BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, NEW DELHI

C.P. NO.IB-1383(PB)/2018

IN THE MATTER OF:

Ms. Priyanshi Arora ....Petitioner

Vs.

M/s Vardhman Buildtech Pvt. Ltd. ....Respondent

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on: 29.01.2019

Coram:
CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

DR. DEEPTI MUKESH
Hon'ble Member (Judicial)

PRESENTS:

For Petitioner : Mr. Vaibhav Tyagi, Adv.
For Respondent : Mr. Sukrit Kapoor & Ms. Shuchi Sejwar, Advs.

ORDER
M.M.KUMAR, PRESIDENT

The Petitioner claiming to be financial creditor has filed the instant Petition 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 to trigger Corporate Insolvency Resolution Process in respect of respondent M/s Vardhman Buildtech Private Limited (for brevity the 'corporate debtor').

2. The Corporate Debtor – M/s Vardhman Buildtech Private Ltd. was incorporated on 11.10.2007 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN U45400DL2007PTC169313.

3. It is submitted by the Petitioner that it had granted a loan facility for an amount of Rs. 30,00,000/- to the respondent – corporate debtor vide loan agreement ('First Agreement') dated 04.08.2015 **(Annexure A-1)** and another loan facility for an amount of Rs. 50,00,000/- vide loan agreement ('Second Agreement') dated 04.08.2015 **(Annexure A-6)**. The said loans had to be repaid after 1 year effective from 08.07.2015 and 13.07.2015 carrying interest @27% per annum on a quarterly basis.

4. Further the Petitioner states that in pursuance of the said agreements the respondent- corporate debtor issued post dated cheques for the payment of interest and the copy of the same is annexed **(Annexure A-2(Colly))** and **(Annexure A-7(Colly))**

respectively. Most of the cheques issued were dishonoured and the return memos of the same have been placed on record **(Annexure A-4)** and **(Annexure A-9)**.

5. It is further submitted by the petitioner that the respondent-corporate debtor had entered into two Builder Buyer Agreements dated 04.08.2015 and offered the properties as collateral security for the loan advanced in its favour. The said agreements have been attached **(Annexure A-3)** and **(Annexure A-8)**.

6. The precise case of the Petitioners is that the total amount in default due and payable by the corporate debtor pursuant to both the said loan agreements as on 25.09.2018 is Rs. 1,46,07,500/- (including interest @27% p.a.).

7. The Financial Creditor has proposed the name of Mr. Manish Gupta as the Insolvency Professional with the address E-62, Lajpat Nagar – II, New Delhi. His registration number is IBBI/IPA–001/IP–P01131/2018-19/11826. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

8. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the petition the Financial Creditor has given the details of the amount claimed in default and the date of the default.

9. A reply to the petition has been filed by one Mr. Lokesh Sharma, being the Authorized Signatory of the Respondent-Corporate Debtor, who has been given authority vide Board Resolution dated 19.09.2018 and also a Rejoinder to the Reply has been filed by the Petitioner-Financial Creditor.

10. In the Reply the Respondent-Corporate Debtor has raised objection to the petition and has stated that there is no 'default' on part of the corporate debtor and hence the petition is not maintainable. On that basis it is sought to be argued that there is no amount due and payable to the Petitioners in whole or in part as the parties have arrived at a settlement and pursuant to the same the respondent-corporate debtor had allotted four apartments in place of the initially agreed three apartments.

The petitioners have outrightly denied the assertion of the corporate debtor and have submitted that there has been no such allotment of the flats nor the loan agreements were revised at any point. There is no such document on record placed by the respondent-corporate debtor that substantiates the allotment of the units.

11. As a sequel to the aforesaid discussion and the material placed on record it is confirmed that the petitioner-financial creditor had disbursed money to the respondent-corporate debtor and subsequently it was secured allotting three units to the financial creditor. Though a considerable long period has lapsed even the principal amount disbursed has not been repaid by the respondent-corporate debtor as per the provisions of the loan agreements nor have the apartments given as security been completed till date. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one lakh. Thus, the petition warrants admission as it is complete in all respects.

12. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate

Insolvency Resolution Process stand fulfilled and accordingly the present petition is admitted.

13. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in our Order dated 27.11.18 rendered in the of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB-1039(PB)/2018).

14. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.

15. As a sequel to the above discussion, this petition is admitted and Mr. Manish Gupta is appointed as the Interim Resolution Professional (Details stated in para 7 above).

16. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.

17. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee 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.

18. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Manish 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 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.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

-Sd-

(M.M.KUMAR) 29.01.2019

PRESIDENT

-Sd-

(DEEPTI MUKESH)

MEMBER (JUDICIAL)

29.01.2019

(VIDYA)