

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT No. IV)**

COMPANY APPLICATION No. IB-919/ND/2018

(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:

Aman Chhabra & Anr.

**Applicants/
Financial Creditors**

Versus

Mascot Soho Homes Private Ltd.

**Respondent/
Corporate Debtor**

Order Pronounced on: 12/01 /2022

Coram:

**Dr. Deepti Mukesh, Hon'ble Member(Judicial)
Ms. Sumita Purkayastha, Hon'ble Member (Technical)**

MEMO OF PARTIES

1. **Mr. Aman Chhabra**
D-206, Section 61
NOIDA, U.P.

2. **Mrs. Nidhi Chhabra**
D-206, Section 61
NOIDA, U.P.

... **Applicants/Financial Creditors**

Versus

CP (IB) /919/ND/2020

Mascot Soho Homes Private Ltd.

(Earlier known as Mascot Homes P. Ltd.)

Having its registered office at

Flat No. 23B/B-3

Mayur Vihar Phase III

New Delhi 110 096

...

Respondent/Corporate Debtor**Appearance:**

For the Applicant :

For the Respondent : Mr. Dhananjay

ORDER**Per: Ms. Sumita Purkayastha, Hon'ble Member (Technical)**

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Mr. Aman Chhabra** and **Mrs. Nidhi Chhabra**, (for brevity 'Applicants') with a prayer to initiate the Corporate Insolvency process against **Mascot Soho Homes Private Ltd.** (for brevity 'Corporate Debtor').
2. The Applicants financial creditors are residents of NOIDA (UP).
3. The corporate debtor is a Private Limited Company, incorporated under the provisions of companies Act, 1956 on 09.05.2012, duly registered with Registrar of Companies, New Delhi with CIN: U7010SDL2012PTC235548 and having registered office at Mayur Vihar, New Delhi 110 096. The Authorized share capital of the

CP (IB) /919/ND/2020

Sury

Respondent is Rs. 7,00,00,000/- and paid up share capital of the company is Rs. 4,99,95,000/-. The corporate debtor is engaged in development of housing projects.

4. It is submitted by the applicants that in December, 2013 the corporate debtor approached the applicants who are husband and wife, for grant of an unsecured loan cumulatively to the tune of Rs. 1,00,00,000/- (Rupees one crore only) to meet its fund requirements for the housing project known as Mascot Soho Manorath at Plot No. GH-04H/1, Sector 16, Greater Noida, Uttar Pradesh. That, the corporate debtor passed Board Resolution dated 31.12.2013 whereby it procured approval from its Board of Directors to seek unsecured loan from the applicants.
5. That the applicants agreed to invest in the project of the corporate debtor upon an understanding that the corporate debtor shall assure return of the investment with interest by the end of year 2016. That the applicants disbursed a total sum of Rs. 1,00,00,000/- vide three cheques between January, 2014 to January 2015 drawn on Oriental Bank of Commerce in favour of the corporate debtor. That in order to secure the aforesaid loan, the corporate debtor allotted seven under-construction flats in the aforesaid project in the name of applicants and their family members after executing agreements of identical terms and conditions dated 13.01.2015 and 10.01.2016. As per the

July

agreements the corporate debtor shall complete construction of the said flats within 30 months from the date of excavation/signing of the agreement (varying upto 6 months) failing which the corporate debtor shall make payment at the rate Rs. 5/- per sq. ft. of super area per month to the allottees.

6. Since the corporate debtor could not make repayment of the loan amount with interest thereon, the corporate debtor executed three buy-back purchase agreements dated 10.01.2017 in favour of the applicants whereby assuring to return the entire principal amount of Rs. 1,00,00,000/- along with interest of Rs. 1,17,00,000/- i.e. a total of Rs. 2,17,00,000/- in the following manner:
- i) Rs. 31,00,000/- by making allotment of flat No. C-1604 of the project in favour of the applicant;
 - ii) Rs. 1,86,00,000/- on or before 10.11.2019 through re-purchase of the aforesaid allotted flats.
7. That a Memorandum of Understanding dated 22.03.2018 was executed between the corporate debtor and the financial creditor No. 1 recording the aforesaid allotment.
8. That the corporate debtor issued six post-dated cheques all dated 10.08.2019 in favour of the applicants for a total amount of Rs. 1,86,00,000/-. That in November, 2019, the corporate debtor once again approached the applicants to seek extension

of time on the repayment guaranteed vide the post-dated cheques with fresh post-dated cheques in favour of the applicants. The corporate debtor executed three memorandums of understanding in favour of the applicants recording the aforesaid extension of time for repayment through post-dated cheques dated 11.11.2019 and 30.11.2019 for total amount of Rs. 1,86,00,000/-. However, in February, 2020, when the applicants presented the new post-dated cheques, the same were returned with remark "account closed". That the applicants issued a legal notice to the corporate debtor in terms of Section 138 of the Negotiable Instruments Act, 1991, however, the said legal notice failed to evince any response from the corporate debtor. Thus, the corporate debtor has defaulted on its repayment obligations.

9. The corporate debtor has not filed any reply nor appeared before the bench. Therefore, the corporate debtor was proceeded ex parte in the month March, 2021. During the course of hearing on 30.09.2021, Learned counsel appearing for the corporate debtor had endeavoured to settle the matter and make provisions for making payment but the company is in financial difficulty due to service debts.

R Singh

10. Heard the submissions and perused the documents on record. It is beyond doubt that the default has occurred with respect to the payment of financial debt due to the applicant. Disbursement of the loan nowhere denied and the same is received by the corporate debtor as per bank statements of the applicant annexed with the application. The applicant has placed on record copy of bank statement of applicant No. 1 for the period from 12.01.2014 and 20.01.2016 evidencing a debit of cumulative amount of Rs. 1,00,00,000/- to the corporate debtor along with the requisite certificate in accordance with the Books Evidence Act, 1891. The applicants have brought on record copy of the dishonoured cheques, buy-back agreements, allotment agreements, written communication by the Interim Resolution Professional and other related documents in support of their claim. All the above documents clearly reflect that the corporate debtor had availed disbursement of loan and has failed to repay the same. Time and again corporate debtor sought extension to honour the MOUs and or agreement between the parties but failed to execute the same. Even during the hearing, it was admitted by corporate debtor that endeavours are made to settle and make payments, but, without any result. Hence, it leaves no doubt that financial debt has become due and default has occurred.

By

11. As per part IV of form 1 the date of default is 19.02.2020 and the total amount claimed to be in default is Rs. 1,86,00,000/- (Rupees one crore eighty-six lacs only). The application is filed on 14.08.2020, which is well within the period of limitation and not barred by law.
12. The registered office of the corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
13. The present application is complete in terms of Section 9 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt which remains uncontroverted by the corporate debtor. In light of the above facts and records the present application is admitted and CIRP is ordered to be initiated against corporate debtor.
14. The applicant has proposed the name of Mr. Gopal Lal Baser as Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-002/IP-N00553/2017-18/11677 (email - gopal.baser1972@gmail.com) (Mobile +918130729855) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent



and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the corporate debtor and the applicant herein and make disclosure as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

15. We direct the financial creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Gopal Lal Baser to meet out the expense 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 one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.
16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the



Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

17. In terms of above order, the application stands admitted in terms of Section 7 (5) of IBC, 2016. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

-Sd-

Ms. Sumita Purkayastha
Member (Technical)

-Sd-

Dr. Deepti Mukesh
Member (Judicial)

KMN