

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH**

**(IB)-1075(ND)2019**

**IN THE MATTER OF:**

**Mrs. Sunita Agarwal**

**W/O Mr. Shailendra Kumar Agarwal,**

**R/o D-1009, New Friends Colony,**

**New Delhi-110065**

**...Financial Creditor**

**VERSUS**

**M/s Antriksh Infratech Pvt. Ltd.**

**S-302 3<sup>RD</sup> Floor, Aggarwal Mall,**

**Sector-5, Near Ashirwad Chowk,**

**Dwarka, New Delhi-110075**

**... Corporate Debtor**

**Section: 7 of IBC, 2016**

**Order Delivered on: 17.09.2019**

**Quorum:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner : Ms. Shweta

For the Respondent : None



**ORDER**

**PER SHRI L. N. GUPTA, MEMBER (T)**

Mrs. Sunita Agarwal claiming to be a 'Financial Creditor' has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Company, M/s Antriksh Infratech Pvt. Ltd., who is stated to be the Corporate Debtor.

2. The Respondent Company - the Corporate Debtor, M/s Antriksh Infratech Pvt. Ltd. (CIN U452000DL2009PTC187056) was incorporated on 29.01.2009 under the provisions of the Companies Act, 1956. The registered office of the Respondent Corporate Debtor is situated at S-302, 3<sup>rd</sup> Floor, Aggarwal Mall Sector-5, Near Ashirwad Chowk, Dwarka, New Delhi-110075. Its authorized Share Capital is Rs. 1,00,000 and the Paid-up Share Capital is Rs. 1,00,000 as per the details given in master data on the official website of Registrar of Companies. Since the



Page | 2

registered office of the respondent corporate debtor is in Delhi, this Tribunal being Adjudicating Authority has territorial jurisdiction in respect of Respondent Corporate Debtor as per the provisions of Sub-section (1) of Section 60 of the Code.

3. The 'Financial Creditor'-Petitioners has proposed the name of Resolution Professional, Shri. Yogesh Kumar Gupta having his office at C-17B, Basement, Kalkaji, New Delhi-110019 (email id- ykgupta64@yahoo.co.in) with registration No. IBBI/IPA-003/IP-N00078/2017-18/10701. A written communication sent by the petitioner in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India. Additionally, further necessary disclosures have been made by Mr. Yogesh Kumar Gupta, as per requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.



4. It is the case of the Petitioner that they had booked a residential unit in a project, namely "Antriksh Urban Greek" being developed by Corporate Debtor at L Zone, Dwarka Delhi-110075 India, which was confirmed vide the welcome letter issued by Corporate Debtor on 13.07.2015. The Corporate Debtor had also issued a Confirmation Letter dated 13.07.2015 to the Financial Creditor wherein the Financial Creditor was allotted residential apartment on the 6<sup>th</sup> floor, @ 5000/Sq.ft, Buy Back Plan, Size 2500 Sq. ft. That the Financial Creditor had payed a consideration of Rs 25,00,000 vide Draft No. 000055 drawn on HDFC Bank, as acknowledged by the Corporate Debtor vide their Receipt 0492 dated 13.07.2015.

5. Subsequently, the financial creditor executed a Memorandum of Understanding on 28.07.2015 with the Corporate Debtor for the said apartment for a total sale consideration of Rs. 25,00,000. The Petitioner has made payment of Rs. 25,00,000 on 08.07.2015.



6. That as per the Clause 2(c) of the Memorandum of Understanding, the Corporate Debtor *“Company has agreed to give return of 25% per annum at the end of the 24 months or at the issuance of Final LTC by the competent authority (whichever is earlier) from the date of receipt of (10% Booking Amount and Second Demand of 10%) Investment from the Applicant.”*

7. That the Financial Creditor had made following averments in their petition :

*“H. That thereafter, the financial Creditor met the representatives of the corporate Debtor and enquired about the progress of the construction work of the project and the financial creditor was informed that the construction would begin in sometime but the same turned out to be hoax. Whenever the financial creditor enquired, a vague and evasive reply was given to her.*

*I. That the financial creditor has been constantly following-up with the corporate debtor about status of the said complex but to the dismay of the financial creditor no positive response is forthcoming from the corporate debtor about the same. The financial creditor requested the Corporate Debtor to return the amount of Rs. 25,00000/- which was paid towards the part consideration of said flat/unit alongwith the assured return @ 25% p.a. on the said amount but the Corporate Debtor did not return the above said amount and the assured return.*

*J. That the Corporate Debtor is liable to refund the entire amount paid by the financial creditor to the corporate*



debtor, alongwith interest @ 25% per annum, as per the details given in the above said calculation sheet.

K. That after receiving no clear information from representatives of Corporate Debtor, the Financial Creditor visited the project site and was shocked to see that construction work has been completely stalled. No intimation with regard to refund of the said amount was given to the Financial Creditor.

