



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1
CP(IB)/26(MP)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Nirmal Kumar Jain & Ors
V/s
Pushp Ratna Realty Pvt Ltd

.....Applicants

.....Respondent

Order delivered on 16/10/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicants :
For the Respondent :

ORDER

CP(IB)/26(MP)2024

This case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria

Sd/-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)



**THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 26 of 2024

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

Nirmal Kumar Jain & Ors.

163, Anoop Nagar
Indore-452001

Financial Creditor

Versus

Pushp Ratna Realty Private Limited

G-1, Pushparatan Castle
12, Kanchanbag, South Tukoganj
Indore-452001

Corporate Debtor

Memo of Parties

Nirmal Kumar Jain

163, Anoop Nagar
Indore-452001

Petitioner No.1

Richard Shreedhar & Pratima Shreedhar

(Joint Allotees)
Khajrana Chouraha
Near Little Flower School
H. No. RH-34
Classic Purnima Estate
Indore-452016

Petitioner No.2

Anil Kumar Sharma

Cg-11s-74 Vijay Nagar
Indore-452007

Petitioner No.3

Rekha Chouhan

B-6, Veena Nagar
Sukhliya, Indore- 452010

Petitioner No.4

Sanjay Jain

BMD Colony, LNJ Nagar
Mordi, Mordiupli, Banswara
Rajasthan- 327001

Petitioner No.5

Chandraprakash Jain

16/6, Manoramaganj
Galli No.6, Indore -452001

Petitioner No.6



Vishnu Kumar Joshi
11, Kalindi Kunj Colony
Near Scheme 140
Pipliyahana, Indore -452001

Petitioner No.7

Sonal Choradia
24153, Prestige Jindal City
Building 2, Tower 4
Manjunatha Nagar
Tumkur Road Bangalore North
Bengaluru- 560073

Petitioner No.8

Pramod Bhawsar & Rekha Bhawsar
(Joint Allotees)
House No.361 FH
Scheme No.54
Indore-452010

Petitioner No.9

Surendra Kumar Farkya & Vimla Surendra Farkya
(Joint Allotees)
Scheme No.1, Road No.2
Saraswati Niketan New Colony
Mandsaur, MP- 458001

Petitioner No.10

Versus

Pushp Ratna Realty Private Limited
G-1, Pushparatan Castle
12, Kanchanbag, South Tukoganj
Indore-452001

**Respondent
/Corporate Debtor**

Order pronounced on: 16.10.2024

**Coram: Hon'ble Mrs. Chitra Hankare, Member (J)
Hon'ble Kaushalendra Kumar Singh, Member (T)**

Present:

For the Applicant: Ld. Adv. Mr. Nipun Singhvi
a.w. Ld. Adv. Mr. Mayur Jugtawat
For the Respondent: Ld. PCS Mr. Pratik Tripathi

JUDGMENT

1. The instant application was filed on 22.05.2024 by homebuyers through Nirmal Kumar Jain (Applicant), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**CODE**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against Pushp Ratna Realty Private Limited (Respondent) for



the default amount of Rs. 3,68,72,387/- (Principal- Rs.1,14,90,000/- & Interest- Rs.2,53,82,387/-).

2. The respondent is a private limited company incorporated under the provisions of the Companies Act, 1956 and is in the business of real estate activities.

3. The averments made by the homebuyers/applicant in its application and as argued by the learned counsel are summarised as under:

(i) Initially an application [CP(IB) 83 of 2023] under section 7 against the same respondent was filed by some homebuyers which was disposed of as withdrawn vide order dated 25.04.2024 of this Adjudicating Authority with a liberty to file fresh application. Therefore, the present application is filed.

(ii) The Town and Country Planning (TNCP) approved map on 21.10.2008 on 2.33 hectare of land of the respondent. The Municipal Corporation of Indore on 02.12.2010 approved building plan with a buildup area of 66058 sq. mtrs. The applicants disbursed the amount for the project – “Lush by Pushpratna” situated at Kanadia Road, AB Bypass, Indore, Madhya Pradesh. The respondent has issued the allotment letters in favour of the applicants. However, TNCP on 04.07.2011 revoked the permission granted on 21.10.2008 on 2.33 hectare of land.

(iii) The Municipal Corporation of Indore on 30.01.2014 approved 1st building permission. Thereafter it has further approved building plan time to time. Pursuant to the introduction of MPRERA by the MP Government, the respondent registered the said project with MP RERA. As per MP RERA



official website, the proposed completion date for the project was 31.12.2019. However, there has been no movement towards construction of the said project.

(iv) Further, the certified copy as obtained by the applicant from the RERA Authority demonstrates that letters/ notices dated 06.03.2021 & 03.01.2023 were issued by the RERA Authority to the respondent. The said letters/ notices show that there is continuing default on the part of the respondent.

