

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.P. NO. IB-1756(PB)/2018**

**IN THE MATTER OF:**

**Jagat Pal Paliwal & Another**

**.....Financial Creditors/Petitioners**

**v.**

**Jassum Propcon Projects Private Limited**

**.....Corporate Debtor/Respondent**

**SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016**

**Judgment delivered on 31.10.2019**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**HON'BLE PRESIDENT**

**S.K. MOHAPATRA**  
**HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner:

Mr. Sunil Kumar, Advocate

For the Respondent:

Mr. Harsh Sethi & Mr. Sarvapriya  
Makker, Advocates

**M.M. KUMAR, PRESIDENT**

**JUDGMENT**

The Petitioners claiming to be 'Financial Creditors' have filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of Jassum Propcon Projects Private Limited, who is stated to be the 'Corporate Debtor'.



2. The Petitioners are allottees of a real estate project. They are ex-facie financial creditors in terms of the provisions of Section 5(8)(f) and explanation inserted by the Second Amendment Act, 2018 w.e.f. 06.06.2018. The challenge to the aforesaid amendment has been repelled by Hon'ble the Supreme Court in the judgment rendered in the case of Pioneer Urban Land and Infrastructure Limited and Another v. Union of India & Ors. (Writ Petition (Civil) No. 43 of 2019, decided on 09.08.2019). Therefore, no doubt is left that the petitioners are Financial Creditors.

3. The Respondent company-the Corporate Debtor, Jassum Propcon Projects Private Limited (CIN U74899DL1984PTC019484) was incorporated on 05.12.1984 under the provisions of the Companies Act, 1956. The registered office of the respondent corporate debtor is situated at 208-210, 2<sup>nd</sup> Floor, Rectangle-1, D-4, Saket District Centre, Saket, New Delhi-110017.

4. The 'Financial Creditors'-Petitioners have proposed the name of Interim Resolution Professional, Shri Sapan Mohan Garg with the address C-585, Basement, #Z-94, Defence Colony, New Delhi-110024. His Registration number is IBBI/IPA-002/IP-N00315/2017-18/10903. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and



Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

5. The case of the petitioners in nutshell is that they entered into a space buyer's agreement dated 31.07.2014 (Annexure-2) with the respondent towards purchase of a commercial space No. 202B in multi storied commercial project, ABW Tower, IFFCO Chowk, Gurgaon which was being developed by and promoted by 'the Corporate Debtor'. The total cost of the said commercial space was Rs. 41.25 Lakhs. The petitioners have paid a total upfront amount of Rs. 41.00 Lakhs vide two cheques (Annexure-5) and in this regard receipt (at pg. 59) was given by the respondent. The remaining amount of Rs. 25,000/- was to be paid by the petitioners at the time of handing over the possession of the said commercial space. An allotment letter dated 31.07.2014 (Annexure-3) was also issued by the Respondent in favour of the petitioners.

6. According to clause 19 of the allotment letter (Annexure-3), the Respondent Company undertook to complete the construction of building in the said commercial space and then hand over the possession of the same to the petitioners within 24 months from the date of commencement of construction subject to all necessary



approvals and sanctions. At this stage it would be profitable to read clause 19 of the said allotment which is as under:

“19. The construction of the building is likely to be completed in 24 months from the date of commencement, after all necessary approvals and sanctions have been obtained, subject however, to force majeure circumstances and reasons beyond the control of the Company.

7. Simultaneously, both the parties also entered into a buy back agreement dated 31.07.2014 (Annexure-4) whereby the Respondent opted for the right to buy back the aforesaid commercial space within a period of twelve months from the date of execution of the said agreement after paying a premium of Rs. 46.25 lakhs to the petitioners (see clause 3). It is also agreed that the Respondent was to pay interest @ 19.5% per annum on advance payment received from the petitioners till the date of payment of consideration as given in the clause 3 of the agreement (see clause No. 9). The rate of interest i.e. 19.5% per annum was to enhance further to 26% per annum as provided in another agreement dated 01.08.2015 (Annexure-6) (see clause No. 2). The relevant clause Nos. 3 & 2 incorporated in the said buy back agreement dated 31.07.2014 (Annexure-4) & agreement dated 01.08.2015 (Annexure-6) read thus:

- “3. That within a period of 12 months from the date of the agreement the First Party shall have the option to buy back the above said area after returning the Sale Consideration received from the Second Party along with lump-sum premium of Rs. 46,25,000 (Rupees Forty Six Lakhs Twenty Five Thousand Only) to the Second Party. And under no circumstances Second Party can refuse it. Further the above said period of 12 Months may be extended by both the parties after mutual discussion.
2. That both the parties have mutually agreed and decided to amend the rate of interest @ 19.5% per annum as mentioned in clause No. 9 of Agreement dated 31-07-2014 @ 26% per annum on advance payment received from the Second Party till the payment of consideration.”
8. Subsequently the time for buying back the said commercial space was further extended vide second and third addendum (at pgs. 64-71). The Respondent issued various cheques to the petitioners towards interest and part payments of the buyback commitment. However, upon presentation the said cheques, the same bounced back with the endorsement ‘Account Blocked’. Copies of the cheques and bank return memos have been placed on record [Annexure-8 (colly)]. Feeling aggrieved, the petitioners



served legal notices under Section 138 of Negotiable Instrument Act upon the Corporate Debtor and its Managing Directors and proceedings in that regard are pending adjudication before the concerned Court.

9. There was apparently inordinate delay yet the possession of the said commercial space has not been delivered nor any payment towards interest has been made. The petitioners have availed the remedy under Section 7 by filing the instant petition.

10. The precise case of the Petitioners thus is that the total amount in default due to the Petitioners till the date of filing of the present petition is Rs. 1,17,31,913/-. A tabular chart depicting working out the amount of default is annexed (Annexure-9).

11. Learned counsel for the Corporate Debtor has made valiant attempt to resist the admission of the petition by arguing as under:-

1. The said Buyer's Agreement and the relating Addendums of the same and Allotment Letter dated 31.07.2014 are only security documents and they were handed over in blank by the Respondent to the Petitioners. The parties never had any intention to actually enter into any such transaction.



2. The Buyer's Agreement & Allotment Letter are also manipulated document as at Pages No. 1, 3 & 5 (of the Buyer's Agreement), details such as party names, area and dates etc. and as at Pages No. 1 to 3, 5 & 54 (of the Allotment Letter), details such as payment plan, party names, area, price, cheque details, dates and amounts are filled out by hand but none of these bear counter-confirming-signatures by either of the parties. Likewise, at page 3 of the Allotment Letter the signatures of the authorized representative of the Respondent Company appear to be forged in absence of any company stamp affixed alongside the payment details. Further the Addendum to the Buy-Back-Agreement dated 31.07.2017 suffers from similar kind of lacuna.
3. The stamp paper affixed to the Buy-Back-Agreement is dated 05.01.2013 but the agreement has only been executed on 31.07.2014 which clarifies that the parties never had any intention to actually enter into any transaction. Similar kind of defects are also there in stamp paper affixed to the second addendum and third addendum.



4. It is settled law that, an agreement without consideration is not a valid contract. The alleged Buy Back Agreement dated 31.07.2014 is also an agreement without consideration and therefore not a valid contract.
5. The Agreements/MOUs in question cannot be read as evidence for any purposes since Section 35 of the Indian Stamp Act clearly stipulates that the instrument chargeable with duty shall not be admitted in evidence for any purpose. Reliance has also been placed on Section 33 of the Indian Stamp Act which casts a statutory obligation on all the authorities including this Tribunal, to impound a document which is required to be compulsorily registered.
6. The Petitioners are neither a NBFC nor a notified Financial Institution and neither do the Petitioners have any valid license under the Punjab Registration of Money Lenders Act, 1938 and/or the Punjab Prohibition of Private Money Lending Act, 2007.
7. The cause of action for filing the present petition is claimed to be under the alleged 3<sup>rd</sup> Addendum dated 02.08.2016. However, it may be noted that under the 3<sup>rd</sup> Addendum dated 02.08.2016, there has been no actual

disbursement of any amount for consideration for the time value of money. Therefore, the debt in question does not fall within the meaning of 'financial debt' as defined under Section 5 (8) of the Code.

12. A rejoinder to the reply has been filed by the Financial Creditors reiterating the submissions made in the petition and controverting the assertions in the reply.

13. Having heard learned counsel for the parties we are of the considered view that the Financial Creditor has succeeded in establishing a case for triggering the Corporate Insolvency Resolution Process.

14. Before discussing the legal issues raised, we deem it appropriate to first refer to the material clauses of the agreement. According to clause 19 of the allotment the Corporate Debtor had proposed to handover the possession of the aforesaid commercial space within 24 months from the date of commencement of construction subject to all necessary approvals and sanctions. As per clause 3 of the buyback agreement dated 31.07.2014 (Annexure-4) the Respondent exercised the option to buy back the aforesaid commercial space within a period of twelve months from the date of execution of the said agreement after paying a premium of Rs. 46.25 lakhs to the petitioners. According to clause No. 9 the

Respondent was under obligation to pay interest @ 19.5% per annum on advance payment received from the petitioners till the date of payment of consideration as given in the clause 3 of the agreement. The said rate of interest i.e. 19.5% per annum was further amended to @ 26% per annum vide another agreement dated 01.08.2015 (Annexure-6).

