

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 162/7/JPR/2020

IN THE MATTER OF SECTION 7 OF IBC, 2016.

IN THE MATTER OF:

RADHEY SHAYAM YADAV & ORS.

... Financial Creditor

VERSUS

SANWARIYAJI BUSINESS VENTURE PRIVATE LIMITED

...Corporate Debtor

IN THE MATTER OF CP NO. (IB)- 162/7/JPR/2020

MEMO OF PARTIES

Mr. Radhey Shyam Yadav

7, Chakbad, Nari ka Bas, Kalwar Road, Jhotwara,
Jaipur- 302012 (Rajasthan)

...Applicant No. 1

Mr. Madan Lal

P-1, Nari ka Bas, Manchwa, Jhotwara
Jaipur- 302012 (Rajasthan)

...Applicant No. 2



Mr. Sitaram Yadav
P-1, Nari ka Bas, Manchwa, Jhotwara
Jaipur- 302012 (Rajasthan)

...Applicant No. 3

Mr. Sushil Jhalani
83, Sindhu Nagar, Murlipura,
Vishwakarma Industrial Area,
Jaipur – 302013 (Rajasthan)

...Applicant No. 4

VERSUS

Sanwariyaji Business Venture Private Limited
59, Mansarovar Colony, Kalwar Road, Jhotwara,
Jaipur – 302012 (Rajasthan)

...Respondent

For the Applicant : Harshad Kapoor, Adv.
For the Respondents : Abhinav Mathur, Adv.

Order Pronounced On: 23.12.2021

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The Application in the prescribed Form No.1 is filed by Mr. Radhey Shyam Yadav and Others ('Applicants' / 'Financial Creditors') for initiation of Corporate Insolvency Resolution Process ('CIRP') in the case of Sanwariyaji Business Venture Pvt. Ltd. ('Respondent/ Corporate Debtor'). The application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 ('Rules'). The Applicants are allottees under the real estate project of the Respondent i.e., 'Guman Eternity'. The Letter of Authority in favour of Mr. Radhey Shyam Yadav on behalf of other Applicants to submit the instant Application have been filed at Annexure 1.

2. The Respondent is a Private Limited Company, incorporated under the Companies Act, 1956, on 01.12.2011 and duly registered with the Registrar of Companies, Jaipur bearing CIN: U45201RJ2011PTC037210. The Registered Office of the Company is at Sanwariyaji Business Venture Private Limited, 59, Mansarovar Colony, Kalwar Road, Jhotwara, Jaipur – 302012 (Rajasthan). The authorized share capital of the Respondent Company is Rs. 3,01,00,000/- (Rupees Three Crore One Lakh Only) and paid-up share capital is Rs. 2,81,00,000/- (Rupees Two Crore Eighty-One Lakhs Only). The Master Data of the Respondent is at Annexure 2.
3. It is stated that the Respondent started a group housing project in the name of Guman Eternity on Plot GH-2, situated at Subhash Nagar, RPA Road, Shastri Nagar, Jaipur with the total area of the project being 1468.61 sq. mtr. which is not being registered with the Rajasthan Real Estate Regulatory Authority ('RERA') as per RERA website.
4. It is further stated that the Respondent proposed 32 units of apartments. In compliance with Section 7(1) of the Code, Mrs. Arti Kanoongo, an allottee along with other allottees of 3 flats have preferred this Application having

more than 10% of the total number of allottees under the same real estate project being four apartments booked/sold/allotted out of a total of 32 apartments.

5. The details of each allottee and individual transactions are summarized hereinbelow:

Sr. No.	Name of Allottee	Date of agreement	Flat No.	Sale consideration	The total amount paid to date
1.	Radhey Shyam Yadav	05.05.2015	B-204	1,17,48,880	95,00,000
2.	Madan Lal	01.05.2015	B-103	2,07,38,480	1,09,24,000
3.	Sitaram Yadav	22.05.2015	B-501	1,73,10,080	1,06,00,000
4.	Sushil Jhalani	08.11.2014	B-504	1,17,48,880	95,00,000
	TOTAL			6,15,46,320	4,05,24,000*

* Total differs slightly as compared with Part IV of Form No. 1.

6. In Part-IV of Form No.1 it was mentioned that the Corporate Debtor was given, against the purchase of flats in Guman Eternity, Rs. 4,03,24,000/- (Four Crore Three Lakhs Twenty-Four Thousand Rupees Only) by four allottees. It is stated that the total amount claimed along with the applicable interest (*at the rate of 18% per annum*) is Rs. 5,51,30,972 (Five Crore Fifty-One Lakhs Thirty Thousand Nine Hundred Seventy-Two Rupees Only) for the period 01.10.2018 to 15.10.2020 (*total of 745 days*).

7. In Part-V of Form No.1, the particulars of security held are given, which is stated to be NIL. It is stated that the Financial Creditors had entered into a

Consensus Agreement / MOU ('Arrangement') with the Corporate Debtor wherein the Corporate Debtor, agreed to return the advances received towards booking of units in the project. It was mutually decided between the parties that the Corporate Debtor is liable to repay the debt with interest to the respective Financial Creditors by the end of September 2018; the said MOU is annexed as Annexure – 5 of this petition. The following is the tabular presentation of the allottees and their date of the said Arrangement with the Respondent:

S. No.	Name of the Allottee(s)	Date of the Agreement
1.	Radhey Shyam Yadav	09.07.2018
2.	Madan Lal	11.07.2018
3.	Sitaram Yadav	04.07.2018
4.	Sushil Jhalani	04.07.2018

8. In Part-III of Form No.1 Mr. Prashant Agarwal, Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 has been proposed as Interim Resolution Professional (IRP). Form No. 2 submitted by the proposed IRP is stated to be attached as Annexure – 3 of this petition.

