

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CP No.888/KB/2020

In the matter of:

The Insolvency and Bankruptcy Code,
2016;

and

In the matter of:

Section 10 of the Insolvency and
Bankruptcy Code, 2016 read with rule 7
of the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016;

and

In the matter of

**Sampark Land and Builders Private
Limited**, a company incorporated
under the Companies Act, 1956 having
its registered office at P-535 (1st Floor),
Raja Basant Roy Road, Kolkata -
700029, West Bengal

...Corporate Applicant

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Harish Chander Suri	:	Member (Technical)

Appearances:

For the Corporate Applicant	:	Mrs. Manju Bhuteria, Advocate Mr. Sourav Jain, Advocate
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Order reserved on: 23.03.2021

Order pronounced on: 30.04.2021

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a company petition filed under section 10 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process [CIRP] in respect of Sampark Land and Builders Private Limited (*Corporate Debtor*), being the Corporate Applicant itself.
2. The Corporate Applicant was incorporated on 11th January, 2011 under the Companies Act, 1956 with the Registrar of Companies, West Bengal, Kolkata. Its Corporate Identity Number (CIN) is U70109WB2011PTC157021. Its registered office is situated at P-535 (1st Floor), Raja Basant Roy Road, Kolkata 700029, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with the petition.
3. The case of the Corporate Applicant is as follows:
 - a. The Corporate Applicant and its two group companies - Sampark Land Developers Private Limited and Suryodaya Realtors Private Limited - had launched a real estate project called '*Baruipur Bloomfield*' in February 2011 on Amtala-Baruipur Road. Marketing for the said project was done in the name of Sampark Land Developers Private Limited. Payment of instalments was made by the plot buyers in respect of the plots booked by them in respect of all the three companies, *i.e.*, Rs.36,67,00,275/- to Sampark Land Developers Private Limited and Sampark Land Developers Private Limited distributed sums accordingly – Rs.13,40,26,588/- to the Corporate Applicant and 49,00,91,816 to Suryodaya Realtors Private Limited.
 - b. To avoid any overlapping and to achieve smooth operation of the companies work, the entire business operations were allocated amongst four directors according to their experience and expertise. Two of the directors were having expertise in acquisition and development of

project land like drainage and road construction, one of the directors had expertise in marketing and administration and one was looking after accounts, banking, taxation & other legal matters. As per the agreement, the plot holders were paying the instalment money/deposit money for the plot of land purchased to Sampark Land Developers Private Limited and the possession of the land was supposed to be delivered by the corporate applicant and the two group companies from end of 2016.

- c. The two directors who were managing the acquisition and development work resigned and left the company in October 2015. All these internal problems pushed back the Project by 18 months more and in between the plot holders withheld the payment of their instalments. Some of the plot builders through various letters have demanded the refund of their initial deposits/instalments along with interest from Sampark Land Developers Private Limited as the marketing was done by Sampark Land Developers Private Limited and instalments were paid by the plot buyers to Sampark Land Developers Private Limited. The agreement for sale was with Sampark Land Developers Private Limited. However, the conveyance was to be executed by the Corporate Applicant.
- d. Since the directors responsible for land acquisition and development resigned suddenly, the daily course of the business took a setback. There were several plots of unacquired land in between acquired plots of land due to which demarcation could not be done and the approach road and drainage system could not be constructed. The Corporate Applicant and the group companies started facing significant financial challenges as the plot holders stopped making payment of their outstanding dues and took stand that they will start payment only when the company completes the development work like drainage and road construction. Sampark Land Developers Private Limited took loan from two financial creditors. The loan was taken by Sampark Land Developers Private Limited from M/s Greenland Project for an amount of Rs.35,00,000-on the terms and conditions mentioned in Memorandum of Understanding dated 16th May 2019 entered into by and between the promoters of all three group companies and Greenland Projects. In terms of the said MOU the promoters of all the three companies pledged 76% of their shareholding held by them in all three group companies in favour of Greenland Projects. Even these funds could not improve the position. Under these

circumstances the corporate applicant and its group companies could not complete the project.

