



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-223(ND)/2022

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

In the matter of:

KAUSHAL DESHMUKH AND ORS.

... Petitioners/ Financial Creditor

VERSUS

M/S. GRAND REALITY PRIVATE LIMITED

... Respondents/ Corporate Debtor

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 14.02.2023

ORDER

PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL) &

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant company petition is filed jointly by Mr. Kaushal Deshmukh and 41 other financial creditors / home buyers ('Petitioners') in a class of creditors under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. Grand Reality Private Limited ('Respondent/Corporate Debtor') having CIN: on the ground that the Corporate Debtor committed a default in payment of



Rs.35,32,63,406/- (Rupees Thirty-Five Crore Thirty-Two Lacs Sixty Three Thousand Four Hundred and Sixty only) including interest @ 9% p.a..

2. The Corporate Debtor i.e., M/s. Grand Reality Private Limited having CIN: U45201DL2006PTC242451 is incorporated on 11.12.2006 under the provisions of the provisions of the Companies Act, 1956 having its registered office situated at P-11-12, L.G.F., N.D.S.E, Part-II, New Delhi-110049. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Briefly stated facts of the case as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:-
 - a) The petitioners submit that the petitioners are the allottees of flats in the Corporate Debtor's Real Estate Project called "Marvel Ganga Fria" which has 144 flats in total and the project is located at Wagholi, Pune in Maharashtra. The petitioners further submit that the project "Marvel Ganga Fria" is a RERA approved project vide Registration No. P52100001522 dated 18.05.2020 with a validity effective from 28.07.2017 to 30.06.2021.
 - b) The petitioners submit that the corporate debtor had sold the flats to the petitioners on various dates from 2015 to 2017 and promised to give possession of the flats to the petitioner allottees on various dates from 2017 to 2019, however, till date the corporate debtor has not given possession of the flats to the petitioners. The petitioners further submit that more than 90% of the payment has already been made to the builder by the petitioners and a total payment of Rs.22,58,75,189/- have been made by the allottees in addition to payment on account of stamp duty and registration fees for the flats.



- c) The petitioners submit that the corporate debtor is one of the co-promoters in the application filed to MAHA-RERA for registration of the project namely “Marvel Ganga Fria”. The petitioners further submit that as per Clause 8 of the Article of Agreement dated 16th March, 2017, payment by the petitioners has been made to “Marvel Grand Reality Escrow Account” as per the terms of Articles of Agreement and as per Clause 14 of the said Article of Agreement dated 16th March, 2017 corporate debtor is liable for refund of full amount paid by the Allottees along with interest thereon at the rate of 9% per annum.
4. The defence placed by the corporate debtor in its reply and argued by the learned counsel for the corporate debtor are stated in brief as below:-
- a) The respondent submits that the petitioners are allottees in a residential project known as 'Marvel Ganga Fria', being developed by (1) PAX HOMES LLP. (2) Smt. Jasmine Jehangir, (3) Smt. Binaifer Yuzud Karanjia, and (4) Marvel Landmarks Private Limited ["Developers"] for construction and development of the land Hectares 01=45 Acres, Hectares 00-88 Ares, Hectares 00=87 Ares, Hectares 00-87 Ares, Hectares 00-87 Ares, and Hectares 01=75 Ares bearing Gat Nos. 1401. 1402/1, 1402/2, 1402/3, 1402/4 and 1402/7 respectively and of portions admeasuring Hectares 01-79 Ares, Hectares 01-44 Ares and Hectares 15-01 Ares bearing Gat Nos. 1400, 1423 and 1424 situated in Wagholi, Pune.
- b) The respondent submits that Agreement of Development dated 18.11.2021 was executed between the Respondent Company i.e., Grand Reality Pvt. Limited (referred to as "the Party of the One Part") and (1) Pax Homes LLP. (2) Smt. Jasmine Jehangir, (3) Smt. Binaifer Yuzud Karanjia, and (4) Marvel Landmarks Private Limited (collectively referred to as "the Parties of the Other Part), wherein the rights of development of the said land/ for construction of the Project was vested in favor of the "Parties of the Other Part' by the Party of the One Part i.e., Grand Reality Private Limited in lieu of consideration from each of the mentioned Parties, who were privy to the said Agreement. The respondent further submits that it is evident that the Respondent Company had granted license to the parties of the other part for the construction of the



Project to the relevant parties, who were then responsible for the completion of the said project.