(v) On 04.07.2023 Municipal Corporation of Indore suspended building permission due to complaint from son of a shareholder of the respondent- Mr.Rajiv Agnihotri. Subsequently, the Indore Municipal Corporation seized the subject land due to non-payment of property tax by the respondent.

(vi) The respondent has submitted details in RERA filings which reflects that out of 140 units 77 units are sold. The total number of applicant are 10. Therefore, the number of applicants is beyond the required threshold of 10% of 77 sold units. Moreover, as an allottee, Applicant No.8 has 5 allotments and therefore, applicants are total 14 allottees.

(vii) The respondent has also acknowledged the said debt in its audited balance sheet from 31.03.2014 to 31.03.2020 under the head "Other Current Liability" as Advances from customers. Moreover, the respondent issued allotment letters in the year 2014 & few in 2016 to the homebuyers, wherein the respondent has stated that the construction is expected to be completed within a period of 30 months. Later, the respondent has also given Account confirmation in the year 2017, 2019 & 2021.



(viii) Thus all documents i.e. Account confirmations, allotment letters, audited balance sheets of the respondent, Filings with RERA Authority by the respondent, suffices that the present application is within limitation. Further, the applicant has also filed record of default of the respondent with the Information Utility (NeSL) and the same is deemed to be authenticated by the NeSL.

(ix) However, till the date of filing the present application the respondent failed to deliver the flats to the homebuyers.

4. The objections raised by the corporate debtor/respondent in its reply dated 26.07.2024 and as argued by the learned counsel for the respondent are summarised as under:

i. The applicant has not placed on record any document such as bank statement or agreement to demonstrate that the applicants have made the advance payment to the respondent and that the same is outstanding. The applicant has relied only upon the allotment letter which cannot be considered as evidence of default. The applicant states that they have made the payment to the respondent through bank, in that very case the applicant should have placed on record their bank statement to demonstrate the disbursement of the said debt to the respondent.

ii. The confirmation of account placed on record by the applicant is disputed since the same was taken by the applicant in some other circumstances. Moreover, the said confirmation & allotment letter does not specify the details with regards to the amount paid by the applicant against the specific flat as mentioned in the application.



iii. The date of allotment letter and the date of disbursement of the amount by the applicant as mentioned in the application is mismatched. According to the applicant the payment was made before the issue of allotment letter, however, the allotment letter does not specify the amount which has been given by the applicant to the respondent.

iv. The applicant stated that the present application is filed because the respondent failed to comply the conditions as mentioned in the allotment letter; however, the applicant has not stated that they have also not complied with the conditions mentioned in the allotment letter.

v. The applicants have mentioned the required amount to be given by the applicants to the respondent as per the allotment letter; however, no document has been placed on record to demonstrate that the said amount was disbursed by the home buyer.

vi. As per the allotment letter one of the condition was such that the construction was to be completed within 30 months and thereafter on complete payment from the applicant the possession of the allotted apartments was to be given. The relevant condition is reproduced as under:

The construction is expected to be completed within period of approximately 30 months. You shall be put in possession of the allotted apartments on your paying the entire basis and other charges as aforesaid.

However, the Petitioner No.1, 4, 9 & 10 has not complied with the conditions as mentioned in the allotment letter as they have not made payment according to the allotment letter condition. Since the home buyers have not fulfilled the conditions



stipulated in the allotment letter, the respondent is not liable to give possession to the home buyers unless the home buyers comply with the said conditions. Therefore, there is no default on the part of the respondent. Moreover, the remaining applicants have also not deposited the entire sale consideration and therefore, no cause of action arises on their part also.

vii. Another condition as per the allotment letter was completion of the project subject to availability of materials. The said condition is reproduced as under:

The completion of project subject to availability of cement, steel, water and other township materials and subject to strike, civil commotion, or any act of God, such as Earthquake, flood or any other natural calamity and restrictions imposed by local or Sanctioning or District Authorities or other causes beyond the control of company.

The Madhya Pradesh Real Estate Regulatory Authority (RERA) suspended the project vide its order dated 12.06.2019. However, the said suspension was set aside by RERA vide its order dated 05.03.2021 and the said project was restored. Meanwhile, Covid-19 had its effects and therefore, the project could not be completed on time due to non-availability of the material for construction. The respondent for the purpose of revival of the project, tried to take relevant extensions/renewals and approvals from RERA which is evident from the notices issued by RERA in 2021 & 2023. This shows attempt by the respondent to complete the project if sufficient time and money is granted.

viii. The present application is filed by the applicant on the basis of non-granting possession by the respondent in accordance with the allotment letter. The allotment letter to applicant 1, 2, 3 4, 6, 7 & 10 was issued in 2014 and to applicant 5, 8 & 9 was issued in 2016.



