

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-III
C.P.No.IB-1022/ (ND)/2018**

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Mr Gautam Mullick and Ors.

..Financial Creditors/Applicants

VERSUS

M/s Rohtas Projects Limited

..Corporate Debtor/Respondent

Memo of Parties:

Mr. Gautam Mullick,

S/O Late Mr. Gurbachan Mullick

R/O, B-1/ 327, Janakpuri

Defence Colony, New Delhi- 110058

Mr. Sachin Gupta,

S/O, Mr. Rama Kant Gupta,

R/O, 265, Aminabad Road, Naka Hindola,

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Locknow, Uttar Pradesh- 226004.

Mr. Abhishek Kumar,

S/O Mr. Virendra Prasad Srivastava,
R/O, 1/4a, Rail Vihar Colony,
Aashiyana, Sector-1, Lucknow,
L.D.A Colony, Uttar Pradesh, 226012.

Mr. Ramesh Chandra,

S/O Mr. P.N. Rai,
R/O 35 Neel Vihar,
Indira Nagar, Lucknow- 226016.

Mrs. Sangeeta Srivastava,

W/O, Neeraj Kumar Srivastava
R/O, Flat No. 706, Tower 10, Panchsheel Primrose,
Main Hapur Road, Harsaon, Near Police Line,
Ghaziabad, Uttar Pradesh- 201001.

..Financial Creditors

VERSUS

M/S Rohtas Projects Limited.

Registered Office
Flat No. 2,
First Floor, F-50B



Madhu Vihar Ext. Patparganj,
New Delhi East Delhi
DI- 110092 IN.

..Applicant

Coram:

R.VARADHARAJAN,
Hon'ble Member (Judicial)

K.K. VOHRA,
Hon'ble Member (Technical)

Counsel for the Applicant: Priyadarshi Chaitanyashil, Diptimaan
Kumar (Advocates)

Counsel for the Respondent: Paritosh Budhiraja, Rajesh Prasad
(Advocates)

ORDER

Date: 30.09.2019

1. This is an application which has been filed by the Applicant under the provisions of Insolvency and Bankruptcy Code, 2016 who claim to be the Financial Creditor (FC) of the Respondent Company which has been termed as the Corporate Debtor (CD). The transaction leading to filing of the

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present Application as reflected in the application is stated to be as under:

- a. In the year 1990 the Respondent Company, a subsidiary of Rohtas Venture entered the field of Real Estate Construction and Development, having its registered office in Flat No.2, First Floor, F-50B Madhu Vihar Ext. Patparganj, New Delhi East Delhi 110092.
- b. The CD through its agents and other media sources started marketing its various projects in Sultanpur Road, Lucknow and Rae Bareli and the FCs having come to know of the project booked various plots in the said project.

Name of the FC	Name of the Unit or Project	Date of Agreement	Amount paid at time of booking Rs	Total amount paid by FC Rs
Gautam Mullick	Plot 96 (Emerald) & Plot 122 (Pearl) 155 & 110 sq. yd	27.07.15 & 15.06.15	1,00,000 & 1,00,000	12,81,200
Sachin Gupta	Plot 106 (Pearl) 110 sq. yd	30.07.13	2,00,000	5,94,000
Abhishek Kumar	Acre Scheme 275 sq. yd	31.08.15	2,25,000	16,00,000

Ramesh Chandra	T3-167 in Acre Scheme 150 sq. yd	12.01.15	9,50,000	16,00,000
Sangeeta Srivastava	Acre Scheme 150 sq. yd	7.09.13	4,50,000	8,63,000

- c. The FCs paid a total sum of Rs. 59, 38,200 which is more than 40% of the Base Sale Price of the plots booked by them and after which the CD even confirmed the reservation of the said plots.
- d. The CD promised that it would deliver on its promises by informing the FCs that the possession in the integrated township would be given to the FCs on getting the relevant approval from the Lucknow Development Authority (LDA). However, no such approval was pending at LDA when the same was inquired upon the filing of an RTI.
- e. The CD despite achieving no real progress pertaining to the project kept on demanding the balance amount from the FCs. However, when asked about the progress of the project, the CD kept giving the excuse of delay in getting approvals from LDA.
- f. The FCs being frustrated by such negligent behavior on part of the CD filed a group F.I.R. in Hazratganj Police

Station, Lucknow under various Sections of Indian Penal Code (IPC), 1870.

- g. The investigating agencies found out that the CD had mortgaged the property of the project to various banks and had secured huge sum of money for the same. The CD had also discreetly transferred the ownership of the said land to their relatives from preventing the said property from getting attached.
 - h. The total amount in default due from the CD is Rs.1,-03,26,513 being the Principle Amount paid by the FCs along with simple interest not paid by CD.
2. The documents attached to the application in order to prove the existence of financial debt are following:
- a. Receipts of payments issued to the Petitioners by the Respondent Company.
 - b. Copy of the letters issued by the Respondent Company, asking for payment of due amount by providing fake information regarding the development of the project.
 - c. Copy of Agreements and Memorandum of Understanding executed between the Respondent Company and Petitioners.
 - d. An original translated copy of the RTI filed at the Lucknow Development Authority.