- c) The respondent submits that a bare reading of the "Agreement of Development" dated 18.11.2011, would manifest that the Respondent Company was never entrusted with the task of development and construction of the said land or the completion of the said project, and was merely the land owner of the said land. The respondent further submits that from the Agreement of Development dated 18.11.2011 the only obligation that the Respondent Company had was towards the "Parties of the Other Part" in terms of the "Agreement of Development" and to no one else. The respondent adds that "Respondent Company" and the "Parties of the Other Part" were dealing with each other on a "principal to principal" basis and not in a partnership or a joint venture situation and therefore, initiating CIRP against the Respondent Company is not only utterly unwarranted but is also unsustainable in law.
- d) The respondent submits that a bare perusal of the terms of the "Agreement of Development", shows that the said Project is a revenue sharing model between the Respondent Company and the Developers, wherein all amounts received from the prospective Purchasers of Flats/Units in the Project by way of "Gross Sales Proceeds" of the Project to be implemented on the said Land shall be deposited in the said "Collection Account". It was further agreed between the parties that for a period of one year from the date of sale of the first Flat/Unit in the said Project, the Gross Sale Proceeds of the said Project shall, be apportioned between the Respondent Company and Developers in the proportion 26:63.60:2.97:2.97:4.46. The respondent further submits that from the above statement it is evident that the majority revenue is with the developers collectively and not with the Respondent Company. Moreover, the said 26% is in lieu of the arrangement arrived between the parties and under no circumstance should be construed to mean that the Respondent Company is obligated towards the Applicants in any manner.
- e) The respondent submits that the respondent is not a 'Corporate Debtor' in terms of Section 3 (8) of the Code. Section 3(8) of the Code, 2016 defines 'Corporate Debtor' as "a corporate person who owes a debt to any person".



The respondent further submits that Section 3(11) of the Code defines "debt" as a "liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt"

f) The respondent submits that petitioners have themselves defaulted in paying the installments against payment for the said project and therefore, cannot be allowed to take benefit of their own wrongs. The respondent further submits that there has been a substantial delay on the part of the Petitioners for payment of dues towards the price of the unit and still a considerable outstanding amount is left to be cleared by the petitioners, which the petitioners are trying to escape paying.

5. The petitioners filed the rejoinder to the reply submitted by the corporate debtor.

The submissions of the petitioners in the rejoinder are stated herein in brief:-

a) The petitioners submit that the basis by virtue of which the respondent i.e., M/s. Grand Reality Private Limited becomes the Corporate Debtor is the Articles of Agreement dated 16.03.2017 executed between the Petitioners, Respondents and the Builders of the project. The petitioners further submit that as per the Articles of Agreement dated 16.03.2017, respondent is one of the First Party amongst the others wherein as per Clause 14 of the said Agreement respondent is liable for refund of full amount paid by the Allottees along with interest. The petitioners add that despite several requests and legal notice, the respondent did not refund the amount with interest.

b) The petitioners submit that the fact is that the respondent has sold flats to the petitioners by virtue of Articles of Agreement dated 16.03.2017 and also took responsibility to refund the entire amount with interest in case of default. The petitioners further submit that this very fact does not change by reference to Agreement of Development dated 18.11.2011, more particularly, when the petitioners are not party to the Agreement of Development dated 18.11.2011.

c) The petitioners submit that the respondent has received 26% of the Gross Sale proceeds of the flats which is hard earned money of the petitioners. The petitioners further submit that despite acknowledging the fact that the



corporate debtor has received the hard earned money of the petitioners, the respondent has failed to fulfill its obligations.

d) The petitioners submit that the respondent was supposed to provide the possession of the flats on dates mentioned in the Articles of Agreement and such date has already surpassed long back. The petitioners add that in the event of failure to handover the possession, the corporate debtor is responsible to refund the amount paid by the petitioners along with interest.