Since the date of completion was 30 months from the date of allotment letter, the cause of action for applicant 1, 2, 3 4, 6, 7 & 10 would have arose in 2017 and for applicant 5, 8 & 9 would have arose in 2019 and therefore the limitation period for the respective cause of action would be 2020 & 2022. Thus the present application is barred by limitation.

ix. The proviso to section 7 stipulates the requisite minimum threshold of allottees eligible to initiate insolvency proceedings. It mandates that either a minimum of one hundred allottees from 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, are eligible to file a petition for initiating the insolvency resolution process. However, the applicant has not placed on record any document from where it can be determined that the said requirement is complied with.

5. The applicants through its rejoinder dated 26.07.2024 have submitted that they have made the payment in accordance with the terms as mentioned in the allotment letter. Moreover, the construction was stalled since 2014-15 and therefore, the respondent should not expect the home buyers to make any further payments; the respondent has also never demanded the home buyers to make further payments since it failed to undertake construction. It is further stated that the respondent has acknowledged and treated the applicant as allottees; and the amount disbursed by the applicant is reflected in the audited balance sheet of the respondent; further based upon the RERA filings made by the respondent it is evident that out of total 140 units 77 are sold and therefore, the application filed by 10 applicants is beyond the required threshold of 10% of 77.



6. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record. It is noted that the applicants are home buyers and earlier to an application [CP(IB) 83 of 2023] against the same respondent was filed by some home buyers which was withdrawn with a liberty to file fresh application as some of the applicants/allottees in that application were barred by limitation to file their application.

7. It is noted that the applicants herein have enclosed a table detailing therewith the payments made by each of the applicant date wise towards the project of the respondent company named as “Lush by Pushpratna” situated at Kanadia Road, AB Bypass, Indore, Madhya Pradesh. For ready reference the relevant details as contained in the table at Annexure-4 of the application is given hereunder:

Petitioner No.	Name	Date	Principal Amount	Interest From date of disbursement @ 8% per annum as on 30.04.2024	Total amount
1	Nirmal Kumar Jain	12.12.10	2,00,000	5,62,164	7,62,164
		29.12.14	14,10,000	28,99,594	43,09,594
	Total		16,10,000	34,61,759	50,71,759
2	Richard Shreedhar & Pratima Shreedhar (Joint Allotees)	07.02.11	1,00,000	2,77,715	3,77,715
		17.04.11	2,50,000	6,84,232	9,34,232
		12.11.14	6,00,000	12,46,192	18,46,192
	Total		9,50,000	22,08,140	31,58,140
3	Anil Kumar Sharma	12.12.10	2,00,000	5,62,164	7,62,164
		29.12.14	1,00,000	2,05,645	3,05,645
		12.02.15	11,00,000	22,40,675	33,40,675
	Total		14,00,000	30,08,484	44,08,484
4	Rekha Choudhan	07.10.13	9,50,000	21,47,725	30,97,725
		07.10.13	2,50,000	5,65,191	8,15,191
	Total		12,00,000	27,12,916	39,12,916
5	Sanjay Jain	07.03.16	2,00,000	3,75,229	5,75,229
		14.05.16	16,80,000	31,06,934	47,86,934
	Total		18,80,000	34,82,163	53,62,163
6	Chandraprakash Jain	15.07.14	2,00,000	4,26,072	6,26,072



		17.03.14	18,00,000	39,33,182	57,33,182
	Total		20,00,000	43,59,253	63,59,253
7	Vishnu Kumar Joshi	03.03.11	3,00,000	8,28,828	11,28,928
		15.10.10	3,00,000	8,53,651	11,53,651
	Total		6,00,000	16,82,579	22,82,579
8	Sonal Choradia	24.08.10	5,000	14,385	19,385
		26.08.10	1,00,000	2,87,574	3,87,574
		27.08.10	1,00,000	2,87,514	3,87,514
		27.08.10	1,00,000	2,87,514	3,87,514
		28.08.10	1,00,000	2,87,453	3,87,453
		08.09.10	95,000	2,72,446	3,67,446
		07.10.14	2,00,000	4,18,571	6,18,571
	Total		7,00,000	18,55,456	25,55,456
9	Pramod Bhawar & Rekha Bhawsar (Joint Allotees)	12.12.10	2,00,000	5,62,164	7,62,164
		01.10.14	4,00,000	8,38,205	12,38,205
	Total		6,00,000	14,00,370	20,00,370
10	Surendra Kumar Farkya & Vimla Surendra Farkya (Joint Allotees)	04.04.11	1,00,000	2,74,446	3,74,446
		01.11.14	4,50,000	9,36,821	13,86,821
	Total		5,50,000	12,11,267	17,61,267
	Grand Total		1,14,90,000	2,53,82,387	3,68,72,387