- e. The three group companies purchased 146 Bighas of land, out of which 120 Bighas is registered and 26 bighas land is not yet registered but advance payment for acquiring the said 26 bighas land has been made to the seller. The agreement for sale has been entered into in respect of 108-110 Bighas of land. The corporate applicant herein between 2011 and till date purchased total of 14.97 bighas land and out of the said 14.97 bighas, 1.68 bighas has been registered in the name of the plot buyers.
- f. It is stated that as marketing for the said project was done in the name of the Sampark Land Developers Private Limited and the payment of instalments were made by the plot buyers in respect of the plots booked by them in respect of all the three companies to Sampark Land Developers Private Limited and Sampark Land Developers Private Limited distributed sums accordingly, *i.e.*, Rs.13,40,26,588/- to the Corporate Applicant.
- g. The Corporate Applicant has neither been able to give possession of the plots to the plot buyers nor has been able to refund the amount demanded by several plot buyers from Sampark Land Developers Private Limited. Several plot holders have issued notice calling upon Sampark Land Developers Private Limited to refund the amount paid by them towards purchase of the plot along with interest. The Corporate Applicant is in default.
- h. In the circumstances, a Board Meeting was held on 26th May 2020 (page 18 of the petition) and in the said meeting it was resolved that an Extraordinary General Meeting (EGM) would be convened on 18th June 2020 to approve filing of an application under section 10 of IBC before this Adjudicating Authority.
- i. All three companies including the corporate applicant has two shareholders each, *viz.*, Sk. Mokbul Hossain and Mr. Omprakash Tulsian. The said two shareholders are directors in all the three companies.

- j. The shareholders of the Corporate Applicant in the Extra-Ordinary General Meeting held on 18th June, 2020 passed a Special Resolution for filing an application under section 10 of the Code. In the said meeting the shareholders resolved to authorise Mr Om Prakash Tulsian, a director of the Corporate Applicant to file the necessary application under the Code. The attendance sheet of the said meeting is annexed at page 23 of the petition. The Corporate Applicant has referred to the minutes of the Extra-ordinary General Meeting dated 18th June, 2020 (page 22 of the petition) wherein the members of the Corporate Debtor have unanimously resolved by way of Special Resolution to the following effect:

“RESOLVED THAT pursuant to the provisions of Section 10 of the Insolvency and Bankruptcy Code, 2016 (the code) read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and all other applicable provisions, if any, of the Companies Act, 2013 (including any statutory modification(s) or re-enactment(s) thereof for the time being in force). The consent of the members be and is hereby accorded to file an application under Section 10 of IBC, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) with the National Company Law Tribunal (NCLT), Kolkata Bench at Kolkata.”

“RESOLVED FURTHER THAT Mr Om Prakash Tulsian, Director of the Company shall be solely authorised to do all such acts, deeds or things as may be desirable to file an application under section 10 of the Insolvency and Bankruptcy Code and subsequent representations in this regard from time to time before the relevant authorities including for appointment of legal and Insolvency Professional for initiating the CIRP.”

4. In the circumstances as stated above the Corporate Applicant has filed the instant petition under section 10 of IBC read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of CIRP in respect the Corporate Applicant itself.
5. It is submitted on behalf of the petitioner that the other two group companies namely Sampark Land Developers Private Limited and Suryodaya Realtors Private Limited have also separately filed applications under section 10 of IBC read with rule 7 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 for initiation of CIRP before this Adjudicating Authority, being CP No.887/KB/2020 and CP No.889/KB/2020 respectively. It is submitted that in the facts and circumstances it is necessary that CIRP be initiated in respect of all three group companies together.

6. In compliance of the order dated 9th October, 2020 the Corporate Applicant has published the notice of the application in two newspapers, *viz.*, *Financial Express (English)* and *Ekdin (Bengali)* on 9th November 2020 and the affidavit of compliance dated 11th November 2020 has been filed by the Corporate Applicant. No one has appeared to oppose or support the petition.
7. The Corporate Applicant has filed three supplementary affidavits (SAs) to bring on record certain facts and documents which were necessary for proper adjudication of the instant petition. The first supplementary is affirmed on 8th October 2020, the second on 25th November 2020 and third on 8th March 2021.
8. The documents relied on by the petitioner in the petition and SAs of 8th October 2020, 25th November 2020 and 8th March 2021 are as follows:
 - (a) A copy of the Board Resolution dated 19th June 2020 authorising Mr. Om Prakash Tulsian to file the petition. (page 16 of the petition).
 - (b) Board Resolution dated 26th May 2020 wherein resolution was passed to call EGM on 18th June 2020 to consider and approve filing of an application under Section 10 of IBC. (page 18 of the petition)
 - (c) Notice of EGM. (page 20-21 of the petition)
 - (d) Extract of the Minutes of EGM held on 18th June 2020 wherein Special Resolution was passed for filing application under Section 10 of IBC. (page 22 of the petition)
 - (e) Attendance Sheet of EGM. (page 23 of the petition)
 - (f) List of Financial Creditors comprising of Plot buyers. The list contains

name of 262 plot buyers (page 24 to 34 of the petition)

