

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

CP (IB) No. 3050/MB-IV/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

Shri. Vasant Seena Poojary

...Financial Creditor/Applicant

V/s

**M/s. Temple Rose Real Estate Private
Limited,**

[CIN: U70102MH2007PTC169257]

...Corporate Debtor/Respondent

Order Dated: 09.02.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Precilla D'souza, Advocate.
For the Respondent(s) : Mr. Prakhar Tandon, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition being C.P. (IB) No. 3050/NCLT/MB/C-IV/2019 filed by **Shri Vasant Seena Poojary**, the Financial Creditor, on 16.08.2019 under section 7 of Insolvency & Bankruptcy Code, 2016 (I & B Code) against **M/s. Temple Rose Real Estate Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution

Process (CIRP). The Financial Creditor claiming a sum of Rs.10,29,881/- is outstanding.

2. The case of the Financial Creditor is as under.

a. The Corporate Debtor is a Private Limited Company incorporated under Companies Act, 1956 and is engaged in the business of acquiring land and developing into Mini Township in Natural Ambience with Urban lifestyle facilities and constructing Bungalows/Villas with modern amenities.

b. The Corporate Debtor liability arises in connection with the certain financial investment in the Ponzi Schemes introduced by the Corporate Debtor to the Financial Creditor where the Financial Creditor is an individual investor of the Corporate Debtor.

c. The Corporate Debtor for the purpose of development floated various schemes for the sale of acquired land and among them also introduced various Cash Incentive Schemes (CIS). The investors invested/deposited various sums of money as per the schemes introduced by the Corporate Debtor. The Corporate Debtor had obtained credit rating from CRISIL and also ISO Certification which showed the credibility, and stability of the company. More than 6000 Investors/Depositors had invested in the various schemes of the company. The Cash Incentive Schemes of the Corporate Debtor were reproduced hereinunder: -

- i. Income Growth Plan (IGP);
- ii. Monthly Income Plan (MIP)
- iii. Buy back scheme(s)
- iv. Guaranteed Buyback Scheme 3 to 5 years period scheme:
- v. Guaranteed Buyback Scheme 3 to 3 ½ years period scheme:
- vi. Revenue Sharing

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- vii. Unit Certificate
 - viii. Equal Monthly Instalment Scheme
 - ix. Bungalow Scheme
 - x. Agro Farm Scheme
 - xi. Unique offer 10 plots
 - xii. Personal Loan

d. The Financial Creditor invested total amount of Rs. 4,50,000/- on different dates under 3 years Guaranteed Buy Back Scheme which doubles the amount after the period of 3 years. The Financial Creditor also invested Rs. 66,215/- in Equal Monthly Instalments (EMI) Scheme by making the 20% down payment of the proposed N.A land opted to purchase by paying in future 60 Equated Monthly Instalments to the Corporate Debtor. The Notarised Sale Agreement between Corporate Debtor and Financial Creditor had been executed for the piece of land/plot which was given as security which is detailed as infra:

- i. Invested full payment an amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) vide Agreement dated 5th May 2015 with the Corporate Debtor under Receipt 02461 dated 18th April 2015 in the proposed N.A project Rose Raigad City- 1, location Walsure (Raigad), Plot No. RRC- 628 (Survey No. 628 admeasuring 1000 sq.yd. Village Walsure, Taluka: Mahad, District: Raigad. The Corporate Debtor issued to the Financial Creditor post dated Cheque No. 006394 dated 22nd April, 2018 drawn on Kotak Mahindra Bank, Thane Branch for Rs. 3,00,000/- (Rupees Three Lakhs only) has been received and the same was deposited on 21.07.2018 with his bankers Syndicate

Bank, Prabhadevi Branch Mumbai and the for encashment and the said cheque was dishonoured with the remark 'Account Blocked' and the Bankers of the Financial Creditors intimated the same with a cheque dishonouring memo dated 21.07.2018.

- ii. Invested as full payment an amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) on 7th February 2015 with the Corporate Debtor under Receipt 32141 dated 7th February 2015 in the proposed N.A project Rose Pearl City (C-Block), Location Ralla Jangam (Nalgonda), (A.P) Plot No. RPC-0329 (Survey No. 263 admeasuring 100 sq.yd. Village Ralla Jangamat Mandal : Yadagrigitta District: Nalgonda, and the Corporate Debtor had issued post dated Cheque No. 040016 dated 10th February 2018 drawn on ING Vyaya Bank Limited, Lower Parel Branch for Rs. 3,00,000/- (Rupees Three Lakhs only) has been received by the Financial Creditor but could not be deposited as Bank Account of the Corporate Debtor was attached by EOW Mumbai Branch.

The Corporate Debtor also executed an Agreement for Sale dated 19th October 2015 for the plot which was given as security to the Financial Creditor.

- iii. Financial Creditor invested an amount of Rs. 1,50,000/- (Rupees One lakh Fifty thousand only) on 14th October 2015 with the Corporate Debtor under Receipt 18808 dated 14th October 2015 in a proposed N.A. project for a plot / piece of land Rose Raigad City- 1, Location Walsure Raigad, Plot No. RRC- 1150 (Survey No. 1150

admeasuring 1000 sq.yd. Village Walsure, Taluka: Mahad, District: Raigad, and the Corporate Debtor issued post dated Cheque No. 050484 dated 16th October 2018 drawn on ICICI Bank Limited, Kurla LBS Marg Branch for Rs. 3,00,000/- (Rupees Three lakhs only) has been received by the Financial Creditor but could not be deposited as all the bank account of the Corporate Debtor is attached by the EOW Mumbai Branch.