8. It is further noted that the respondent has issued the allotment letters and account confirmation in favour of the applicants onto the payments made by them as home buyers/allotees. For ready reference the details such as the flat number, date of allotment letter and dates of account confirmation as issued by the respondent to the respective applicants/allotees as provided in the application is given hereunder:

Petitioner No.	Name of the Petitioner	Flat No.	Allotment Letter Date	Total Payment Made	Date of Account Confirmation-1	Date of Account Confirmation-2	Date of Account Confirmation-3
1	Nirmal Kumar Jain	F-101	07.11.14	16,10,000	09.11.21	23.10.19	16.06.17
2	Richard Shridhar	C-201	12.11.14	9,50,000	09.11.21	23.10.19	16.06.17
3	Anil Sharma	D-207	07.11.14	14,00,000	09.11.21	23.10.19	16.06.17
4	Rekha Chouhan	D-505	23.04.14	12,00,000	09.11.21	23.10.19	16.06.17
5	Sanjay	F-	18.05.16	18,80,000	09.11.21	23.10.19	16.06.17



	Jain	301					
6	Chandra Prakash Jain	H- 302	29.03.14	20,00,000	09.11.21	23.10.19	16.06.17
7	Vishnu Kumar Joshi	C- 302	06.05.14	6,00,000	09.11.21	23.10.19	16.06.17
8	Sonal Choradiya	D- 403	15.11.16	5,00,000	09.11.21	23.10.19	16.06.17
	Sonal Choradiya	A- 602	15.11.16	50,000	09.11.21	23.10.19	16.06.17
	Sonal Choradiya	A- 601	15.11.16	50,000	09.11.21	23.10.19	16.06.17
	Sonal Choradiya	A- 603	15.11.16	50,000	09.11.21	23.10.19	16.06.17
	Sonal Choradiya	A- 604	15.11.16	50,000	09.11.21	23.10.19	16.06.17
9	Rekha Bhawsar	F- 402	20.07.16	6,00,000	09.11.21	23.10.19	16.06.17
10	Surendra Kumar Farkiya	E- 208	28.03.14	5,50,000	09.11.21	23.10.19	16.06.17

9. On perusal of these allotment letters, which are placed on records, it is noted that the said project was to be constructed within 30 months and thereafter possession was to be given to these allottees on payment of entire amount towards the cost of flats. However, we find that the applicant had made part payment only, since the construction was stalled. We also note that the respondent also never raised any demand to these applicants/ allottees to make balance payment and or taken any step to cancel their allotments on the ground of non-payment of the due instalments. For ready reference, one of the allotment letter & Confirmation of accounts issued by the respondent to the home buyer, as annexed in the application are placed hereunder:



Annexure 12

ALLOTMENT LETTER



To,
Mr. Richard Shreedhar & Mrs. Pratima Shreedhar
RH 34 Classic Punima Estate ; Indore.

Date : 12/11/2014

Ref : Allotment of 3 BHK , 2nd Floor , Block C, Apartment No.201, in "Lush", situated at Kanadia Road , AB Bypass , Indore., M.P., India.

Dear Sir /Madam,

Pursuant to your booking and request for a 3 BHK flat on 2nd floor of block C in Lush , Apartment No. 201, in our Township being developed on Kanadia Road, AB Bypass, we hereby Provisionally allot you, 3 BHK in Block C, Apartment No. 201, Total salable area of 1388 sq. ft. on the following terms & conditions.

- You shall pay a basic price of Rs. 2350000/-
- The aforesaid basic price shall be paid in installments as under:

SR. NO	PAYMENT SCHEDULE
1	25 % on Booking
2	15 % on Commencement of Work
3	5 % on Plinth Level
4	5 % on first slab
5	5 % on second slab
6	5 % on third slab
7	5 % on fourth slab
8	5 % on fifth slab
9	5% on sixth slab
10	5 % on seventh slab
11	5 % on brick work commencement
12	5 % Plaster
13	5 % on Flooring
14	5 % Possession

In addition to the basic price, you shall also pay the other charges as per details given below before possession:-

- External Maintenance deposit (sinking fund) Rs. 25000/-
- Advance Monthly maintenance charges Rs 1.50 per sq ft per month or as decided by the resident welfare society from time to time.(for 2 yrs.)
- Service Tax, VAT and other taxes as Applicable.

