

**IN THE NATIONAL COMPANY LAW TRIBUNAL
 “CHANDIGARH BENCH, CHANDIGARH”
 (Exercising powers of Adjudicating Authority under
 the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 105/Chd/Hry/2019

**Under Section 7 of Insolvency and
 Bankruptcy Code, 2016**

In the matter of :

1. Mrs. Kussum Chadha Ahuja
 W/o Sh. Narinder Nath Ahuja,
 R/o D 2/1, Amaltas Marg,
 DLF, Phase-1,
 Gurgaon-122002.
2. Surender Mohan
 S/o Sh. Ram Dev,
 R/o B-5/110, Safdar Jung Enclave,
 New Delhi-110029. ...Applicant/Financial Creditor

Versus.

M/s C&C Towers Limited,
 R/o Plot No.70, Sector-32,
 Gurgaon-122001. ...Respondent/Corporate Debtor

Judgement delivered on: 10.10.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
 Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant : Mr. Munish Kumar Garg, Advocate.

For the Respondent : 1. Ms. Shubreet Saron, Advocate.
 2. Mr. Rohit Mittal, Advocate.

Per: Pradeep R. Sethi, Member(Technical)

JUDGEMENT

The instant petition is filed by Mrs. Kussum Chadha Ahuja (**Financial Creditor No.1**) on behalf of herself and as Power of Attorney holder of Shri Surender Mohan (**Financial Creditor No.2**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s C&C Towers Ltd. (**Corporate Debtor**). The petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The registered office of the corporate debtor is stated to be at Plot No.70, Sector-32, Gurugram, Haryana. Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. Section 7(1) of the Code *inter alia* states that the financial creditor either by itself or jointly with other financial creditors may file an application for initiating CIRP. The present application filed by Mrs. Kussum Chadha Ahuja for herself and Power of Attorney holder of Shri Surender Mohan is therefore, in order. The Power of Attorney of Shri Surender Mohan is stated to be at pages 66 to 72 of the petition.

3. The application filed in Form 1 is signed and verified by Mrs. Kussum Chadha Ahuja for herself and as Power of Attorney holder of Shri Surender Mohan. The affidavit of Mrs. Kussum Chadha Ahuja verifying the contents of the application is at pages 32 to 34 of the petition.

4. It is stated that the corporate debtor launched a “buy back” scheme in Cinepolis at 3rd Floor in Tower “A” intended to be leased out to Cinepolis India Pvt. Ltd. for setting up a Megaplex/Big Bazaar at the Lower

Ground Floor in Tower “C” at Sector 57, Mohali, Punjab and as per the “buy back” scheme, the corporate debtor invited applications for booking space in the project upon payment of 50% of the basic sale consideration for a period of 24 months against which they promised to pay assured return for 24 months equivalent to 1% of the amount invested and after the expiry of 24 months, refund the total amount invested along with premium at 16% of the initial investment.

5. It is stated that the financial creditor No.1 entered into a “buy back” scheme – Big Bazaar Agreement on 09.05.2016 with the corporate debtor wherein she booked 1336 sq. ft. space at basic sale price of ₹6000 per sq. ft. and paid a booking amount of ₹40,00,000 vide cheque No.000105 drawn on Kotak Mahindra Bank equivalent to 50% of the basic sale price in terms of the “buy back” scheme launched by the corporate debtor. It is submitted that in terms of clause No.2 of the agreement, it was promised by the corporate debtor that he would pay monthly assured return to the extent of ₹40,000 to the financial creditor No.1 for a period of 24 months from the date of execution of the agreement. It is further stated that in terms of clause No.5 of the agreement, the corporate debtor was to refund an amount of ₹46,40,000 to the financial creditor No.1 inclusive of initial investment of ₹40,00,000 plus premium amount of ₹6,40,000 after the expiry of 24 months from the execution of the agreement i.e. on or before 09.05.2018.

6. Similar agreement is stated to be entered into by the financial creditor No.2 with the corporate debtor on 06.07.2016 for booking of 334 sq. ft. space at basic sale price of ₹6000 per sq. ft. and the booking amount of ₹10,00,000 is stated to be paid by cheque No.848177 drawn on Indian Bank

New Delhi. The quantum of monthly assured return is stated to be ₹10,000 and the refund on the expiry of 24 months from the execution of the agreement i.e. on or before 06.07.2018 is stated to be ₹11,60,000 including initial investment of ₹10,00,000 plus premium amount of ₹1,60,000.

7. It is submitted that the corporate debtor defaulted in the payment of the assured return to the financial creditors and sent letters to them on 23.10.2017 and 20.02.2018 requesting them to hold their cheques towards principal and monthly interest and stating that the current phase is temporary and being resolved at the earliest.

8. It is stated that the corporate debtor failed to pay the assured returns to the financial creditor No.1 from September, 2017 to May, 2018.

9. It is stated that in May, 2018 the terms of the agreement entered into between the financial creditor No.1 and the corporate debtor expired and accordingly, the financial creditor No.1 presented the cheques issued by the corporate debtor towards the refund and premium for payment but the cheques were returned dishonoured with the remarks "account closed". It is stated that in breach of clause No.4 of the agreement dated 09.05.2016, the corporate debtor failed to refund the initial investment along with premium to financial creditor No.1.

