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IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram : Shri Madan B. Gosavi,
Hon'ble Member (J)
&
Shri Virendra Kumar Gupta,
Hon'ble Member(T)

CP (IB) No. 1826/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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:

Anil Agarwal, having his registered office at 21/3, S.N. Chatterjee Road, Kolkata- 700 038, West Bengal;

... Petitioner/Financial Creditor

-Versus-

In the matter of:

Prabhudarshan Developers Private Ltd., a company incorporated under the provisions of Companies Act, 1956, having its registered office at 13/2B, N.N. Ghosh Lane, Kolkata- 700 040.
CIN : U45400WB2008PTC129290

... Respondent/Corporate Debtor

Counsel appeared:

1. Mr. Ratul Das, Advocate] For Financial Creditor
2. Mr. Soumyajyoti Nandy, Advocate,]

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Date of Pronouncement of Order: 05.02.2020

ORDER

Per Shri M. B. Gosavi, Member(J):

This application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) is filed by one Mr. Anil Agarwal, the home-buyer within the meaning of section 5(8)(f) Explanation (a) and (b) of I&B Code against **Developer-** Corporate Debtor, M/s. Prabhu Das Developers Private Ltd. to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor on the ground that Corporate Debtor committed default in paying the financial debt of sum of Rs.54,26,539/- and/or failed to give peaceful possession of the premises bearing no."4F-3", in Block-4, in the 3rd floor in a building proposed to be named as "Prabhu Orchard" situated at Mouza-Rasapunja, Pargana, Police Station- Bishnupur, District- 24 Parganas (South).

2. Notice of this application was duly served on the corporate debtor by Speed Post and by Email also. The Financial Creditor filed affidavit on record producing the copy of Email duly delivered to the corporate debtor and track report showing that postal authority had delivered the notice of this petition to the corporate debtor. In spite of due service of the notice, the corporate debtor did not appear in the matter, hence held hearing of this petition *ex parte* against the corporate debtor.

3. Financial Creditor produced on record alongwith the application copy of agreement of sale dated 18.02.2016. We have perused this agreement clause 5.5 of the agreement states that, "**Unless prevented by circumstances beyond the control of the Vendor Cum Developer the Vendor Cum Developer shall**

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cause the said flat/unit and car parking space to be constructed erected and completed on or before December-2018 (hereinafter referred to as the Completion Date)”. Financial Creditor states that the Corporate Debtor did not keep his promises. He has paid the corporate debtor a sum of Rs.24,44,320/- as a purchase price of the residential premises. Agreement also discloses that the above amount was duly received by the corporate debtor on the date of execution of above agreement.

4. Financial Creditor stated that as the corporate debtor failed to give possession of the flat as agreed, he called upon the corporate debtor to give possession or refund the amount by his notice dated 01.07.2019. Notice appears to be received by the corporate debtor and the corporate debtor replied the notice vide letter dated 11.07.2019 wherein he pointed out that 80% construction work is completed and he seeks six months' time to give possession. Be that as it may, the fact remained on record is that corporate debtor did not give possession of the premises to the financial creditor, as per terms of the agreement nor refund the amount claimed by the financial creditor and thereby committed default in paying the financial debt.

5. Financial Creditor established both the facts, i.e. (i) there is a debt due and payable by the corporate debtor to the financial creditor and (ii) corporate debtor committed default in paying the sum.

6. Financial Creditor suggested name of Mr. Arun Kumar Khandelia, proposed Interim Resolution Professional of 'Shantiniketan', 8, Camac Street, 8th floor, Suite# 807, Kolkata-700 017 having registration no. IBBI/IPA-002/IP-N00514/2017-18/11592 for appointment as the IRP. Proposed IRP has submitted written communication in Form-2 dated 17.10.2019, wherein it is declared that

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there is no disciplinary enquiry pending against her. The application is defect-free. In view of the facts and evidence on record, we hold that the application deserves to be admitted. We admit the same by passing the following order:

ORDER

- (i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of Corporate Debtor, **M/s. Prabhudarshan Developers Private Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.
- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- 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 possession of the corporate debtor.
- iv) 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.
- v) 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.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.31 or passes an order for liquidation of 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.

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viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.

ix) As per the suggestion of the Financial Creditor for appointment of IRP Mr. Arun Kumar Khandelia, proposed Interim Resolution Professional of 'Shantiniketan', 8, Camac Street, 8th floor, Suite# 807, Kolkata-700 017 having registration no. IBBI/IPA-002/IP-N00514/2017-18/11592 for appointment as the IRP is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan. The IRP has filed her consent in form no.2 alongwith the declaration that no disciplinary proceeding is pending against her.

x) The Financial Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016


xii) Registry is hereby directed to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email as per provisions of IBC.


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Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **20.03.2020** for filing progress report


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 5th day of February, 2020.