



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.949/MB-IV/2021

Under Section 7 of the IBC, 2016

In the matter of

Jushya Realty Private Limited

[CIN: U45202MH2010PTC206601]

...Operational Creditor

v/s.

Ninety Properties Private Limited

[CIN: U45202MH2008PTC188982]

...Corporate Debtor

Order Delivered on: 03.02.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Shyam Kapadia, Ld. Counsel

For the Respondent:

Mr. Rohit Gupta, Ld. Counsel.



ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Jushya Realty Private Limited, (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Ninety Properties Private Limited, (“the Corporate Debtor”).
2. The Financial Creditor is engaged in business of developing and constructing of property and the Corporate Debtor is also engaged in the business of developing properties. The Financial Creditor agreed to purchase 100% of share capital of the Corporate Debtor held by its Shareholders/promoters for a lumpsum consideration of Rs.4,50,00,000/- and paid an advance payment of Rs. 1,25,00,000 to the Corporate Debtor towards this transaction on 17.12.2014. This fact is stated in a demand notice dated 08.03.2021 and Part IV of the petition. The Financial creditor has filed Bank Statement evidencing the payment having been made to the Corporate Debtor. On perusal of Financial Statement of the Corporate Debtor for the year ended 31.03.2018, annexed to the petition, it is observed that the Corporate Debtor has stated this amount as “advance from debtors” under the head “other current liabilities”. Thus, there is no dispute as to existence of the debt.
3. The Financial Creditor has pleaded that the Corporate Debtor failed and neglected to provide any documents to the advisors for carrying out the due diligence as mutually agreed at the time of entering in the transaction. The Financial Creditor has filed the letter dated 14.11.2018 asking the Corporate Debtor to pay the money within 7 days from the date of receipt in view of non-



resolution of issue of title document and non-execution of share purchase agreement in relation to the shares of the Corporate Debtor.

4. The Corporate Debtor filed the affidavit in reply dated 07.02.2022 denying the advanced to the Corporate Debtor; existence of any transaction for sale of shares of Corporate Debtor by its Ex- directors; and existence of any share agreement in relation thereto. The Corporate Debtor has also submitted that the petitioner is not the Financial Creditor as per the provision of the Code.

Findings

5. We have heard both the Counsel and perused the material on record.
6. The Financial Creditor has filed this application u/s 7 of the Code claiming this advanced payment is in nature of financial debt which is defined u/s 5(8)

"financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;



(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

7. Form the reading of above definition we find that amount of advance paid for purchase of shares of the Corporate Debtor does not fall under the definition of Financial Debt as it was not disbursed against the consideration for the time value of money. It is further noted that such advance also does not fall within the inclusive definition part as contained in clause (a) to (i).
8. Since, the amount in default is not a financial debt, accordingly, the applicant is not a financial creditor in terms of sec 5(7) of the Code. In view of this, this bench is of considered view that this petition u/s 7 is not maintainable as section 7 provides filing of an application by a Financial Creditor only.



ORDER

9. The petition bearing CP(IB) 55/MB-IV/2021 filed by **Jushya Realty Private Limited**, (“the Financial Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Ninety Properties Private Limited** (“the Corporate Debtor) is **Dismissed**.
10. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

PRABHAT KUMAR
Member (Technical)
03.02.2023.

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)