

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-V**

(IB) 2356 (ND)/2019  
IA/739(ND)2021

**IN THE MATTER OF:**

**M/S AIRWIL INFRA LTD**

**...FINANCIAL CREDITOR**

**VERSUS**

**M/S ASCOT PROJECTS PVT LTD**

**...CORPORATE DEBTOR**

**AND**

**IN THE MATTER OF:**

**AIRWIL INTELICITY SOCIAL WELFARE SOCIETY  
THROUGH ITS PRESIDENT  
HAVING ITS REGISTERED OFFICE AT  
O 1207, AMRAPALI ZODIAC,  
SECTOR 120, NOIDA**

**...APPLICANT**

**VERSUS**

- 1. M/S ASCOT PROJECTS PVT LTD  
THROUGH ITS DIRECTOR  
HAVING ITS REGISTERED OFFICE AT:  
H.NO.31, GALL NO.5, KISHAN KUNG EXTN  
LAXMI NAGAR EAST DELHI DL 110092**
- 2. M/S AIRWIL INFRA LTD  
THROUGH ITS DIRECTOR  
HAVING ITS REGISTERED OFFICE AT  
1110, MAIN BAZAR PAHAR GANJ  
NEW DELHI DL 110055**
- 3. M/S INTELICITY BUSINESS PARK PVT LTD  
THROUGH ITS RESOLUTION PROFESSIONAL  
HAVING ITS REGISTERED OFFICE AT:  
M-167 VIKAS PUN, NEAR SYNDICATE BANK,  
NEW DELHI 110018**
- 4. M/S SSR TOWNSHIPS PRIVATE LIMITED  
THROUGH ITS DIRECTOR  
HAVING ITS REGISTERED OFFICE AT  
A-47, LOWER GROUND FLOOR  
HAUZ KHAS SOUTH DELHI 110016**
- 5. SHRI SANJAY KUMAR  
S/O SH. CHITTAR SINGH  
R/O B-30, SECTOR GAMMA, GREATER NOIDA  
UTTAR PRADESH 201306**



6. SHRI MANOJ KUMAR CHAUDHARY  
S/O SH. CHITTAR SINGH  
R/O B-30, SECTOR GAMMA, GREATER NOIDA  
UTTAR PRADESH 201306

7. SHRI KAMAL AGGARWAL  
S/O MADAN LAL AGGARWAL  
R/O S-563, FIRST FLOOR, SCHOOL BLOCK  
SHANKARPUR, DELHI 110092 ...RESPONDENTS

SECTION: U/S60(5)r/w Section 65 of IBC, 2016

Order delivered on: 23.07.2021

**CORAM:**

**MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**MR. K.K. VOHRA, MEMBER (TECHNICAL)**

**PRESENT: -**

For the Applicant:- Adv. Kumar Mihir and Geeta Mathur

For the Respondent:- Adv. Atula Sharma, Resolution Applicant

**ORDER**

**AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

1. The present application is filed under Section 60(5) read with Section 65 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") praying the following reliefs:

- i. Allow the Applicant Society representing majority of Unit Holders/Creditors of Intellicity Business Park Pvt Ltd to participate in the proceedings of the Company Petition bearing No. (IB) 2356 (ND) OF 2019, which is pending for adjudication before this Adjudicating Authority.
- ii. Reject the instant Petition under Section 7 filed by Airwil Infra Limited and pass necessary orders under Section 65(1) of Insolvency and Bankruptcy Code, 2016 levying exemplary penalty on the directors of Airwil Infra Limited;

