

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

**Company Petition (IB)No.227/ALD/2019**

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

**IN THE MATTER OF**

NEHA KHANNA

.....Applicants/Financial Creditors

**VERSUS**

M/S TYBROS INFRATECH PRIVATE LIMITED

.....Respondent/Corporate Debtor

**ORDER DELIVERED ON : 06.07.2021**

**CORAM:**

**Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial**

**For the Applicant/ Financial Creditor: Mr. Akshay Bajpai, Adv**

**For the Respondent/ Corporate Debtor: Mr. Sujeet Kumar, Adv**

**Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)**

**Order**

1. The present petition has been filed by the financial creditor (herein referred as "petitioner") i.e. "**Neha Khanna**" under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor i.e "**M/s Tybros Infratech Private Limited**" on grounds of its inability to liquidate its financial debt.
2. As per averments made in the petition, the Financial Creditor/ applicant purchased two cottages at the holiday resort being developed by the corporate debtor in the name and style of " EON

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Resort" situated at on Midday Corbett Ranikhet, Near Maa Bhona Devi Temple, Ghatti- Basot Road, Village Jihad, District Almora for the total consideration of Rs. 76,33,000/- for each cottage.

3. Accordingly, two separate agreement to sell dated 15.04.2016 were entered into and the applicant paid a sum of Rs. 22,50,000/- (including service tax of Rs. 78,814/-) at the time of signing the agreement and the balance of Rs. 54,61,814/- was to be paid at the time of the possession of the cottages. Further stated that the corporate debtor could not deliver the cottages within time stipulated under the agreements dated 15.04.2016 and the applicant requested for full refund of the amount already paid. The Corporate Debtor agreed for making the refund but sought additional time of 3 to 6 months for effectuating the payment and also sought additional funding of Rs.5 lacs and promise to treat the entire amount as loan and to pay interest @ 18% per annum on the same till the time the payment are made.
4. It is further stated that an additional amount of Rs. 5 lacs were paid to the Corporate Debtor and the loan agreement dated 20.11.2018 was entered into between the Financial Creditor and the Corporate Debtor. At the time of entering into the loan agreement, the Corporate Debtor issued six cheques in favour of the applicant in discharge of its liabilities, however, when the applicant presented the cheques for payment, there were returned by the bank of the Corporate Debtor for insufficient funds.
5. Subsequently, the Applicant sent a legal demand notice to the Corporate Debtor seeking payment against the returns cheques. However, the payment was received only in respect of one cheque and

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with the remaining five cheques, the payment continued to be outstanding and is in default.

6. The learned counsel for the applicant also contended that in the present matter two counter affidavits has been filed by the corporate debtor in which in the first counter affidavit the debt is admitted while in the second counter affidavit the debt is disputed.
7. The counsel for the Corporate Debtor in the counter affidavit submitted that by mistake the authorised representative of the company has filed the preliminary reply considering the applicant as investor but after examining the record of the company, it was found that the applicant is not an investor but a homebuyer who booked and entered into an agreement to sell for two cottages with the respondent company and prays for the first reply to be ignored, which has been filed due to mistake.
8. It is submitted by the counsel for corporate debtor that two residential cottages were purchased by the financial creditor and when the cottages as booked by the Applicant got completed, the applicant was asked to take over the possession after paying the balance amount of Rs.1,07,66,000/- but the applicant stated that she is not having adequate fund for payment and request for full refund, which request was denied by the respondent as there was no such clause in the agreement to sale. Further the applicant informed to the respondent that she is having the buyer for her cottages and requested that said cottages be transferred in the name of new buyers at the market price and instead of paying the balance amount the applicant came forward with the proposal to sale her rights to the buyer which has also been

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refused by the company. Then she proposed that the post-dated cheques by the company be given to her as security and she will bring the buyer who will pay the current rate of the cottage to the company and the amount given by the new buyer will be deposited in the company account and the same to be considered as loan and the balance amount over and above 50 lacs will be adjusted after the cancellation of allotment in the name of the applicant.

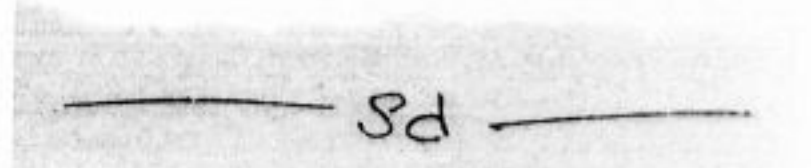
9. Further stated that the applicant has got executed the loan agreement with the assurance that she will deposit Rs. 45 lacs through new buyer and get her allotment cancelled. However, the applicant with the dishonest intention has misused the cheque given as a guarantee and has not paid Rs. 45 lakhs to the company. Thus the residential cottage of the applicant are ready for transfer and possession but the second party is not ready and willing to deposit the rest of the amount and not ready for transfer and possession of the cottage allotted to her, therefore, the Corporate Debtor stated that no question of default arises when the principal amount has not been paid.
10. Here the case in hand , before considering the aspect of debt and default, the aspect of maintainability of petition with respect to the applicant being the homebuyer is needed to be dealt with and in the present matter, the petition is being filed by the financial creditor "herein referred as applicant" who is the homebuyer and has purchased two cottages from the respondent company .
11. Referring to the judgment of Hon'ble Apex Court in the matter of **"MANISH KUMAR VS. UNION OF INDIA AND ANR [WP(C) NO 26 OF 2020]"** which upheld *The Insolvency and Bankruptcy Code*

*(Amendment) Act, 2020 in which for initiating CIRP, the minimum threshold for financial creditors who are allottees under a real estate project, shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less.*

12. In view of the amendment made in the Code, this court is of the opinion, that as the present application as being filed by the single homebuyer thus is not maintainable .

Accordingly, it is therefore,

**ORDERED** that the prayer to initiate proceedings U/S 7 IBC against the "M/S Tybros Infratech Private Limited" is hereby rejected and the application stands dismissed as not being maintainable.

  
**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date: 06.07.2021**

Swati Gupta  
(LRA)