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IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (IB) No.1670/KB/2018

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:

1. Pramod Jain, residing at 13, Mukhram Kanoria Road, Ground Floor, Howrah - 711 101.
2. Neelam Jain, residing at 13, Mukhram Kanoria Road, Ground Floor, Howrah - 711 101.
3. Urmila Devi Pandya, residing at 13, Mukhram Kanoria Road, Ground Floor, Howrah - 711 101.

.....Applicant/Financial Creditors

And

In the Matter of:

Ideal Heights Private Limited, having its Registered Office at 50, Jawaharlal Nehru Road, Kolkata - 700 071

..... Respondent/Corporate Debtor

Date of Hearing 29th November 2019

Order Delivered on 3rd December 2019

Coram:

Madan B Gosavi, Member (J)

Virendra Kumar Gupta, Member (T)

For the Financial Creditor

- : 1. Mr. Reetabrata Mitra, Advocate
2. Miss. Urmila Chakraborty, Advocate
3. Mr. Indradeep Basu, Advocate

For the Corporate Debtor

- : 1. Mr. Shaunak Mitra, Advocate
2. Mr. Saubhik Chowdhury, Advocate
3. Mr. Dripto Majumdar, Advocate

[Signature]

[Signature]

ORDER**Per Virendra Kumar Gupta, Member (Technical)**

This application has been filed under Sec.7 of Insolvency & Bankruptcy Code, 2016 by the financial creditors, viz., (1) Pramod Jain, (2) Neelam Jain and (3) Urmila Devi Pandya to initiate corporate insolvency resolution process against the corporate debtor, viz., Ideal Heights Private Limited. The amount of default has been stated in the application at Rs.78,32,573/- on account of principal plus interest as on 15/11/2018.

2. The facts, in brief, are that the financial creditors are home buyers who purchased flats in real estate project of the corporate debtor. A sum of Rs.39,16,287/- was paid in terms of agreement dated 24/8/2011 against the total sale consideration of Rs.86,84,082/-. However, the corporate debtor failed to deliver the flats which resulted into filing of this petition.

3. Ld. Counsel appearing on behalf of the financial creditors submitted that the corporate debtor had agreed to deliver the possession of the said flats within 36 months with grace period of 6 months, however, the corporate debtor failed to do so. Ld. Counsel submitted that by a letter dated 12/11/2013 the corporate debtor sought extension for completion of the project and requested for an extended time period of 42 months therefrom with 6 months grace period. Even during the extended period, corporate debtor could not deliver the flats. Hence, it was a case of breach of the terms and conditions of the agreement resulting into debt being due and payable. Thus, this petition was liable to be admitted.

4. Ld. Counsel for the corporate debtor, on the other hand submitted that the agreement had been entered into on 24/8/2011, hence, limitation expired on 27/8/2014. Thus, the claim made by the financial creditors were barred by limitation. Thereafter, in support of his claim referred to clause 5.1 of the

agreement and also drew our attention to pages 44 and 45 of the Paper Book to show that the proposal made by the corporate debtor had not been accepted by the financial creditors, hence, as per clause 16.1 at page 25, copy of which is annexed with the Paper Book was not binding on the corporate debtor. Therefore, such proposal could not constitute as acknowledgment of debt and extend period of limitation.

5. Ld. Counsel for the financial creditors, in the rejoinder, submitted that in terms of provision of explanation to Sec.18 of Limitation Act, 1963, such letter constitutes as acknowledgment of debt.

6. We have considered the submission made by both the sides and perused the materials on record. It is not in dispute that financial creditors gave a specific sum in pursuance of an agreement signed between the parties on 24/8/2011. It is also not in dispute that the possession of the residential flats has not been given. It is also not in dispute that in a letter dated 12/11/2013 the corporate debtor has made a proposal wherein it has been mentioned that the corporate debtor would endeavour to complete the construction of the said units and deliver possession thereof on or before 31/3/2017 with a 6 months grace period. It is also not in dispute that clause 16.1 provides that the modification or amendment of any clause or agreement would be effective when both the parties execute the same in writing. However, the question before us is whether such letter though not signed by the financial creditors can constitute an acknowledgment of debt and extend the period of limitation in terms of provision of Sec.18 of the Limitation Act, 1963. In this regard it is not in dispute that in view of letter dated 12/11/2013 has been signed by the corporate debtor wherein a proposal has been made to complete the construction in extended period. The date of such extension is fixed as 31/3/2017 and, if extended, it ends on 30/9/2017. Thus, the liability to deliver possession or to make the

refund arises firstly on 31/3/2017, if the possession is not delivered.

7. Now, while we look at the provision of explanation (a) to Sec.18 of the Limitation Act, 1963, it is clear that a communication from the corporate debtor would be sufficient to constitute as acknowledgment of debt though it may not be signed by the person to whom it is addressed. Having said so, this position will remain the same in respect of clause 16.1 of agreement as such the clause operates to different field i.e. where without acceptance such clause could be enforced at general law or not. This would be particularly so, in view of provision of Sec.3 (6) read with provision of Sec.238 of Insolvency & Bankruptcy Code, 2016. Further, it may also amount to promise under Sec.25 (3) of Indian Contract Act, 1872 and this can happen even after the expiry of limitation period.

8. It reveals from the record that the financial creditor has not proposed the name of Interim Resolution Professional. Hence, we approve the name of Shri Nitesh Kumar More, IP Registration No.IBBI/IPA-001/IP-P01087/2017-18/11785 email id nmore2091@gmail.com Mob. No.8336087901 as IRP as he/she is on the panel approved by Insolvency & Bankruptcy Code, 2016 and no disciplinary proceedings are pending against him.

9. In view of the above discussion, we admit the application and order as under:-

ORDER.

- i. The application filed by the Financial Creditors under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Ideal Heights Private Limited is hereby admitted.

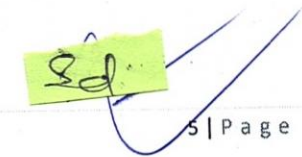
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- ii. We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv. Moratorium under Section 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 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - 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 the possession of the corporate debtor.





- v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi. 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.
- vii. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii. 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 Section 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.
- ix. Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.
- x. Shri Nitesh Kumar More, IP Registration No.IBBI/IPA-001/IP-P01087/2017-18/11785 email id nmore2091@gmail.com Mob. No.8336087901 as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi. The Financial Creditors to pay a sum of Rs.2,00,000/- (Rupees Two lakh only) to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill. In case further funds are required during Corporate Insolvency Resolution Process and if

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not provided by Committee of Creditors then IRP/RP can approach this Tribunal for that purpose.


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

xiii. Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

10. List the matter on 23/1/2020 for filing of the progress report.

11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Virendra Kumar Gupta)
Member (T)


(Madan B Gosavi)
Member (J)

Signed on 3rd December 2019