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- iii. Tag this Company Petition of Airwil Vs Ascot bearing No. (IB) 2356 (ND) OF 2019 with the ongoing proceedings of Intellicity having CP No. IB-17(ND)/ 2019;
  - iv. Pass any such other further Orders in favor of the applicant as this Tribunal deems appropriate.
2. The facts mentioned in the application in brief are as follows:
- i. That the Applicant herein is a registered association of the majority of apartment buyers/financial creditors of M/s Intellicity Business Park Limited, the Holding Company of the Corporate Debtor, M/s Ascot Projects Pvt Ltd, who have booked/invested flats/shops/office/virtual space in a project being developed over the land owned by the Corporate Debtor.
  - ii. That the Respondent No.1, Corporate Debtor, M/s Ascot Projects Pvt Ltd ("Ascot") is a 100% owned subsidiary of the Respondent No.3, M/s Intellicity Business Park Pvt Ltd ("Intellicity"). It is also relevant to reiterate that Ascot is the company in whose favour the lease has been issued by the Greater Noida Authority for the land over which Intellicity is developing a residential project namely Intellicity, wherein the members of the Applicant association have booked their flats/shops/ office/ virtual space.
  - iii. That Intellicity is already undergoing separate CIR Process since 27.05.2019 pursuant to an Application under Section 7 of the Code being CP No. IB-17(ND)/ 2019 and the Respondent No. 4 is the successful Resolution Applicant whose resolution plan has been approved by the Committee of Creditors (CoC) of Intellicity and the same is pending approval before this Tribunal.
  - iv. That the Respondent No.4 in his Resolution Plan has proposed merger of Ascot with Intellicity thereby transferring the land of Intellicity project to Intellicity to ensure smooth



Construction/Completion of the project and to protect the interest of all Financial Creditors.

- v. That, in the above factual background, it is relevant to note that Respondent Nos. 5 to 10, Shri Sanjay Kumar, Shri Manoj Kumar Chaudhary, Shri Sameer Anil Sutar, Shri Anil Ram Sutar, Shri Kamal Aggarwal and Shri Vikas Bhagat are the ex-directors of Intellicity. It is also relevant to mention that ASCOT being 100% subsidiary of Intellicity, these respondents/ex-directors were in control of the said Company ASCOT which is the Corporate Debtor in the instant case.
- vi. That out of the aforesaid ex directors, Shri. Sanjay Kumar, Shri, Manoj Kumar Chaudhary and Shri Kamal Aggarwal are the directors of Airwil Infra Ltd which has filed the instant Petition under Section 7 of the Code against Ascot.
- vii. That, in view of the above, it is apparent that Intellicity, Ascot and Airwil are group companies and related parties and the Directors of Airwil being ex-directors of Intellicity were clearly in control of all the three related companies that is Airwil, Ascot & Intellicity.
- viii. That as a result of CIR Process of Intellicity, the ex-directors thereof were ousted from the management of the said company. Thereafter, in order to defeat, the resolution process of the said Company, the Ex-Directors of Intellicity initiated the instant proceedings against Ascot with a malicious and fraudulent intention for an alleged transaction between Airwil and Ascot which was supposedly undertaken under their own instructions by companies which were directly under their control.
- ix. Further, as the directors of Ascot were appointed by these ex directors, who were aware of the financial conditions of Ascot, acted in connivance with each other and entered into a sham settlement and issued post-dated cheques in favour of Airwil being totally aware, that the same will get dishonored. Further, as expected, when the said Cheques got dishonored, they



revived the instant Petition under Section 7, in order to commit a fraud upon this Tribunal and the financial creditors/Buyers of Intellicity Business Park. It is thus evident that the instant application has been filed fraudulently to defeat the ongoing CIRP of Intellicity and therefore, the action of the directors of Airwil/Airwil is squarely falling within the ambit of Section 65 of the Code which mandates this Tribunal to reject such applications and to impose a penalty on the persons, which seek/attempt to initiate such malicious and fraudulent proceedings.

