

**IN THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

I.A. NO. 6467 OF 2023

IN

C.P. (IB) NO. 445 OF 2023

IN THE MATTER OF:

IDBI TRUSTEESHIP SERVICES LIMITED

...APPLICANT/FINANCIAL CREDITOR

VERSUS

SHREE VARDHMAN BUILDROP PRIVATE LIMITED

...RESPONDENT/CORPORATE DEBTOR

AND

IN THE MATTER OF:

MR. RAJESH KUMAR & ORS.

...PROPOSED RESPONDENTS

Order Delivered on: 18.01.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER, JUDICIAL**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER, TECHNICAL**

PRESENT:

For the Applicant : Sr. Adv. Mr. Krishnendu Datta, Ms. Geetika Sharma,
Mr. Pranjit Bhattacharya, Ms. Tarini Khurana, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUDARAM, MEMBER JUDICIAL

1. The present Interlocutory Application no. 6467 of 2023 has been filed by the Mr. Rajesh Kumar under Rule 11 read with the National Company Law Tribunal Rules, 2016 seeking following reliefs: -
 - a. Allow the present application and implead the Applicant as a necessary party;

- b. Dismiss the Petition filed by the Petitioner against the Respondent as the same was filed to recover its dues.
 - c. Pass such other order(s), direction(s) as deemed fit and proper in the facts and circumstances of the case and in the interest of justice and equity.
2. Brief stated the facts of the present case as averred by the applicant are that the Corporate Debtor had launched a group housing residential under the name and style of 'Shree Vardhman Mantra' situated at Sector 67, Gurugram ("said project"). The Applicant, Mr. Rajesh Kumar, had booked an apartment bearing no. J-308, (hereinafter referred as the 'said Apartment') in the said project. Similarly, the booking details of the 27 supporting applicants are annexed. The applicants had entered into Apartment Buyers's Agreements wherein the terms of allotment were crystalised between the parties.
3. Further, submitted that as on date, the Applicants have paid majority of the sums due under the Apartment Buyer Agreement against the sale consideration payable by them. Surprisingly, the Applicants have come to know about the petition filed by the Petitioner seeking CIRP against the Corporate Debtor for default in repayment of amount. However, the Applicant has come before this Tribunal because in case this Tribunal admits the petition filed by the petitioner, the applicants would be left remediless and the Project for which the Applicants have invested huge amounts being ruined on account of petty disputes between the Petitioner and the Corporate Debtor.
4. The Applicant further submitted that the Corporate Debtor is in a position to complete by the Project by October, 2026 and has already given an undertaking with respect to completion/delivery of the Project to this Tribunal. However, the initiation of CIRP against the corporate debtor would delay handing over of the apartments to the homebuyers and also delay completion of the project. Consequently, the CIRP of the Corporate Debtor

would be against the interest of the home buyers at large, as while the work is proceeding its final stage of completion, the CIRP of the Corporate Debtor would adversely affect the larger interest of the home buyers.

5. Moreover, there is a new tower being developed in the Project and there is construction and sale of the commercial portions of the Project, which is ongoing. The Corporate Debtor would receive sufficient funds to repay the loan of the Financial Creditor. Therefore, the present proceedings are not going to benefit any party herein, neither the Financial Creditor nor the Corporate Debtor or the customers of the Project, like the Apartment herein.
6. The Applicant submitted that the CIRP of the Corporate Debtor would seriously prejudice the interest of the Applicant and other Homes Buyers in the Project who are looking forward to getting the possession of their apartments. The Applicant has been waiting from the time of making the initial flat booking payment in a hope to get the possession of its apartment. Admittedly, the Applicant is made to bear interest/EMI's on loans taken for the purpose of purchasing the apartment in the Project and simultaneously are also incurring the expense of paying rental accommodation. The Applicant in aspiration of getting the possession of its apartment was regularly following up the Corporate Debtor and by personally visiting the Project site on regular intervals to know about the actual developments in the Project.
7. We have heard the parties and perused the case records, averments made in the application and submission made by the parties. The relevant documents annexed with the respective submissions have also been examined.
8. Adverting to the facts of the case in hand, the present application is being preferred by a group of 24 applicants who claim to be the homebuyers in the project 'Shree Vardhaman Mantra' situated at Sector-67 Gurugram promoted by M/s. Shree Vardhman Buildprop Private Limited seeking intervention in the present Company Petition i.e., C.P.(IB)/445/2023, an

application filed under Section 7 of the Code, 2016 filed by M/s. IDBI Trusteeship Services Limited ('Financial Creditor') seeking initiation of Corporate Insolvency Resolution Process ("CIRP") qua M/s. Shree Vardhman Buildrop Private Limited ('Corporate Debtor'). The sole and substance of the contention raised by the applicants in the present application are that the admission of the C.P.(IB)/445/2023 may hamper the delivery of the possession of units in the project 'Shree Vardhaman Mantra' promoted by the Corporate Debtor.

9. We are of the view that in an application filed under Section 7 of the Code, 2016, the Financial Creditor and the Corporate Debtor alone are the necessary parties and the Adjudicating Authority, at the pre-admission stage is only required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides, the application being complete as mandated under Section 7(5) of the Code. Consequently, there is no requirement for intervention of any other 'Financial Creditor' or any other party before admission of an application under Section 7 of the Code, 2016.
10. The Hon'ble NCLAT in **Shobhnath & ors. Vs. Prism Industrial Complex Ltd., in Appeal (AT) (Insolvency) No. 557 of 2018** held that in an application filed under Section 7 of the Code no other party than the Applicant & Corporate Debtor can be entertained and intervention by any party cannot be considered for. The relevant extract of the judgement is reproduced herein below: -
 5. *From the impugned order, we find that the Adjudicating Authority has allowed intervention applications filed by different creditors, which is not the requirement of the 'I & B Code'/law.*

 11. *This Appellate Tribunal in numerous cases has stated that notice is to be given only to the 'Corporate Debtor' in an application under Sections 7 or 9 of the 'I & B Code'. The question of intervention by a third party before the admission of the application under Sections 7 or 9 does not arise.*

11. In view of the aforementioned facts and circumstances, we are of the view that no third party intervention is contemplated at this stage. Accordingly, the present application i.e., **I.A.6467ND/2023** stands **dismissed. No orders to costs.**
12. We make it clear that any observations or findings made by this Adjudicating Authority in this order should not be construed as expressing opinion on merits. The right of the applicant with regard to the status as creditor and remedies available viz-a-viz the corporate debtor shall not be prejudiced on the grounds of dismissal of the present application.

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**