Off. : G-1, Pushparatna Paradise, 9/5, New Palasia, Indore (M.P.) 452001 - Tel. : 0731 - 2549339 - Email : indore.builders@gmail.com

- Registration charges & Stamp Duty as applicable.
- Parking Charges 75000/- per car.
- S.T.P Charges Rs.25000/-
- Club membership Charges 50000/-
- MPEB Charges 45000/-

- The construction is expected to be completed within a period of approx. 30 Months. You shall be put in possession of the allotted Apartment on your paying the entire basic price and the other charges, as aforesaid.
- The completion and transfer of the said 3 BHK Apartment 2nd Floor Block C, No. 201, by the Company is subject to the availability of cement, steel, water and other Township materials and subject to strikes, civil commotion or any act of God , such as Earth quake , floor or any other natural calamity and restrictions imposed by the local or Sanctioning or District Authorities or other causes beyond the control or District Authorities or other causes beyond the control of the Company.
- The allotted area is subject to a change of +/- 5%.
- You shall be required to sign and execute a sale agreement with the Company containing detailed terms and conditions for the sale of the said 3 BHK in Block C No. 201, as and when desired by the Company.
- The allotment is in accordance with the terms & conditions laid down herein and the allottee has accepted the same after reading, understanding and agreeing to the same and further undertakes to abide by the said terms and conditions.
- The boundaries for the said apartment are as under :

East:- Stair Case / Lobby	West:- Township Road
North:- Flat No.202	South:- Township Road

Yours truly,

 Authorized Signatory,
 Director.

I/ We Accept & confirm what is stated above

Date:



Authority from 19.02.2018 till 31.12.2019, according to which the project was to be completed till 31.12.2019. In case, the project was not expected to be completed by that date, the promoter was required to submit an application for extension prior to that date. However, the project was neither completed by the said date nor any application was filed before RERA within the given time limit for seeking extension of the period, due to which the project registration was suspended on 12.06.2019 itself. As a result of suspension of the project, ban was imposed on taking any new bookings as well as on registration of sale deed. Further, bank account of the promoter was also seized. Pursuant to the said suspension the respondent filed an application before RERA seeking extension of time to complete the said project. Subsequently, RERA vide its order dated 05.03.2021 set aside the suspension order of the project and also restored the project from suspension.

11. It is also noted from RERA order dated 03.01.2023 that subsequent to the project registration the respondent failed to publish the financial information for the quarter ending March 2021 and even after reminders and show cause notice, the respondent did not appear before the RERA. Therefore, an ex-parte action was taken against the respondent vide order dated 15.12.2022 and for violation of section 37 of the Act by the promoter, RERA vide its order dated 03.01.2023 imposed penalty on the promoter of the respondent along with the direction that no new booking in the said project, no issuance of allotment letter to any new allottee, no execution of sale deed in favour of new allottee and no creation of interest for any third party in relation to the said project can be done by the promoter without prior permission from RERA or until any other order is given by RERA Authority.



12. It is further noted that one of the applicant namely Nirmal Kumar Jain had sent a notice to the respondent on 03.05.2024 seeking answer regarding the compliances made under RERA; action taken post expiry of the date of completion of the project i.e. 31.12.2019; steps taken to resolve issues with respect to completion of project. In response to which the respondent through letter dated 12.05.2024 replied that the company is facing certain difficulty and is unable to comply with the relevant laws of RERA; however, the respondent ensured to comply the same.

13. It is further noted that an Intervention Application (Inv. P/8 of 2024) and Interlocutory Application (IA 371 of 2024) was filed by Mr. Rajeev Agnihotri seeking direction to array him as respondent in the present application to provide an opportunity to defend his family's interest (as shareholders) in the respondent company and to object the maintainability of the present application under section 7.

This Adjudicating Authority vide its order dated 11.09.2024 had dismissed both the applications as not maintainable holding that the individual shareholder does not have any locus to file such application. It was also observed that the issue of limitation as pointed out by the said intervener in IA 371 of 2024 would in any case be examined by the Adjudicating Authority in section 7 application. It was also noted in the said order that there appears dispute between the shareholders and prima-facie that could be a matter of oppression & mismanagement. For ready reference the relevant paragraphs of the said order are reproduced as under:

“3. Both the applications are filed and listed for hearing at the stage when the said company petition C.P.(IB)/26(MP)2024 has already been heard in part. Nevertheless, the learned counsel, Mr. Manoj Munshi was allowed to put forth the issue as raised by the applicant/intervener in



these applications. In the context, the learned counsel, Mr. Manoj Munshi submitted that the present applicant/intervener and his family members are the shareholders in the corporate debtor Pushp Ratna Realty Pvt Ltd; and that they were allotted 50% of the shareholding in lieu of the land that the applicant/intervener had transferred in the company for constructing a township thereon. In this regard he further submitted that the applicant/intervener and his family members were the owner of 2,01,858 sqft. precious residential land in Khajrana, Indore and had intended to construct a township thereon; that the applicant intervener had no experience or exposure in the real-estate business and, therefore, he approached one Mr. Ashok Kumar Jain for purpose of construction of the township; that as per the Memorandum of Understanding ('MoU') applicant/intervener and his family members had agreed to incur all construction cost and expense thereon whereas Mr. Ashok Kumar Jain, who is the director in the respondent corporate debtor, was not required to invest any money in the project but was entitled to receive only service charges @ Rs. 189/- per sqft. of the salable area and if the project prolonged beyond five years then service charges was payable @ Rs. 12.60% of the selling price. He also submitted that as per the MoU.