- x. That the members of the Applicant have been requesting the Resolution Professional of Intellicity to apprise the aforesaid facts to this Tribunal and take necessary steps to expose the fraudulent and malicious intentions of the ex-directors of Intellicity/present directors of Airwil. However, the Resolution Professional of Intellicity has not taken any steps to protect the interest of the financial creditors/Buyers of Intellicity Business Park.
- xi. That most of the financial creditors/Flat buyers of the Intellicity have been waiting for their houses/ flats/ units since last 6-7 years being the victims of the fraud committed by the Ex-directors of Intellicity/Present directors of Airwil and grave prejudice and injury will be cause to them, if the resolution plan approved by the CoC is allowed to be rendered infructuous due to the instant application under Section 7 of the Code as this may cause hindrance to the merger of Land Owning Company/Ascot with the project developing company/Intellicity and without merger it is not possible to give proper resolution to the project Intellicity adversely effecting fate of about 1800 Homebuyers.
- xii. In view of the above, the Applicant Society/homebuyers of the Intellicity Business Park Limited comprising the majority of the



members of the CoC of Intellicity, are praying to this Tribunal to allow the Applicant to intervene in the present Application.

3. We have heard the Ld. Counsel for the applicant and perused the averments made in the application.

4. Ld. Counsel for the applicant has raised all the facts mentioned in the application.

5. He further submitted that the applicant of IB/2356/2019 in connivance with Corporate Debtor had entered into a sham settlement and issued post-dated cheques in favour of Airwil being totally aware, that the same will be dishonoured.

6. He further submitted, on this ground, the instance application has been fraudulently filed to defeat the ongoing CIR Process of Intellicity, whose Resolution Plan have already been approved by the CoC and pending for approval before this Adjudicating Authority.

7. He further submitted that therefore, action of Airwil is squarely within the ambit of Section 65 of the Code. Hence, the applicant may be permitted to intervene in IB/2356/2019.

8. In the light of submissions, we went through the application filed by the Airwil IB/2356/2019 and we notice that the applicant has filed this application under Section 7 of IBC, 2016 claiming themselves to be a financial creditor.

9. By filing this application, the applicant has prayed to implead them as a party in this proceeding. Therefore, at this juncture, we would like to refer to Section 7 of IBC, 2016 and the same is quoted below: -

**IBC Section 7-Initiation of corporate insolvency resolution process by financial creditor.**

**(1) A financial creditor either by itself or jointly with other financial creditors other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before**



the Adjudicating Authority when a default has occurred. Provided that for the financial creditors, referred to in clauses (a) and (b) of the sub-section (6A) of the section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten percent. of the total number of such creditors in the same class, whichever is less:

Provided further that for the financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten percent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission.

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Explanation.—For the purposes of this sub-section, 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 of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that—



(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.



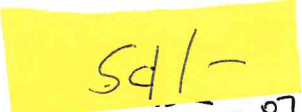
10. A bare perusal of the provision show, in order to trigger the Section 7 of IBC, 2016, the Adjudicating Authority have to examine only two facts; whether there is Financial Debt and there is any default of payment. The moment these two facts are established by the applicant and it is further found the application is complete under Section 7(2) IBC 2016 and there is no disciplinary proceeding pending against the proposed IRP, then the Adjudicating Authority under Section 7(5) IBC, 2016 has no option but to admit the application.


11. We further notice that under Section 7 of IBC, 2016, the third person is not a necessary party only a financial creditor and the Corporate Debtor are the necessary party in this proceeding.

12. We further notice that the applicant has filed this application under Section 60(5) of IBC, 2016. Admittedly, the **(IB) 2356 (ND)/2019** is not admitted as yet. Therefore, in our considered view, the applicant is not a necessary party even their prayer cannot be allowed under Section 60(5) of the IBC, 2016.

**13.** For the reason discussed above, we are unable to allow the prayer of the applicant and permit them to participate/intervene in the proceeding of Company Petition No. **(IB) 2356 (ND)/2019**.

**14. Accordingly, the prayer of the applicant is hereby rejected and application i.e IA/739(ND)2021 stands dismissed.**

 Sd/-  
K. K. VOHRA 23.07.21  
Member (T)

 Sd/-  
ABNI RANJAN KUMAR SINHA 23.07.2021  
Member (J)