15. It is not disputed that the allotment letters/builder buyer agreements were signed and executed between the parties. However, the stand taken by the Respondent is that the same were handed over blank by the Respondent to the Petitioners. The Respondent had also issued various cheques to the petitioners towards interest and part payments of the buyback commitment. However, upon presentation the said cheques, the same bounced back with the endorsement 'Account Blocked'.

16. A reasonable period of delay of six months to one year might be acceptable. However, the facts in the present case shows that the project is not complete. The principles of reasonableness are implied in such like cases. There is extraordinary delay of about 3 ½ years in delivering the possession from the date of execution of the allotment letter dated 31.07.2014. In any case the possession



should have been offered by July, 2016 and therefore, the principal amount along with compensation and interest becomes payable.

17. As a matter of fact, each of the petitioner waited to the maximum time postulated in the builder buyer agreement/allotment letter and the possession was not delivered till November, 2018 i.e. date of filing of the petition.

18. The other argument concerning applicability of Punjab Registration of Money Lenders Act, 1938 and Punjab Prohibition of Private Money Lending Act, 2007 has also failed to impress us because the entire cause of action arose to the petitioner in Delhi including the fact that registered offices of both the entities are situated at Delhi and the said act would only apply to the territories of Punjab and Haryana.

19. It is settled law that a standard form of contract having been prepared by the Respondent upon which the petitioners had no option but to put their signatures. The issue of gap between the date of purchase of stamp paper and execution of agreement is also irrelevant as it is the normal practice that persons like the Respondent, who have to regularly/constantly execute agreements normally purchase stamp paper in bulk and use it as and when required. It is also pertinent to mention that the Respondent had

acted upon the buyback agreement and has accordingly issued cheques, which got dishonoured on presentation. On the one hand the Respondent has alleged that the documents are security documents and on the other hand it has issued cheques. If the documents are forged and fabricated then there should have been criminal proceedings initiated by the respondent. On the contrary the petitioners have filed proceedings under Section 138 of Negotiable Instruments Act, 1881.

20. For Corporate Insolvency Resolution Process Part-II (chapter-I) has been carved out and in Section 5 (8) (f) of the Code the expression 'financial debt' has been defined to mean a debt along with interest, which is disbursed against the consideration for the time value of money and includes any amount raised under any other transaction including the sale or purchase agreement, which has commercial effect of a borrowing. The explanation has clarified that any amount raised from an allottee under a 'real estate project' was to be considered as an amount having the commercial effect of a borrowing and the expression 'allottee' and the 'real estate project' are to have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016. It is the aforesaid provision which was



subject matter of challenge before Hon'ble the Supreme Court in a bunch of petitions. In the lead case titled as Pioneer Urban Land and Infrastructure Limited (supra) the conclusion of detailed discussion has been recorded in para 86 by Hon'ble the Supreme Court which reads as under:-

**“Conclusion**

- i. The Amendment Act to the Code does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.
- ii. The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.
- iii. Section 5(8)(f) as it originally appeared in the Code being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only clarificatory of this position in law.”



A perusal of conclusion (i) shows that the explanation added to Section 5 (8) (f) by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06.06.2018 has been upheld by holding that it does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India. Conclusion (iii) further shows that Section 5 (8) (f) as originally incorporated in the Code was a residuary provision and always subsumed within it allottees of flats/apartments and the Amendment Act is only clarificatory of the position of law.

21. We further find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in our order dated 27.11.2018 rendered in the case of ECL Finance Limited vs. Digamber Buildcon Pvt. Ltd. (IB- 1039(PB)/2018).

22. After a reading of Section 7 of the Code along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The IRP proposed does not have any disciplinary proceedings pending against him.



23. As a sequel to the above discussion, this petition is admitted and Mr. Sapan Mohan Garg is appointed as an Interim Resolution Professional.

24. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code.

25. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. We direct the Financial Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to her 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 Creditors. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditors.

27. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

28. Before parting we must notice the complaint made against Financial Creditors in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditors as it is only fair to do so.



29. The office is directed to communicate a copy of the order to the Financial Creditors, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

Sd/-

(M.M. KUMAR)  
PRESIDENT

31.10.2019

Sd/-

(S.K. MOHAPATRA)  
MEMBER (T)

31.10.2019  
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