3.1 The Learned Counsel Shri Manoj Munshi further submitted that Mr Ashok Jain had a newly incorporated company (date of incorporation 17.06.2008 in the name of Pushpratna Realities Pvt Ltd) with paid up capital of Rs 5 Lakh distributed among the family members of Mr Ashok Jain; and that as per the understanding between them, he had transferred entire land (201858 sq ft) in the name of company in consideration of allotment of 50000 equity shares with face value of Rs 10/- and premium of Rs 690/-; that the market value of land at that time was around Rs 3.27 crores and as a result both the families [applicant / intervener family and Mr Ashok Jain & his family] held 50000 equity shares each in the said company. It was stated that the applicant/ intervener agreed to this arrangement without understanding the repercussion thereof.



3.2 *The Leaned Counsel Mr Manoj Munshi further submitted that the applicant/intervener had made an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 in the Hon'ble High Court of M. P. Bench at Indore for appointment of the Arbitrator for adjudication of disputes between the parties in terms of Clause-20 of the MoU; that the Hon'ble High Court vide its order dated 23.08.2021 passed in AC No. 09/2020 appointed Hon'ble Shri Justice K.K. Lahoti formal Acting Chief Justice of M.P. High Court as sole Arbitrator to adjudicate the dispute between the parties; that the sole Arbitrator as appointed by the Hon'ble High Court could not pass the award within the limitation as provided under Section 29-A of the Arbitration and Conciliation Act, therefore, the mandate got terminated de-jure, and resultantly, the applicant has filed an application under Section 29-A of the Act before the Hon'ble High Court for extension of time to enable the sole Arbitrator to pass the award which is still pending.*

4. *In the aforesaid background, the learned counsel, Mr. Manoj Munshi pleaded for directing the petitioners/homebuyers in the said C.P.(IB)/26(MP)2024 to array the intervener as a respondent to provide an opportunity to defend their interest in the respondent company and for that they have placed their objections in IA/371(MP)2024, opposing admission pf section 7 petition filed by the homebuyers, wherein it is stated that petitioners/homebuyers in section 7 petition have mis-stated the date of default with the ulterior motive to bring their petition within the limitation; that as per the allotment letter issued to the homebuyers, the corporate debtor had agreed to handover the possession of the constructed flat within thirty months which had expired before any acknowledgments were given by the corporate debtor. It is also submitted that the earlier company petition C.P.(IB)/ 83(MP)2023 filed by the homebuyers against the corporate debtor was withdrawn as they realized that their case was barred by limitation. In that application, the homebuyers had placed an acknowledgment that was issued to them on 09.11.2021 and now that in the present application which has been filed by the homebuyers, (some of them now different from earlier*



applicants) they have managed few more acknowledgments in connivance with the corporate debtor which is under hand in glove with the applicant/homebuyers. It is also pointed out that the acknowledgments dated 16.06.2017 and 23.10.2019 which are now filed in the present petition was not filed in the earlier petition and thereby it is alleged that these acknowledgments dated 16.06.2017 and 23.10.2019 have been back dated with connivance between the proxy homebuyers and corporate debtor to cause prejudice to the applicant/intervener who holds 50% share in the company.

5. We have heard learned counsels appearing from both sides and perused the relevant records. During the course of the argument, it was observed that the present petition C.P.(IB)/26(MP)2024 is filed by the homebuyers under Section 7 of the IBC, 2016 for initiating the insolvency proceedings against the said corporate debtor and as such the respondent/corporate debtor is to be represented by the present management having control over the company and individual shareholder would not have any locus-standi. The learned counsel for the petitioner/homebuyers and the corporate debtors, who were present on advance service of these applications, also objected to the locus standi of the applicant/intervener. They also submitted that they did not intent to file any reply as the application filed by the applicant/intervener requires to be dismissed forthwith.

6. We also noted that the applicant/intervener are raising the issue for objecting the admission of Section 7 petition primarily on the ground that the said application of homebuyers is barred by limitation. We also note that the issue of limitation in any case is to be examined while taking decision for admission of the Section 7 petition and is being looked into in the proceedings of the company petition CP(IB)/26(MP)2024.