6. We have heard Ld. Counsels for both the parties and perused the averments made in this petition, reply, rejoinder and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been examined in detail. On the basis of the pleadings, the following issues have to be decided :

- I. Whether the petitioners are entitled to maintain the present petition being homebuyers and meet the threshold limit of 100 of such allottees or 10% of the total number of such Allottees?**
- II. Whether M/s. Grand Reality Private Limited, respondent herein is a Corporate Debtor in terms of Section 3(8) of the Code, 2016 and the Petitioners are Financial Creditor to the Corporate Debtor?**
- III. If the answer to issue No. II is in the affirmative, whether there was any default on the part of the Respondent Corporate Debtor (M/s. Grand Reality Private Limited) in completion of the project 'Marvel Ganga Fria' and also in repayment of the amount to the Petitioners and whether on that basis Corporate Insolvency Resolution Proceedings can be initiated against this Corporate Debtor?**
- IV. Relief (s).**

The above issues are answered as under: -

ISSUE - I

7. In order to initiate the CIRP against a corporate debtor on an application filed under Section 7 of the Code, 2016, by financial creditors who are Allottees in a



real estate project, the applicants it must primarily qualify the threshold limit of not less than 100 of such allottees under the same real estate project or not less than 10% of the total number of such allottees under the same real estate project, whichever is less, as envisaged under second proviso to the Section 7(1) of the Code. We are satisfied that in compliance of the said proviso, this instant petition has been jointly filed by 42 allottees out of a total of 144 allottees i.e., more than 10% in the 'Marvel Ganga Fria' project, which satisfies the criteria as provided in second proviso to the Section 7(1) of the Code, 2016. Accordingly, the present petition meets the threshold criteria as provided under Second Proviso to Sub-Section 1 of Section 7 of the Code, 2016 is complied with.

ISSUE - II

8. As regard to the issue whether M/s. Grand Reality Private Limited, respondent herein is a Corporate Debtor in terms of the Code, 2016, this Adjudicating Authority find it necessary to go through the contents of the (i) Agreement of Development dated 18.11.2011 executed between the Corporate Debtor, being party of the first part and Pax Homes LLP and others being the second party and (ii) Article of Agreement dated 16th March, 2017 executed between the Corporate Debtor, Pax Homes LLP and other (Promoters), as party of the first part and Homebuyers/purchasers, party of the second part. This clearly establishes that the Land Owner i.e., Corporate Debtor is the proper and necessary party to the present matter.



9. The relevant Clause 10 of the Agreement of Development dated 18.11.2011 executed between the M/s. Grand Reality Private Limited ('Corporate Debtor') , being party of the first part and Pax Homes LLP and others being the second party is reproduced herein below in verbatim:-

"8. The Parties herein shall open a Bank Account in the name of "MARVEL - GRAND REALITY ESCROW ACCOUNT" with any Bank as mutually decided by them and such Account (hereinafter referred to as "the Collection Account") shall be operated by the duly authorized representatives of the parties hereto jointly and in accordance with an Escrow Agreement to be executed between the Parties hereto and any such Bank. All amounts received from the prospective Purchasers of Flats/Units in the Project by way of "Gross Sales Proceeds" of the Project to be implemented on the said Land shall be deposited in the said "Collection Account". It is agreed between the parties hereto that for a period of one year from the date of sale of the first Flat / Unit in the said Project, the Gross Sale Proceeds of the said Project shall, be apportioned between the Party of the One Part (Grand Reality Private Limited), No.(1) of the Parties of the Other Part ('Pax Homes LLP'), No.(2) of the Parties of the Other Part, No.(3) of the Parties of the Other Part and No.(4) of the Parties of the Other Part in the proportion 26-63.602.972.97:4.36 respectively. To enable No.(1) of the Parties of the Other Part to recover the said Interest Free Recoverable Deposit of Rs.7,50,00,000/-, it is agreed between the parties hereto that the Gross Sale Proceeds of the said Project shall be apportioned from the inception thereof between the Party of the One Part, No.(1) of the Parties of the Other Part, No.(2) of the Parties of the Other Part, No.(3) of the Parties of the Other Part and No.(4) of the Parties of the Other Part in the proportion 24.75:64.85:2.97:2.97:4.46 respectively."