9. The Respondent has submitted in its reply / written submission that it is not wilfully defaulting on the repayment; it always had the intention of repaying the sale consideration but it is handicapped because of the registration of FIR against the director of the Respondent on 06.03.2016 for involvement in the alleged fraud and misappropriation of funds committed by one Mr. Bharat Bumb with the

Syndicate Bank, Jaipur. It was also contended that the Enforcement Directorate has passed a Provisional Attachment Order dated 12.09.2020 through which all the assets of the Respondent Company have been seized and attached, while also freezing the accounts. Therefore, the Respondent cannot access its bank accounts and as a result, it is unable to repay the aforementioned sale consideration amount.

10. During the hearing, the learned counsel for the Applicant relied on the petition filed and stated that the requirements of Section 7 of the Code are satisfied and the petition needs to be admitted. The learned counsel for the Respondent argued that the interest at the rate of 18% per annum was never agreed between the parties, however, acknowledges the principal amount is due and payable on their part. In this regard, it is noted that as per the Arrangement, at Annexure – 5, the Corporate Debtor has agreed to pay the interest however; the rate of interest is not clear.

11. The learned counsel for the petitioner submits that as per Section 5(8)(f) which defines 'Financial Debt' *w.e.f.* 06.06.2018, the explanation to the aforementioned section gives effect to the amount raised for real estate project, which has the commercial effect of borrowing; therefore, falls under the jurisdiction of this NCLT Bench. He further submits that under explanation to Section 7(1) of the code, a financial creditor either by itself or jointly with other financial creditors may file an application for initiating CIRP against the corporate debtor before the Adjudicating Authority when a default has occurred and as per explanation to this subsection, 'a default includes a default in respect of a financial

debt owed not only to the applicant/financial creditor but to any other financial creditor.’

12. The learned counsel furthermore submits that the applicants have complied with the threshold limit as prescribed under Section 4(1) read with Notification No. S.O. 1205 E (F No. 30/9/2020-Insolvency) dated 24.03.2020 and with Section 7(5)(a) of the Code is as follows: -

*“(5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and no disciplinary proceedings are pending against the proposed resolution professional, it may, by order, admit such application.”*

13. We have carefully considered the submissions of learned counsel for the Applicants and the Corporate Debtor and have also perused the record.

14. In the present case, the occurrence of default is evidenced by the details furnished by the applicant including the copies of the agreement to sale, the copies of receipts of money advanced, the copies of the statement of accounts duly certified under the Bankers Books Evidence Act 1891.

15. It is noted that the Respondent has not registered their Real Estate Project ‘Guman Eternity’ with RERA. Further, it is also noted that no date of completion of the project has been provided by either by the Financial Creditor or the Respondent in their respective pleadings nor it is provided under the agreement to sale annexed at Annexure – 9 of the petition, or the tripartite agreement annexed at Annexure – 10. Moreover, the parties *vide* Annexure – 5 of the Arrangement agreed that the Respondent will refund the entire amount received towards the

sale consideration and will cancel the bookings of the flats of the Financial Creditors.

16. The application filed in the prescribed Form No. 1 is found to be complete.

17. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon the appreciation of the documents placed on record to substantiate the claim, this Adjudicating Authority allows this application of the Financial Creditor.

18. The proposed Interim Resolution Professional ('IRP'), Mr. Prashant Agarwal has filed Form No.2 (Annexure – 3 of the petition), stating therein that no disciplinary proceedings are pending against him.

19. The conditions provided by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against Sanwariyaji Business Venture Pvt. Ltd. be admitted. The directions regarding the moratorium and appointment of IRP are given below.

20. We declare 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.

21. 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 the 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.

22. 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.

23. The following directions are also issued in respect of the appointment of the Interim Resolution Professional:

i) Mr. Prashant Agarwal, resident of F-106 (1st Floor), Sumer Complex, Gautam Marg, Behind Bagadia Bhawan, C-Scheme, Jaipur – 302001 having Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127 and email address ippagrawal@gmail.com is appointed as an Interim Resolution Professional;

- ii) The term of appointment of Mr. Prashant Agarwal, shall be under 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 inter-alia prepare a complete list of inventories of assets of the Corporate Debtor;
- iv) The Interim Resolution Professional shall strictly act under the Code, all the rules and regulation framed thereunder by the Board or the Central Government and following the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morality;
- 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 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;

viii) The Interim Resolution Professional shall after invitation and 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 the constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall

convene the first meeting of the committee within seven days of filing the report of the constitution of the committee; and

ix) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every month.

24. In terms of Section 7 of IBC, 2016, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Tribunal to carry out the CIRP. A copy of this order shall also be communicated to IBBI for its records.



Sd —

**RAGHU NAYYAR,
MEMBER (TECHNICAL)**



Sd —

**DEEP CHANDRA JOSHI,
MEMBER (JUDICIAL)**