10. As regards financial creditor No.2, it is submitted that the corporate debtor failed to pay the assured return from November, 2017 to July, 2018 and the presentation of the cheques issued by the corporate debtor lead to the same result of being dishonoured.

11. It is stated that the financial creditor No.2 issued a legal notice on 20.09.2018 to the corporate debtor regarding the dishonour of the cheque and calling upon the corporate debtor to make the payment against the cheque.

12. In Part IV of Form 1 the amount claimed to be in default is stated to ₹71,07,396 comprising of dues towards financial creditor No.1 of ₹56,85,984 and dues towards financial creditor No.2 of ₹14,21,412. The computation of amount of default is stated to be annexed as Annexure A-1.

13. In part III of Form 1, Shri Amit Gupta, Registration No. IBBI/IPA-002/IP-N00021/2016-17/10048 has been proposed as Interim Resolution Professional (**IRP**). Form No. 2 submitted by him is stated to be enclosed as Annexure A-9 of the petition.

14. Vide order dated 26.03.2019, notice of the petition was directed to be issued to the corporate debtor. The order dated 06.09.2019 notes that the learned counsel for the corporate debtor, while admitting that in view of the order of the Hon'ble Supreme Court dated 09.08.2019, passed in **Writ Petition (Civil) No.43 of 2019, titled as "Pioneer Urban Land and Infrastructure Limited & Anr. "**, the Tribunal is to proceed further with the CP, seeks more time to file reply to the main petition. Accordingly, last chance was granted to the corporate debtor to file reply to the petition within two weeks with copy in advance to the counsel opposite and rejoinder thereto, if any, may be filed within one week thereafter with copy in advance to the counsel opposite. The matter was thereupon listed for 04.10.2019.

15. On 04.10.2019, the learned counsel for the corporate debtor on instructions submitted that the corporate debtor is not in a position to repay the debts due to the petitioner and also to various other creditors and that the

corporate debtor has no objection if the CP is admitted and CIRP is initiated against them.

16. We have carefully heard and considered the submissions of the learned counsel for the financial creditor and the corporate debtor and have also perused the record.

17. Section 7(5)(a) of the Code provides for admission of the application where the Adjudicating Authority is satisfied that –

- (a) a default has occurred;
- (b) application under Section 7(2) is complete; and
- c) there are no disciplinary proceedings pending against the proposed resolution professional.

18. We are first examining whether the default has occurred. Default as defined in Section 3(12) of the Code means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the corporate debtor. The financial creditor No.1 has booked 1336 sq. ft. space at basic sale price of ₹6000 per sq. ft. vide agreement dated 09.05.2016 and has paid a booking amount of ₹40,00,000 vide cheque No.000105 drawn on Kotak Mahindra Bank. The financial creditor No.1 is to get an assured return per month of ₹40,000 and also a refund of ₹46,40,000 (initial investment of ₹40,00,000 plus premium amount of ₹6,40,000) after 24 months from the execution of the agreement. However, it is stated that corporate debtor not only failed to pay the assured returns from September, 2017 to May 2018, the cheques towards the refund and premium were also dishonoured in May, 2018. Similar position of non-payment of

assured return from November, 2017 to July 2018 and dishonour of cheques towards refund and premium for payment are stated to have taken place in the case of the financial creditor No.2 also.

19. We find that clause 9 of both the agreements in the case of the two financial creditors is a default clause stating that three consecutive cheques of assured return of 1% per month will be treated as default or single cheque bounced (principal or bullet payment) on account of reasons “insufficient funds”/ “payment stopped by drawer”/ “signature mismatch” will lead to the occurrence of default on the part of the corporate debtor. The bouncing of the cheques as discussed above on the reason albeit of “account closed” and the non-payment of the amounts thereafter clearly evidences the occurrence of default.

20. The application is filed in the prescribed Form 1 and no defects therein have been brought out by the learned counsel for the corporate debtor. The application under Section 7(2) is therefore, treated as complete.

21. As discussed above, the proposed IRP Shri Amit Gupta has filed Form No.2 (Annexure A-9 of the petition). The IRP has stated therein that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency.

22. The conditions provided for in Section 7(5)(a) of the Code are thereby satisfied. We may add here that as stated above, the learned counsel appearing for the corporate debtor on instructions has stated that the corporate debtor has no objection if the CP is admitted and CIRP is initiated against him. We are therefore, satisfied that the provisions of Section 7(5)(a) of the Code are satisfied, and admit the application for initiation of CIRP in the case of the

corporate debtor M/s C&C Towers Ltd. Directions for moratorium and appointment of IRP are given below.

23. We declare the Moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- (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.

24. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the

Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

25. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

26. The following directions are issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Amit Gupta, registered insolvency professional bearing Registration No. IBBI/IPA-002/IP-N00021/2016-17/10048; Mobile No. 9415005108; email ID: amitguptacs@gmail.com as Interim Resolution Professional.
- ii) The term of appointment of Mr. Amit Gupta shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the

duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iv) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against 'Corporate Debtor';
- vi) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the

management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
- viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

27. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Pronounced in open court.

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

Sd/-
(Pradeep R. Sethi)
Member (Technical)

October 10, 2019
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