Ltd. in terms of Section 7 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences 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 judgment, decree or order in

    (b) any court of law, tribunal, arbitration panel or other authority;

    (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

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(d) 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;

(e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

(f) 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;

(g) 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;

(h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

11. In Part III of Form 1, Mr. Amarpal, Registration No. IBBI/IPA-001/IP/P-01584/2018-2019/12411 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form 2 dated 24.09.2020 has been filed along with the C.P at Page Nos.34-35. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order.

12. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Amarpal and there is nothing adverse against him. In view of the above, we appoint Mr. Amarpal, bearing Registration No. IBBI/IPA-001/IP/P-01584/2018-2019/12411, registered address at B-96, 02nd Floor, Udyog Vihar, Phase-V, Gurugram, Haryana - 122016, as the Interim Resolution

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Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

13. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
14. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)