

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**SPECIAL BENCH, NEW DELHI**

**C.P. NO.IB-1321(PB)/2018**

**IN THE MATTER OF:**

Ms. Shilpa Jain and Anr.

....Petitioner(s)

Vs.

Raheja Developers Ltd.

....Respondent

**SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016**

**Order delivered on: 20.08.2019**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**SHRI PRADEEP R. SETHI**  
**Hon'ble Member (Technical)**

**PRESENTS:**

For Petitioner : Ms. Mahima Sinha, Adv.  
For Respondent :Mr. Arjun Agarwal, Adv.

**ORDER**  
**M.M.KUMAR, PRESIDENT**

The Petitioner(s) claiming to be financial creditor(s) have filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to



trigger Corporate Insolvency Resolution Process in respect of respondent Raheja Developers Limited (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditor' is an 'allottee' under a 'real estate project'.

2. The Corporate Debtor – Raheja Developers Limited was incorporated on 27.11.1990 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U45400DL1990PLC042200.
3. The Petitioners have claimed that they had booked an apartment in the residential project- Raheja's Sampada being developed by the Respondent-Corporate Debtor. In pursuance of the same the Corporate Debtor issued a joint allotment letter dated 03.08.2012 (**Annexure P-5**) and executed a Flat Buyer's Agreement dated 03.08.2012 (**Annexure P-4**). In pursuance of the same the financial creditors made payments amounting to Rs. 86,62,691/- to the Corporate debtor on various dates as mentioned in Part-IV of the petition. The receipts issued by the Corporate Debtor have been placed on record (**Annexure P-15(Colly)**). Ledger account of the corporate debtor- respondent has been placed on record (**Annexure P-10**).



4. The precise case of the Petitioners is that the total amount in default due and payable by the corporate debtor is Rs. 86,62,691/- along with interest @18% p.a. A tabular chart depicting working of the amount in default is annexed **(Annexure P-13)**.
5. The Financial Creditor has proposed the name of Mr. Jitesh Gupta as the Insolvency Professional with the address 257, Vardhman City Center, Near Shakti nagar Railway Under Bridge, Gulabi Bagh, Delhi- 110052. His registration number is IBBI/IPA-002/IP-N00144/2017-18/10380 and email id - jitesh@jkgupta.com. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration **(Annex II)**
6. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the petition the Financial Creditor has given the details of the amount claimed in default and the date of the default.



7. A reply to the petition has been filed by one Mr. Rajesh K. Singh, being the Authorized signatory of the Respondent-Corporate Debtor, who has been given authority vide Board Resolution dated 08.08.2018.
8. In the Reply the Respondent-Corporate Debtor has raised various objections to the petition. First and foremost preliminary objection raised is that there is no 'default' on part of the corporate debtor and hence the petition is not maintainable. It has also been pleaded by the corporate debtor that handing over of the possession was subject to the provisioning of the infrastructure by the government in the area as it has received the occupation certificate in 2016 and delay was on the part of the authorities as till date water and sewer line has not been provided.
9. The submission made by the respondent- corporate debtor is wholly unwarranted as the maximum period of 36 months has already expired in August 2015 and the possession has not been handed over till date. The amount therefore would become 'due and payable'. In that regard reference may be made to Clause 4.2 of the Buyer's Agreement which provide for the possession of the Apartment within a period of 36 months



commencing from 03.18.2012. Admittedly the period of 36 months came to an end on 03.08.2015 and the construction was not complete. Clause 4.2 further provides that in case the construction was not complete then the corporate debtor-respondent was under obligation to pay the allottee compensation @ Rs. 7/- sq. ft. of the super area per month for the entire period of such delay. It has not been disputed before us that no amount has been paid which was due and payable. It is pertinent to mention that Clause 4.2 postulates that the aforesaid compensation @ Rs. 7/- sq. ft. of the super area per month for the entire period of such delay was to be adjusted at the time of conveying the apartment and not earlier and it will be treated as a distinct charge. The clause cannot be given a literal meaning to mean that till eternity the corporate debtor-respondent would defer possession and the financial creditor-petitioner are bound to wait. A construction of any such clause would be to grant reasonable period of one year.

10. Even the notice of possession dated 15.11.2016 (**Annexure P-11**) cannot be regarded as delivery of possession. According to the Notice of possession a further period of 4 weeks to

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handover the possession and 3 months for registration have been sought.

11. A perusal of the so called NOC dated 11.11.2016 (**Annexure A-3** with the reply) would show that the corporate debtor – respondent was to apply for Water connection within 15 days and till then portable water through tankers was required to be supplied to the residents. It is also stipulated in Clause 4 of the same document that the corporate debtor- respondent was to be wholly responsible for disposal of sewerage and storm water till the time services were made available by HUDA/ State Government as per the Scheme.
12. In the reply no such stand has been taken to show that the provision of water supply and disposal of sewerage/ storm water have been made. The notice of possession is merely a mirage and till date possession has not been delivered despite the fulfilment of all the obligations by the financial creditor-petitioner.
13. The vague averments made by the corporate debtor-respondent hardly need to be noticed. The other objections are also lame excuses to deny the claim of the Financial Creditor.



Therefore we do not find any force in the objection raised and the same are hereby rejected.

14. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled.

15. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in our Order dated 27.11.18 rendered in the case of ECL Finance Ltd vs Digamber Buildcon Pvt Ltd. (IB-1039(PB)/2018).

16. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.



17. As a sequel to the above discussion, this petition is admitted and Mr. Jitesh Gupta is appointed as the Interim Resolution Professional.

18. The judgment in this matter could not be pronounced earlier as the issue concerning Constitutional validity of explanation to sub section 8 (f) of Section 5 of the Code, 2016 was subject matter of challenge before Hon'ble the Supreme Court in a bunch of petitions. In the lead case titled as Pioneer Urban Land and Infrastructure Limited and Another v. Union of India &Ors. (Writ Petition (Civil) No. 43 of 2019) the order has now been pronounced on 09.08.2019. We have gone through the judgement and find that the directions issued by Hon'ble the Supreme Court do not in any manner advance the case of the Corporate Debtor and the petition deserves to be admitted. It may also be noticed that at no stage possession has been offered to the petitioner and that question of denial of possession would not arise.

19. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3

days) make public announcement with regard to admission of this application under Section 7 of the Code.

20. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. We direct the Financial Creditor to deposit a sum of Rs. 1 Lac 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 needful shall be done within three days from the date of receipt of this order by the



Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

22. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

23. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.



24. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. Petitioner is also directed to provide copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

  
**(M.M.KUMAR)**  
**PRESIDENT**

20.08.20

  
**(PRADEEP R. SETHI)**  
**MEMBER (TECHNICAL)**

**Pronounced under Rule 151 of the National Company Law Tribunal Rules, 2016 as Hon'ble Member (Technical) Sh. Pradeep R. Sethi is not holding the Court today.**

**Nirmala Vincent**  
**(Court Officer)**

**20.08.2019**  
**(VIDYA)**