7. As such we are of the view that applicant/intervener is not required to be heard on the issue of limitation as the same will have to be examined even otherwise by this Adjudicating Authority while deciding



the said Section 7 petition. Further there appears to be a dispute between the shareholders. Prima facie it appears to be an oppression & mismanagement matter and the submissions of the applicant/ intervener that he has also moved an arbitration as well would have no bearing to section 7 proceedings; and for that reason also the applicant /intervener even being shareholder does not have any locus-standi in the matter of Section 7 petition and, therefore, cannot be allowed to be impleaded as respondent in Section 7 petition and in view thereof both the applications are not maintainable.”

14. It is also noted that after the present application under section 7 was heard and reserved for order, another Interlocutory Application (IA 386 of 2024) has been filed by the shareholder of the respondent company namely Jayshree Agnihotri (mother of Shri Rajeev Agnihotri) stating that the present application under section 7 is a proxy application sponsored by Mr. Ashok Jain and his group who control the affairs of the company. Once again in this application also it is alleged that the respondent had issued back dated acknowledgement letters dated 16.06.2017 & 23.10.2019 to the 10 home buyer acting in collusion with them subsequent to the withdrawal of the first application [CP(IB) 83 of 2023] to bring the present application under section 7 within the limitation period. It is also stated therein that Mrs. Jayshree Agnihotri, being 50% shareholder, looking to conspiracy and connivance between the present board of directors and the applicant homebuyers, is willing to discharge the liabilities as claimed by the applicant homebuyers of section 7 petition within 30 days to save the respondent company from CIRP. Through that application the direction of this Adjudicating Authority is sought to direct the applicant homebuyers to accept the amount of their dues towards respondent company from Mrs. Jayshree Agnihotri and thereby, to dismiss the present section 7 petition.



However, the said IA through a separate order of even date is also being rejected on the ground that in the absence of any documentary evidence, based upon her assertion, it cannot be inferred/concluded that the present section 7 application is filed by the applicant / allottees in collusion with the respondent. Rather on perusal of the documents as enclosed with section 7 petition, it can be inferred that the respondent indeed had raised the funds from the applicant allottees under a real estate project and as such the payment so made by these applicants fall within the meaning of 'financial debt' as defined under section 5(8)(f) read with the explanation given thereunder in clause (i) & (ii); however the respondent corporate debotor has failed to complete the construction of the said real estate project. The financial debt still exists and as such the applicant allottees as home buyers have the right to file the present application under section 7 of the Code. Furthermore, in the matter of section 7 petition, the direction to the promoter and/or shareholder for discharging their liability or direction to the petitioners to accept their dues from such promoters / shareholders cannot be issued and the promoter and/or shareholders are at liberty to make any settlement with their creditors; and as such no such direction as prayed for by Mrs. Jayshree Agnihotri in the said IA 386 of 2024 could be made in the matter of section 7 petition.

15. Considering the above, we find that the respondent has defaulted in giving the possession of the flats as allotted to the home buyers. The applicant disbursed the amount to book the flats in the project of the respondent on various dates between the years 2010 to 2016 against which the allotment letters were issued by the respondent on different dates between the years 2014 to 2016 and the three Account Confirmation to 10 home buyers were also issued on 16.06.2017, 23.10.2019 & 09.11.2021 by the respondent.



We also find that the amount paid by the homebuyers are reflected under the head Other current liability as advances from customers (i.e. home buyers) in the audited balance sheets of the respondent for the financial years 2013-14 to 2019-20. Though the said balance sheets do not contain the list of customers (homebuyers) as regards the advance amount reflected under the head 'advance from customers', however the respondent has also not denied that these 10 applicants have not made any advance towards the real estate project and that the amount so reflected in the balance sheet does not include the payments made by these applicants. Rather, the respondent has by issuing the account confirmation statement, confirmed the payments made by the applicants to the respondent. Admittedly, the genuineness of account confirmation statement dated 09.11.2021 has not been questioned even by the intervener Shri Rajeev Agnihotri and/or the shareholder Smt. Jayshree Agnihotri in Inv P. 8 of 2024, IA 371 of 2024 & IA 386 of 2024 respectively. As such on considering the said account confirmation dated 09.11.2021 and the balance sheets together, it is inferred that the balances shown year after year in the balance sheet under the head advance from customer also includes the amount paid by these applicants as advance towards the real estate project of the respondent. Thus, we are of the view that these balance sheets for the financial years 2013-14 to 2019-20 constitute the acknowledgement by the respondent of the advance payment made by the applicants.