10. The relevant extract of Clause 8 of the Article of Agreement dated 16th March, 2017, in respect of Unit No. 201, which is taken as a sample to examine the terms of the Article of Agreement dated 16.03.2017 executed between M/s. Grand Reality Private Limited ('Corporate Debtor') Corporate Debtor, Pax Homes LLP and other (Promoters), party of the first part and Homebuyers/purchasers, party of the second part is reproduced herein below in verbatim:-

“(8) As mentioned above, the Purchaser/s has/have agreed to acquire Unit No.201 in Building" P2" in the said Complex to be known as "MARVEL GANGA FRIA" at or for the mutually agreed lump sum consideration of Rs.54,26,859/- (Rupees Fifty Four Lacs Twenty Six Thousand Eight Hundred Fifty Nine Only). **** **The Purchaser/s shall make payment of the said agreed consideration amount by cheques/ Demand Drafts / Bank Pay Orders drawn /issued on/in favor of the Promoters "Marvel Grand Realty Escrow Account 2" according to the Schedule of Payments set out in the Third Schedule hereunder written.*******”

“Consequences of Failure:-

(14) It is agreed between the parties hereto that if the Promoters fail to give possession of the said Unit in accordance with the terms of this Agreement on the date mentioned in Clause 5(b) hereinabove, or if, the Promoters and/or their Agents for reasons beyond its control, are unable to give possession of the sold Unit by the said date and after a period of six months If those reasons still exist, then in such case, the Promoters shall, without prejudice to their rights reserved hereunder, be liable to refund the amounts already received by them in respect of the said Unit from the Purchaser/s with simple interest thereon at the rate of 9% per annum from the date it received the same till the date the amounts and Interest thereon is refunded to the Purchaser/s and the said amount and



interest shall be charged on the sold Unit to the extent of amounts due, but subject to any prior encumbrances. Provided however, that the Promoters shall be entitled to a reasonable extension of time for giving delivery of the Unit by the aforesaid date, if the completion of the building in which the Unit is to be housed is delayed on account of:

.....
11. On a conjoint reading of both the agreements referred above, it clearly establishes that (i) the Corporate Debtor M/s. Grand Reality Private Limited is a party to both the agreements ;(ii) the consideration/amount paid by the home buyers is passed on to the M/s. Grand Reality Private Limited ('Corporate Debtor') also as the M/s. Grand Reality Private Limited is not only the beneficiary but also the joint signatory to the Escrow Account in which the consideration towards the sale of the units of the 'Marvel Ganga Fria' project is collected, which is later distributed among the beneficiaries of the Escrow Account in the pre-decided ratio; (iii) Further, as per the Articles of Agreement entered into with the respective homebuyers for the sale of the units, M/s. Grand Reality Private Limited ('Corporate Debtor') is termed as one of the promoters of the project wherein the obligations and rights of the promoters and purchasers were prescribed. The clause 1 of the said Articles of Agreement specifically prescribes that Promoters are proceeding with the construction of work of the said complex to be known as "Marvel Ganga Fria" on the said land more particularly described in the First schedule therein.

12. Considering the above factual position we are of the considered view that M/s. Grand Reality Private Limited ('Corporate Debtor') being the entity sharing the sale proceeds of the flats/units of the project in its capacity as a



promoter/beneficiary of the project 'Marvel Ganga Fria', is also responsible to ensure completion of construction of project within the timeline prescribed and is liable to refund the amounts already received by them in respect of the unit from the petitioners with simple interest thereon at the rate of 9% per annum as per clause 14 supra.

13. With regard to the respondent's contention that the rights of development of the construction of the Project was vested in favor of the "Parties of the Other Part' and respondent was merely a land owner, this Adjudicating Authority is of the considered view that the respondent M/s. Grand Reality Private Limited being the owner of the project land who entered into the Development Agreement with the Developers and has agreed to has a share in the sale proceeds from the sale of the units of the project cannot be discharged of its liabilities towards the Petitioners. From the very pleading of the respondent, it is clear that the share of receipts of the respondent are not just confined to the cost of land as the Agreement of Development dated 18.11.2011 clearly speaks about the manner and sharing ratio of the sale consideration of the project units sold between the respondent and the other party. Mere adding a clause in the Agreement of Development dated 18.11.2011, that parties are dealing with each other on a Principal to Principal basis and not in a partnership or a joint venture situation cannot in any way change the real nature of the commercial sharing of fruits of the project among the parties as the covenants of Agreement of Development dated 18.11.2011 and Article of Agreement with the purchasers for the sale of units of the project clearly speaks about obligations between the parties and the manner of sharing of revenue derived from the sale of the units of the project.



