

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, DELHI  
BENCH III**

**IB-297/ND/2019** Under Section 7 of the  
Insolvency and Bankruptcy Code, 2016  
r/w Rule 4 of the Insolvency and  
Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016

*In the matter of Efferent Real Estates Pvt. Ltd*

**Divya Sharma**

...Financial Creditor

Versus

**Efferent Real Estates Pvt. Ltd**

...Corporate Debtor

Order delivered on 20.12.2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)  
K.K. VOHRA, MEMBER (TECHNICAL)

*For Financial Creditor*

*: Mr. Piyush Singh, Mr. Aditya Parolia,  
Mr. Prateek vats, Mr. Purusharth Bisht,  
Mr. Saurav Sharma, Advocates  
Ex-parte*

*For Corporate Debtor* :

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

**ORDER**

1. Ld. Counsel for the Financial Creditor is present. There is no representation on behalf of the Corporate Debtor. As seen from the Order dated 09.10.2019 the Corporate Debtor was proceeded Ex-parte.

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2. Under adjudication is an application bearing No., IB-297/ND/2019 filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) r/w Rule 4 of the Insolvency and Bankruptcy/Application to Adjudicating Authority) Rules, 2016. The prayers made are to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor viz., *Efferent Real Estate Private Limited*, to declare moratorium and appoint Interim Resolution Professional (IRP).

3. It is submitted by the Ld. Counsel for the Financial Creditor (FC) that a Commercial Food Court Unit worth Rs, 31,00,000/-, was booked in a project being developed by the Corporate Debtor (CD), namely, Unit No. 09, 2<sup>nd</sup> Floor in Project Center Point 1D, Gurgaon (Project). The FC on 10.11.2016, paid an amount of Rs. 1,00,000/- towards the Project. Pursuant to the booking on 22.11.2016, the FC and the CD entered into a Memorandum of Understanding (MoU), whereby as per Clause 8, the CD agreed to construct the commercial complex and complete it by December 2017, from the date of signing of the MoU. It was stipulated that in case the construction does not get complete in 6 (Six) months, the CD will refund the complete amount paid plus 175% of the total value of the unit to the FC. Clause 9 of the MoU further stipulates, if for any reason the construction of the commercial complex is not completed by 31.03.2018. Then, the FC shall be entitled to seek refund of all monies paid viz., payment of the said Basic Sale Price and other chargers along with interest and compensation amounting to total value plus 200% of the total value of the unit.

4. The Counsel for the FC submitted that in the light of the terms and conditions of the MoU mentioned above, the FC has made timely payments and paid the amount of Rs.6,00,000/- through cheques, details of which is given under Clause 5 of the MoU, which is corroborated with the bank statement placed on record. The CD failed to fulfill the commitments made vide MoU dated 22.11.2016. However, on perusal of the Computation Sheet placed on record, it appears that the CD had partially refunded an amount of Rs.

4,35,000/- to the FC. The detail of the balance is given in the Computation Sheet in terms of the MoU, the total of which comes to Rs. 94,65,000/-.

5. The FC has sent termination letter for the unit booked on 25.01.2019 to the CD, stating therein that the CD has not delivered the Unit on time in terms of the MoU and demanded the refund of the entire amount paid along with compensation and interest, as stipulated in the MoU to which no reply was given by the CD.

6. Having considered the facts and circumstances and the material available on record, there is sufficient evidence to ascertain the default on the part of the CD. The Application filed by the FC is complete in all respect including the name of the IRP. Therefore, the Application is **admitted** and the commencement of the CIRP is ordered, which ordinarily shall be completed within 180 days, reckoning from the day this order is passed.

7. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:-

- (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 Securitisation 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.
8. The supply of essential goods or services of the CD shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
9. Mr. Gaurav Katiyar is hereby appointed as IRP, as has been proposed by the FC. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. The IRP is directed to take charge of the CD's management immediately including the bank accounts. The IRP is also directed to cause public announcement as prescribed under Section 15 of IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.
10. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the CD, its Promoters or any person associated with the management of the CD shall extend all assistance and cooperation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.
11. The FC and the Registry are directed to send the copy of this Order to IRP with immediate effect, so that he could take charge of the CD's assets etc.,

and make compliance with this Order as per the provisions of IBC, 2016. The e-mail and other details of the IRP are as follows: -

Name: Mr. Gaurav Katiyar,

Registration Number: IBBI/IPA-001/IP-P00209/2017-18/10409

Address: D-32, East Kailash, New Delhi, 110065

E-mail Id: cagauravkatiyargmail.com

Mobile No.: 9818949966

12. The Registry is also directed to communicate this Order to the FC, the CD, and the concerned RoC.

13. The Order is dictated and pronounced in the open court. There is no order as to cost.

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**(K.K. VOHRA)  
MEMBER (TECHNICAL)**

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**(CH. MOHD SHARIEF TARIQ)  
MEMBER (JUDICIAL)**

U.D.Mehta/G