- (g) Agreement of Sale of Sampark Land Developers Private Limited with some plot buyers (pages 35 to 58 of the petition)
- (h) Copies of Audited Balance Sheet of the Corporate Applicant for the financial year 31st March 2019 and 31st March 2020. (page 59 to 80 of the petition)
- (i) Statements showing assets and liabilities of the Corporate Applicant and its group companies as on 31st March 2020. (page 81 to 90 of the petition)
- (j) Summarised Statement of land purchased by Corporate Applicant and its group companies. (pages 91 to 95 of the petition).
- (k) List of shareholders. (page 96 of the petition)
- (l) A copy of Memorandum and Articles of Association of the Corporate Applicant. (page 97 to 115 of the petition)
- (m) A copy of master data of the Corporate Applicant downloaded from the website of MCA. (page 116 of the petition)
- (n) Document pertaining to promoters' shares being pledged against the loan taken up by group company, Sampark Land Developers Private Limited. (page 117 of the petition)
- (o) Form II issued by proposed IRP along with certificate of registration. (page 118 to 121 of the petition)
- (p) Provisional balance Sheet of the Corporate Applicant as at 31st July 2020. (pages 121A to 121F of the petition)
- (q) Minutes of the Board Resolution dated 10th May 2013 (pages 4 to 5 of 1st SA)
- (r) Statement depicting the present market value of the land (pages 7 of 2nd SA)
- (s) A copy of the Audited Financial Statement of the Corporate Applicant as on 31st December 2020. (pages 6 to 16 of 3rd SA)

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- (t) A copy of the map depicting the holding of land by the Corporate Applicant and its Group Companies, plots registered in favour of the plot buyers and the plots for which part payment of approximately 30% has been made by the Corporate Applicant and its Group Companies. (Page 17 of 3rd SA)
9. The Corporate Applicant has stated in the supplementary affidavit of 25th November 2020 and 8th March 2021 that there is no statutory liability.
10. The Corporate Applicant has stated in the petition that there are no operational creditors in the Company. The Corporate Applicant has one class of financial creditors comprising of plot buyers. The Corporate Applicant has disclosed the details of the financial creditors at page 24 to 34 of the petition. The Corporate Applicant has neither handed over the possession of the plots nor refunded the amount of Rs. 13,40,26,588/- . The Corporate Applicant is in default.
11. The Corporate Applicant has proposed Mr Kamal Nayan Jain [IBBI Registration No.IBBI/IPA-001/IP-P00029/2016-2017/10065] as the Interim Resolution Professional to carry out the functions enumerated in the Code. A copy of Form B being Authorisation for Assignment (AFA) as required in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, the was handed over at the time of hearing of the petition.
12. We have heard the arguments made on behalf of the Corporate Applicant and perused the petition and the supplementary affidavits and the supporting documents annexed to the petition and the supplementary affidavits.
13. We are of the view that the petition made by the Corporate Applicant is complete in all respect as required by law. It clearly shows that the Corporate Applicant is in default and there is no reason to deny admission

of this petition. In view of this, the Adjudicating Authority admits the petition and orders initiation of CIRP against the Corporate Applicant. It is accordingly hereby ordered as follows:

- (a) The petition being CP No.888/KB/2020 filed by Sampark Land and Builders Private Limited, the Corporate Applicant, under section 10 of IBC read with rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process is admitted.
- (b) There shall be a moratorium under section 14 of IBC regarding the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 [SARFAESI] Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (c) Notwithstanding the above, during the moratorium, -
 - (i) The supply of essential goods or services to the corporate debtor shall not be suspended or interrupted or terminated during moratorium period.
 - (ii) The provisions of sub-section (1) of section 14 shall not apply to such transactions as may be notified by the Central Govt. in consultation with any financial sector regulator.

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- (d) The order of moratorium shall have effect from the date of its order till the completion of insolvency process or this Tribunal approves the resolution plan under section 31(1) or passes an order for liquidation of corporate debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of CIRP shall be made immediately as specified under section 13 of the IBC, read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
- (f) **Mr Kamal Nayan Jain** [IBBI Registration No.IBBI/IPA-001/IP-P00029/2016-2017/10065; Email: knjain@knjainco.com] is hereby appointed as an Interim Resolution Professional to carry the functions as mentioned under the Code.
- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
14. The Registry is directed to communicate this order to the Corporate Applicant and the IRP by email and WhatsApp and in any case not later than two days from the date of this order.
15. The Registry is directed to send copies of this order to the Registrar of Companies, West Bengal, Kolkata. Additionally, the IRP shall file a copy of this order with the Registrar of Companies, West Bengal, Kolkata, in the prescribed Form INC-28. Upon such service, the said RoC shall update the master data of the corporate applicant.
16. List the main CP on 15.07.2021 for reporting progress.

Harish Chander Suri
Member (Technical)

Rajasekhar
V K

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Rajasekhar V K
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Rajasekhar V.K.
Member (Judicial)