14. The project Marvel Ganga Fria was registered with MAHA- RERA, wherein as per the application submitted with MAHA-RERA Authority, the name of M/s. Grand Reality Private Limited is mentioned as the Promoter of the project and the type of the agreement is shown as 'Revenue Share' indicating the sharing of sale proceeds share between the promoters inter-alia. The extract of the MAHA-RERA Application for the project 'Marvel Ganga Fria' where the Corporate Debtor is categorized as Co-Promoter is placed as Annexure-6 (Colly.) at pg no. 63 -69 of Volume 1 of the instant Company Application filed under Section 7 of the Code, 2016.

15. Further, the Maharashtra Real Estate Regulatory Authority vide its Circular No. 12/2017 dated 04.12.2017 with Subject:- Land Owners/Investors having Area/Revenue Share in Real Estate Project to be treated as Promoter (landowner/investor). The relevant part of the Circular No. 12/2017 dated 04.12.2017 is reproduced herein below:-

***“WHEREAS** during the online registration process, especially for on-going projects, it was observed that several developers (who actually obtain building permissions and construct) of the real estate project, have entered into arrangement with individuals/ **organizations like land owners or investors, by which the said individuals/ organizations are entitled to a share of the total revenue generated from sale of apartments or share of the** total area developed for sale which are also marketed and / or sold by such individuals / organizations.*

***WHEREAS** a careful consideration of the aforesaid definition in the light of the true object and purpose of the said Act leaves no manner of doubt that such individuals/ organizations are also covered and clearly fall within the aforesaid definition of the term 'Promoter' and as such are Promoters within the meaning of the said terms for the purpose and for the implementation of the said Act and all the rules framed there under. They are therefore jointly liable for the functions and responsibilities specified in the Act in the same*



manner as the Promoter who actually obtains building permissions and carries out construction.”

16. Thus, this Adjudicating Authority is of considered the view that the alleged Agreement of Development dated 18.11.2011 between M/s. Grand Reality Private Limited (‘Respondent / Corporate Debtor’), M/s. PAX Homes LLP, M/s. Marvel Promoters & Developers (Pune) Private Limited and other individuals is a matter of internal affairs of the Corporate Debtor and the Petitioners being outsider are not privy to the management of the internal affairs of the Corporate Debtor as to which party to the Agreement of Development dated 18.11.2011 have what responsibility and Doctrine of Indoor Management squarely applies herein, therefore the argument of the Corporate Debtor that development and construction of the project ‘Marvel Ganga Fria’ is the not the responsibility of the Corporate Debtor cannot be accepted by this Adjudicating Authority.

17. Section 3(8) of the I&B Code, 2016, defines the expression ‘Corporate Debtor’ which means a corporate person who owes a debt to any person. The clause relating to the maintaining of the escrow account and collecting the sale consideration of units tin the escrow of the units and its distribution thereof in the predetermined sharing ratio in the Agreement of Development dated 18.11.2011, the covenants specifically Clause 5 specifying the obligations of promoters in the Articles of Agreement for the sale of units speaks of the real nature of the relationship between the Respondent and Pax Homes LLP and others. Therefore, from the contents of the Agreement of Development dated 18.11.2011, it is clear that the substratum of the said ‘Agreement of



Development' is that the parties to the agreement are acting in the capacity of the 'Joint Development Partners' who entered into a consortium of sorts for developing the subject land/project with their respective roles and duties in consideration of the receipt of the proceeds from the sale of the units of the project.

18. The very fact that M/s. Grand Reality Private Limited, the respondent herein, M/s. Pax Homes LLP and the other parties to Agreement of Development dated 18.11.2011 are equally accountable for ensuring the successful completion of the project in all respects and delivery of possession to the home buyers as well identified as the promoter by MAHA-RERA, have failed to deliver the possession to the parties to the Articles of Agreement dated 16th March, 2017, they shall be jointly and severally liable to refund the amount along with interest as per the covenants more specifically Clause 14, of the Articles of Agreement dated 16.03.2014. Therefore, in our considered view M/s. Grand Reality Private Limited clearly falls within the definition of Corporate Debtor as provided in 3(8) of the Code, 2016.