The Corporate Debtor also executed an Agreement for Sale dated 27th October 2015 for the plot which was given as security to the Financial Creditor.

- iv. The Financial Creditor also invested Rs. 66,215/- (Rupees Sixty Six Thousand Two Hundred Fifteen only) towards the 20% down payment for a plot RR-212 Phase I , the proposed NA project of the Corporate Debtor. The Corporate Debtor and Financial Creditor executed Notarised Agreement for sale dated 4th October 2014 and balance amount was to be payable in the EMI amount of 4414/- (Rupees Four Thousand Four Hundred Fourteen only) total 60 instalments. The Corporate Debtor out of the profit earned has diverted the funds in other subsidiary companies.
- e. The Corporate Debtor failed to honour the commitment in respect of the repayment of debt to its investors and multiple FIRs' are registered against the Directors : (i) EOW Mumbai C.R. No. 11/2017 (Dadar Bhoiwada Police Station (ii) EOW Pune C.R. No. 275/2017 (Chatursinghi Police Station,) (iii) 60/2017 (Cantonment Police

Station, Pune) u/s 406, 409, 420(B) of Indian Penal Code 1860 r/w section 3 & 4 of the Maharashtra protection of Interest of Depositors in Financial Establishment Act, 1999 (Act No. XVI of 2000). U/S. 3, 4 & 5 of Prize chits money Circulation Banning Act 1978 and the properties acquired by the Corporate Debtor and its directors from and out of the deposits collected from their investors/depositors.

f. At present the Directors of the Corporate Debtor are arrested by the Economic Offence Wing Puna and are in the judicial custody at Yerwada Prison Pune.

3. The matter was listed before the Bench on numerous occasions. Despite, service of Court Notice, the Corporate Debtor neither appeared nor filed any reply in rebuttal. Therefore, the Corporate Debtor proceeded ex parte on 28.07.2022. Thereafter, on last two dates of hearing when the case is listed for final hearing one Mr. Prakhar Tondon, Advocate, appeared in the matter on behalf of the Corporate Debtor.

Findings:

4. We have prudently heard the Ld. Counsel for the Financial Creditor and also perused the material available on record.
5. During the Course of arguments, the Ld. Counsel for the Financial Creditor submits that they have invested total amount of Rs. 4,50,000/- on different dates under 3 years Guaranteed Buy Back Scheme which doubles the amount after the period of 3 years. Further, they have also invested Rs. 66,215/- in Equal Monthly Instalments (EMI) Scheme by making the 20% down payment of the proposed N.A land opted to purchase by paying in future 60 Equated Monthly Instalments to the Corporate Debtor. The

Notarised Sale Agreement between Corporate Debtor and Financial Creditor had been executed in the year 2014 for the piece of land/plot. Since, the Corporate Debtor failed to honour its commitment, multiple FIR's are also lodged against them.

6. On-going to the merits of the case, the question arises before this Bench are: -
 - a. Whether the Financial Creditor is covered under the definition of "Financial Creditor" under Section 5 (7) of the Code?
 - b. Whether the debt claimed in the Petition is 'financial debt' as prescribed under Section 5(8) of Code?
7. The Petitioner is a not a financial institution who lent the money or gave financial assistance to the Corporate Debtor and even not a homebuyer.

Section 5(7) of the Code defines a 'Financial Creditor':- "(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;"

8. For ready perusal, Section 5 (8) of the Code is reproduced hereinunder: -

Section 5(8) of the Code defines the 'Financial Debt' in the following terms:-

"(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 non-recourse basis;

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

1[Explanation.—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) (ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(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;”

9. On perusal of the section 5(8) referred supra, it is clear that the very essential requirements for a debt to qualify as a 'financial debt' is that it is 'disbursed against the consideration for the time value of money'. Financial debt is usually for a sum of money received today to be paid over a period of time in the future. In the instance where the Petitioner is relied upon is a simple agreement of sale for purchase of a property. This is not even a case wherein there are any 'assured amount' of return which was promised. Herein, it is a sale – purchase transaction which allegedly stands breached and such a transaction would not acquire the status of a 'financial debt' as the transaction does not have consideration for the time value of money, which is a substantive ingredient to be satisfied for fulfilling requirements of the expression 'Financial Debt'.
10. Taking into consideration the judgment of Hon'ble Supreme Court in the matter of Innoventive Industries Limited Vs ICICI Bank & Anr., this Bench holds the amount claimed in the Petition is not advanced against the time value of money and hence it is not a "financial debt" u/s 5(8) of the Code and also the Petitioner does not come under the definition of "financial creditor" u/s 5(7) of the Code.
11. Hence, in view of the above, we are of the considered view that this Petition is not maintainable under Section 7 of the Code and deserves to be **dismissed**. However, the Petitioner is at liberty to approach the proper forum for recover its dues.

Sd/-

Manoj Kumar Dubey
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)