L. That Corporate Debtor has promised the Financial Creditor to pay an amount of Rs. 25,000,00/- and give return of 25% per annum at the end of 24 months which ended on 07.07.2017 but Corporate Debtor have miserably failed and not returned the above said amount. The Corporate Debtor, as stated above, failed to honor the aforesaid Agreement.

M. That the Financial Creditor, issued demand notice/email dated 01.02.2019 demanding a sum of Rs. 47,31,164.38/- which included (i) principle amount of Rs. 25,00,000/- + interest @ 25% per annum till 08.02.2019. But the Corporate Debtor refuse to accept the above said notice and the envelope containing the said notice was returned with postal remark 'the addressee refuse to accept'."

8. It is claimed that the Respondent is liable to pay an amount of Rs. 47,31,164.38, of which Rs. 25,00,000 is the principal amount and Rs. 22,31,164.38 is the interest amount @ 25% per annum pertaining to the period from 08.07.2015 to 31.01.2019.



9. As none appeared on behalf of Corporate Debtor during the proceedings, the Corporate Debtor was proceeded ex-parte vide order dated 30.08.2019 of this Bench.

10. It is pertinent to mention here that clause (8) of Section 5 of the Code has been amended by the Insolvency and Bankruptcy (amendment) Ordinance, 2018 with effect from 6<sup>th</sup> June, 2018. In view of the revised definition at Clause 8(f), any amount raised from an allottee under a real estate project is deemed to be an amount having the commercial effect of a borrowing and thus, is covered by the definition of 'Financial Debt' under the Code. Definition of 'Financial Debt' has been amended to specifically include dues of home buyers i.e. Real Estate (Residential). The amendment also recognizes home buyers as "Financial Creditor". Accordingly, the home buyers can initiate Corporate Insolvency Resolution Process against defaulting builder or developer, as "Financial Creditor" in terms of Explanation to Section 5 (8) (f) of the Code with effect from 06.06.2018.



11. Therefore, petitioner being a financial creditor can invoke Corporate Insolvency Resolution Process under Section 7 of the Code against the respondent Corporate Debtor in case of default in repayment of financial debt.

12. As per the material placed on record, it is confirmed that the applicant - financial creditor had disbursed the money to the respondent - Corporate Debtor as consideration for purchase of a residential apartment. Though, a considerably long period has lapsed, even the principal amount has not been repaid by the Corporate Debtor as per the Memorandum of Understanding. It is, therefore, evident that the Corporate Debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees One Lakh. Thus, the application warrants admission as it is complete in all respects.

13. It is, however, noticed from the Master Data of the Corporate Debtor annexed at Page 25 of the petition that the name of the Corporate Debtor Company has been struck off by the Registrar of Companies. In this context, it is worth referring



to the Judgement of the Hon'ble NCLAT in the matter of **Elektrans Shipping Pte Ltd Vs Pierre D'silva and Anr. Company Appeal (AT) (Insolvency) No 754 of 2019 dated 06.09.2019**, where it has been held that :

*"In view of the aforesaid provision, we hold that the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of 'Corporate Insolvency Resolution Process' under Sections 7 and 9 of the I&B Code based on the application, if filed by the 'Creditor' ('Financial Creditor' or 'Operational Creditor') or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248. In the present case, application under Section 7 having admitted, the 'Corporate Debtor' and its Directors, Officers, etc. deemed to have been restored in terms of Section 252(3) of the Companies Act."*

14. In the light of the aforesaid judgement of Hon'ble NCLAT, this Bench orders restoration of the name of the Corporate Debtor Company in the Register of RoC. The IRP so appointed shall take immediate steps towards restoration of the name of the company in the Register of RoC expeditiously. All expenses incurred on the process of restoration of the Company shall be reimbursed by the CoC to be recovered as cost of CIR process.

15. Accordingly, in terms of Section 7 (5) (a) of the IB Code, the present application is admitted and as proposed by the applicant, Sh. Yogesh Kumar Gupta having his office at C-17B, Basement, Kalkaji, New Delhi-110019 (email id- ykgupta64@yahoo.co.in) and registration No. IBBI/IPA-003/IP-



N00078/2017-18/10701 is appointed as an Interim Resolution Professional.

16. In pursuance of Section 13 (2) of the Code, we direct the Interim Insolvency Resolution Professional to make a public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus, the following prohibitions are imposed which must be followed by all and sundry:

- “(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 Securitisation 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.”

18. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. 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.

19. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *inter alia*, by Sections 15, 17, 18, 20 & 21 of the Code. He must follow the best practices and principles of fairness, which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile Directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the IB Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation



committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

20. We direct the Financial Creditor to deposit a sum of Rs. 1 (One) lakh with the Interim Resolution Professional namely Mr. Yogesh Kumar Gupta to meet out the expenses 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 three days from the date of receipt of this order by the Financial Creditor. The amount, however, will 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.

21. The Registry is directed to communicate a copy of this order to the Financial Creditor, 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.

  
**(L. N. Gupta)**  
**Member (T)**

  
**(Ina Malhotra)**  
**Member (J)**