19. At this juncture, we find it relevant to refer Hon'ble Supreme Court judgement in **Pioneer Urban Land and Infrastructure Ltd & Anr versus Union of India & Ors (Writ Petition (Civil) No. 413 of 2019)**, wherein the Hon'ble Supreme Court held that:-

“ In the case of real estate developers, the developer who is the supplier of the flat/apartment is the debtor in as much as the home buyer/allottee funds his own apartment by paying amounts in advance to the developer for construction of the building in which his apartment is to be found. Another vital difference between operational debts and allottees of real estate projects is that an operational creditor has no interest in or stake in



the corporate debtor, unlike the case of an allottee of a real estate project, who is vitally concerned with the financial health of the corporate debtor, for otherwise, the real estate project may not be brought to fruition. Also, in such event, no compensation, nor refund together with interest, which is the other option, will be recoverable from the corporate debtor. One other important distinction is that in an operational debt, there is no consideration for the time value of money – the consideration of the debt is the goods or services that are either sold or availed of from the operational creditor. Payments made in advance for goods and services are not made to fund manufacture of such goods or provision of such services. Examples given of advance payments being made for turnkey projects and capital goods, where 112 customisation and uniqueness of such goods are important by reason of which advance payments are made, are wholly inapposite as examples vis-à-vis advance payments made by allottees. In real estate projects, money is raised from the allottee, being raised against consideration for the time value of money. Even the total consideration agreed at a time when the flat/apartment is non-existent or incomplete, is significantly less than the price the buyer would have to pay for a ready/complete flat/apartment, and therefore, he gains the time value of money. Likewise, the developer who benefits from the amounts disbursed also gains from the time value of money. The fact that the allottee makes such payments in installments which are co-terminus with phases of completion of the real estate project does not any the less make such payments as payments involving “exchange”, i.e. advances paid only in order to obtain a flat/apartment. What is predominant, insofar as the real estate developer is concerned, is the fact that such installment payments are used as a means of finance qua the real estate project.”

ISSUE – III & IV

20. The Respondent herein is the party entitled to share the proceeds from the sale of the units of the ‘Marvel Ganga Fria’ and had received the same. Accordingly, in view of the findings of the Hon’ ble Supreme Court in **Pioneer Urban Land & Infrastructure Ltd.** (Supra) and upon considering the conspectus of the facts and circumstances of the present case, this Adjudicating Authority is of the view that M/s. **Grand Reality Private Limited, respondent herein is a**



‘Corporate Debtor’ and the Petitioners herein are the Financial Creditors in terms of Section 5(8)(f) of the Code, 2016.

21. In view of the law enunciated by the Hon’ble Supreme Court in **Pioneer Urban Land & Infrastructure Ltd. (Supra)** and the discussion aforesaid, we are satisfied that the petitioners are home buyers/Financial Creditors who have not received the possession of the units in project ‘Marvel Ganga Fria’ within the agreed and prescribed timeline, therefore the Corporate Debtor is in default of the alleged amount of Rs.35,32,63,406/- including interest disbursed by the petitioners towards the purchase of the units in the Escrow Account created by the Corporate Debtor.

22. We find that the instant petition is filed in the proforma prescribed under Section 7 of the Code, 2016 read with Rule 4(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. We are satisfied that there is a debt of more than Rs.1 crore i.e., above the threshold limit as envisaged under Section 4 of the Code, 2016 and the same is in default.

23. Thus, it is clear that when a default takes place i.e., the debt becomes due and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Petitioners are financial creditor and is therefore, entitled to move the application against the Corporate Debtor in view of outstanding financial debt



in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the instant petition ***I.B./223/ND/2022 stands admitted*** and CIRP of ***M/s. Grand Reality Private Limited*** shall be initiated.

24. The petitioner in Part-III of the petition has proposed the name of Mr. Rakesh Kumar Jindal as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-002/IP-N00148/2021-2022/13963. Mr. Rakesh Kumar Jindal, having registration number IBBI/IPA-002/IP-N00148/2021-2022/13963 and email – id iprakesh.jindal@gmail.com is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.

25. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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.”

(e)The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*”

26. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

27. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

28. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Rakesh Kumar Jindal 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 said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules

29. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.

30. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.

31. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

32. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the



Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

33. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./223(ND)/2022 stands admitted.**

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. P.S.N PRASAD)
MEMBER (J)**