16. We note that as per the application the date of default for all the 10 applicants based upon the timeline given in the legal notice sent by the applicant to the respondent, based upon the date of reply of respondent to the legal notice or the date as per certified documents received from RERA are given as under:



Petitioner No.	Name of the Petitioner	Date of default as per legal Notice sent	Date of default from Reply of respondent to the legal notice	Date of default as per certified documents from RERA
1	Nirmal Kumar Jain	18.09.21	09.11.2021	28.03.2024
2	Richard Shridhar	16.10.21	09.11.2021	28.03.2024
3	Anil Sharma	20.09.21	09.11.2021	28.03.2024
4	Rekha Chouhan	19.08.21	09.11.2021	28.03.2024
5	Sanjay Jain	13.01.22	09.11.2021	28.03.2024
6	Chandra Prakash Jain	21.07.21	09.11.2021	28.03.2024
7	Vishnu Kumar Joshi	20.08.21	09.11.2021	28.03.2024
8	Sonal Choradiya	20.10.21	09.11.2021	28.03.2024
	Sonal Choradiya	20.10.21	09.11.2021	28.03.2024
	Sonal Choradiya	20.10.21	09.11.2021	28.03.2024
	Sonal Choradiya	20.10.21	09.11.2021	28.03.2024
	Sonal Choradiya	20.10.21	09.11.2021	28.03.2024
9	Rekha Bhawsar	05.10.21	09.11.2021	28.03.2024
10	Surendra Kumar Farkiya	15.10.21	09.11.2021	28.03.2024

Based on the above dates the learned counsel for the applicant had argued that the application is filed within 3 years from the date of default and as such the present application is not barred by limitation. Whereas, learned counsel for the respondent submitted that the default date would be as per the terms and conditions given in the allotment letter, whereby, the project was to be constructed within 30 months; that if the default date is taken into consideration as the date from 30 months from the issuance of the allotment letter, then the application would be barred by limitation. We have looked into the issue of limitation from the date of default based on the expiry of 30 months from the issuance of allotment letter also and we find that in respect to all these Applicant No.1 to 10, the 30 months' period expired between 2016-2019

The table below reflects the date of issuance of the allotment letter and the date of default based on the expiry of the 30 months' period:



Petitioner No.	Name of the Petitioner	Allotment Letter Date	Date of default based on the expiry of the 30 months period
1	Nirmal Kumar Jain	07.11.14	07.05.17
2	Richard Shridhar	12.11.14	12.05.17
3	Anil Sharma	07.11.14	07.05.17
4	Rekha Chouhan	23.04.14	23.10.16
5	Sanjay Jain	18.05.16	18.11.18
6	Chandra Prakash Jain	29.03.14	29.09.16
7	Vishnu Kumar Joshi	06.05.14	06.11.16
8	Sonal Choradiya	15.11.16	15.05.19
	Sonal Choradiya	15.11.16	15.05.19
	Sonal Choradiya	15.11.16	15.05.19
	Sonal Choradiya	15.11.16	15.05.19
	Sonal Choradiya	15.11.16	15.05.19
9	Rekha Bhawsar	20.07.16	27.01.19
10	Surendra Kumar Farkiya	28.03.14	28.09.16

It is evident from the table above that the date of default varies from 2016 to 2019; however, as stated herein above, the applicant has also enclosed the balance sheet for the financial year 2013-14 to 2019-20 and considering these balance sheets as an acknowledgement of the dues of these homebuyers, the limitation gets extended till 2023. Moreover, in view of directions of the Hon'ble Supreme Court in suo moto petition regarding limitation, the period from 15.03.2020 till 14.03.2021 is also excluded in computing the period of limitation. Thus, the present application having been filed on 22.05.2024, the same is within the limitation period, even without considering the acknowledgement dated 16.06.2017 & 23.10.2019 issued by the respondent.

17. Moreover, the reply dated 12.05.2024 of the respondent to the applicant categorically states that the respondent failed to comply with the relevant laws of the RERA. Thus the respondent failed and is unable to construct and complete the said project.

18. The claim of the applicant stands established and prima facie there is default on the part of the respondent. The default amount



meets the threshold limit of Rs.1 crore as per Section 4 of the IB Code, 2016 and the application is well within the limitation, as discussed herein above.

19. In the view of facts, it is clear that respondent has defaulted. The application is otherwise defect free & on record. Accordingly, we admit this application and order as under:

ORDER

(i) Corporate Debtor Pushp Ratna Realty Private Limited is admitted in the Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency



Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iv) The Financial Creditor has proposed the name of the IRP, therefore, this Adjudicating Authority hereby appoints Mr.Hasti Mal Kachhara having registration No.IBBI/IPA-002/IP-N00342/2017-18/10992 to act as an IRP under Section 13(1) (c) of the IBC, 2016.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this



Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees one lakh only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Commercial Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.



(xii) The commencement of Corporate Insolvency Resolution Process shall be effective from the date of this order.

-sd-

Kaushalendra Kumar Singh
Member (Technical)

-sd-

Chitra Hankare
Member (Judicial)

Swati Khandelwal