- e. Copy of FIR filed against the Directors of the Respondent Company by the Petitioners.
- f. Part of the Agreement mentioning the Buyback Scheme ~~guaranteed by the Respondent Company has been~~ highlighted.
- g. Copy of the complaints filed by the Petitioners against the Respondent Company for the dishonour of cheques.
- h. Copy of the public announcements made by various banks for auctioning with which the property in dispute has been mortgaged with by the Respondent Company.
- i. Copy of Letter No. 148/59/18, dated 20.04.2018 by LDA regarding taking cognizance of the offences against the Respondent Company and its inability to take action against the same.
- j. Copy of letter issued from FCs to the Respondent Company regarding the surrender of their respective plots and claim for their respective amount that they had given towards the project.

3. The CD filed the reply on 3.4.2019 wherein it states that:

- a. CD had fully disclosed to the applicants that the completion of the project is subject to approval from the Authorities and that the Booking/Allotment once made cannot be cancelled by the Purchaser in any circumstances and the discretion to cancel the same entirely rests with the Respondent. Upon cancellation the amount if any, paid over and above the earnest money shall be refunded without any interest.

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- b. That the offer of the possession of the plot is to be made within 24 months from the date of approvals from the competent authorities subject to timely payment by the ~~purchasers of the sales price, stamp duty, Govt. charges~~ and any other charges due and payable according to the payment plan.
- c. The applicant had full knowledge that the project in question is to be completed in phase manner in accordance with the phase wise approval by the competent authority.
- d. CD further submits that it is a clear case of fraud and forgery by the Petitioner with this Hon'ble Tribunal since they have filed forged and fabricated documents before this Hon'ble Tribunal.
4. Upon perusal of the contentions made by the Petitioners and the detailed reply filed by the Respondent, it can be said that the default occurred on the part of the respondent when it failed to provide the possession of the said plots within the stipulated time as per the terms and conditions of the Builder Buyer's Agreement which gave a maximum time limit of 24 months from the date of signing the said agreement. Also the default occurred on the part of the CD, when it further failed to oblige to the Buy Back scheme under the relevant clause of the Builder Buyer agreement despite various requests from the Petitioners. The relevant clauses that deal with the above explanation are as under:

Clause 30 of the Builder Buyer's Agreement states as follows:

“In the event the seller fails to offer possession of the said plot, within 24 months from the date of the approvals from the competent authorities then after 45 days from the expiry of 24 months subject to the purchaser having made all payments as per the payment plan attached as Annexure-I and subject to the terms, conditions of this agreement and barring force majeure circumstances, the seller shall pay compensation to the first named purchaser calculated @Rs.5/- per sq. ft. per month on the full area of the said plot which both parties have agreed just and equitable estimate of the damages that the purchaser may suffer and the purchaser agrees that he/they shall not have any other claims /rights whatsoever. The adjustment of compensation shall be done at the time of execution of the Conveyance Deed.”

5. Taking into consideration all the above, this Tribunal is of the view that a default has been committed in terms of Section 3(12) of the Code of financial debt as defined under Section 5(8) of the Code and that the Applicant has rightly invoked the provisions of the Code. From the Application filed it is seen that the Applicant has named an Interim Resolution Professional in Part III of its Application whose details are as follows:

Mr. Kamal Piyush
K-8, Ground Floor, Jangpura Extnsion
New Delhi-110014.
Email: kamalpiyush@ksaindia.in

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6. It is also seen from the Application that the above named IRP has given a written consent in Form 2 wherein he has agreed to accept appointments as IRP if Application is admitted. Further, it is also evident from the said Form 2 as filed by the IRP as well as the certificate as enclosed therein signed under his hand that he is not a related party to the Corporate Debtor and that he is eligible to be appointed as an independent director on the Board of the Corporate Debtor. Certificate of Registration of the IRP as issued by the Insolvency and Bankruptcy Board of India (IBBI) has also been enclosed along with the Application and taking into consideration all the above, this Tribunal finds that this is a fit case to be admitted in terms of Section 7 of the Code and thereby initiate corporate insolvency resolution process as against the Corporate Debtor with the following consequences:

- a. Mr.Kamal Piyush, having registration no. IBBI/IPA-001/IP-P00476/2017-18/10819, is appointed as the interim resolution professional and he shall strictly act in accordance with the provisions of the Code and the attendant Rules enjoined upon him;
- b. In terms of Section 14, as reproduced hereunder, the Corporate Debtor shall be under moratorium on the following terms:
 - (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;

(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.

c. However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

d. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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.

e. The powers of the Board of Directors of the Corporate Debtor shall stand suspended on and from this day as envisaged under Section 17 of the Code.

f. In terms of Section 7(7)(a) of the Code the registry of this Tribunal is directed to communicate the order to both



the Financial Creditor and the Corporate at the earliest. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

With the above directions, the application stands disposed of.

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(K.K. VOHRA)
MEMBER (TECHNICAL)

—sd/—

(R. VARADHARAJAN)
MEMBER (JUDICIAL)
30/09/2019