



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-301**  
IB-105/ND/2023

**IN THE MATTER OF:**

Naman Infradevelopers Pvt. Ltd.

**....Applicant**

**Vs.**

Metcalfe Properties Pvt. Ltd.

**.....Respondent**

**SECTION**

U/s 7 IBC

**Order delivered on 20.10.2023**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL,  
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open Court vide separate sheets. IB-105/ND/2023 stands **dismissed**.

**Sd/-**

**(DR. BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-**

**(MAHENDRA KHANDELWAL)  
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V NEW DELHI BENCH**

**COMPANY PETITION IB (IBC) NO. 105 of 2023**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

**Naman Infradevelopers Private Limited  
56, Rajpur Road, Behind HDFC Bank  
Dehradun, 248001**

...Applicant/Financial Creditor

*Versus*

**Metcalf Properties Private Limited  
Kh- no. 154/470, V & PO Pooth Khurd,  
Delhi- 110039**

...Respondent/Corporate Debtor

**Order pronounced on: 20.10.2023**

**Coram:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)  
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Appearances:**

For the Applicant : Mr. Deepak Garg, Adv.  
For the Respondent : Mr. Sunil Choudhary, Adv.



## **ORDER**

### **PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)**

1. This is an application filed 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, by M/s Naman Infradevelopers Private Limited (hereinafter referred to as ‘Financial Creditor’), represented by Mr. Amit Arora, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Metcalfe Properties Private Limited [CIN: U45201DL2002PTC117145] (“Corporate Debtor”). The instant application was filed on 08.02.2023.
2. The Corporate Debtor was incorporated on 26.09.2002, having CIN: U45201DL2002PTC117145, under the Companies Act, 1956. Its registered office is at KH-no. 154/470, V & PO Pooth Khurd, Delhi-110039. Therefore, this Bench has jurisdiction to deal with this application.
3. The present application is filed before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 16,11,22,835 /- (Rupees Sixteen Crores Eleven Lakhs Twenty-Two Thousand Eight Thirty-Five only) as on 31.07.2022 (Date of Default).

### **Submissions of learned Counsel appearing for the Applicant are as under: -**

4. The details of transactions leading to the filing of this petition as averred by the Applicant is as follows:
  - a) In the present case, the Financial Creditor through its authorized Director Mrs. Neelam Khanna approached the Corporate Debtor and shown its interest to buy residential plots in the PUDA APPROVED COLONY NAMED Metcalfe Nirvana License No. LDC/ ADA/ 2011/5 dated 19/07/2011 situated at village Bishamber Pura/ Manawala/Jhitan Kalan, Metcalfe Nirvana at Distt. Amristar. The Corporate Debtor was desirous to sell the same.

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- b) Corporate Debtor and Financial Creditor executed Agreement to sell on 10<sup>th</sup> March, 2012 by which Corporate Debtor and Financial Creditor decided the Terms and Conditions. That as per the Agreement, the total sale consideration of the property was agreed at Rs.251 per sq. ft of 3,94,670 sq. ft. area totaling Rs. 9,90,62,170/-. That as per Clause 3 of the Agreement relating to sale of property, advance payment of Rs. 5 Crore was made vide cheque no. 830913 dated 01.03.2012 of Rs. 2,50,00,000 and cheque no. 830912 dated 01.03.2012 of Rs.2,50,00,000 drawn on State Bank of India. Further, balance payment was to be made by the purchaser when the seller would be ready for registry of the plots and notify its readiness to the purchaser in writing.
- c) As per Clause 10 of the Agreement, Corporate Debtor (seller) should get the sale deed executed in favor of the purchaser on or before March 2013. In case the seller fails to execute the sale deed in favor of the purchaser, then the seller shall be liable to return the entire amount received along with interest @ 24% per annum from date of payment of the amount till the actual payment, which the Corporate Debtor failed to do.
- d) That due to default in effecting the registry by the Corporate Debtor by March 2013, Financial Creditor served the Corporate Debtor with reminder letter from 15.04.2013 till 2020 to make the payment. In reply to the Letters, Corporate Debtor on one pretext or the other made excuses and did not effected the registry. However, the Corporate Debtor transferred a sum of Rs.1,78,38,200.00 to the Financial Creditor during 2020 and 2021. Further, a sum of Rs.3,21,61,800.00 was still outstanding as on 10.08.2021. Thereafter, the Corporate Debtor became silent.
- e) Further, the Financial Creditor gave him an option to effect the registry of land project in their name and transferred a sum of Rs. 50,00,000.00 on 21.10.2021. However, the Corporate Debtor demanded Rs.1.00 Crore to effect the registry. The Financial Creditor promised to pay the balance amount on the date of registry.



f) Even after various reminders in the form of letters, the Corporate Debtor again failed to effect the registry. Then vide Letter dated 25.02.2022 the Corporate Debtor showed its inability to transfer the land project and proposed to convert the outstanding amount as loan and to repay the same with interest within four months after entering into the Settlement agreement.

g) That on 12.04.2022 the Settlement Agreement was executed between the Financial Creditor and the Corporate Debtor and as per terms and conditions of that agreement, the Corporate Debtor agreed to repay Rs. 14,91,57,539.00 along with 24% interest on or before 22.07.2022 and if the repayment gets delayed then penal interest of 12% was also to be paid by the Corporate Debtor. Thereafter, due to default in repayment and excuses by Corporate Debtor, numerous reminders by Financial Creditor were reiterated but by this time the Corporate Debtor did not pay any heed to the reminder Letters. Hence, this present application is filed by the Financial Creditor.

5. The Applicant has placed the following documents on record to support its claim:

- a) A copy of Agreement to Sell dated 10.03.2012.
- b) A copy of Bank Statement showing disbursal of payment on 01.03.2012.
- c) Copy of Settlement Agreement dated 12.04.2022.
- d) A copy of Demand Letter dated 07.08.2022.

**Submissions of learned Counsel appearing for the Corporate Debtor are as under:**

6. The details of the submissions made by the Corporate Debtor are as follows:

- a) It is submitted that the present petition is not maintainable in its present form and the same is liable to be dismissed with exemplary cost. The applicant



herein is neither the Financial Creditor nor the Financial Institution as per the definition of the Code and as such the present petition against Corporate Debtor is not maintainable.

- b) That the Applicant misused the document allegedly claimed to be signed by the director of the Corporate Debtor. The said document itself suggests that it has been manufactured by the Applicant with a view to file the false and frivolous petition against the Corporate Debtor.
- c) That the alleged loan agreement cannot be termed as an agreement as the same is alleged to have been made on the request of the Corporate Debtor. However, no such arrangement was ever agreed upon by the Corporate Debtor. Thus, the alleged agreement is neither tenable nor enforceable in the eyes of law. That the falsity of the claim of the Applicant is apparent from the fact that the amount allegedly mentioned to be paid to the Corporate Debtor is not matching with the credit entries in the accounts of the Corporate Debtor.
- d) That the corporate debtor has various other transactions with the Applicant and the Applicant is taking advantage of the same and is allegedly claiming the amount paid by it as a loan.

### **Analysis and Findings**

- 7. We have heard the Learned Counsels for the Applicant and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
- 8. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.



9. In the present case, the Applicant approached the Corporate Debtor and shown its interest to buy residential plots in the PUDA APPROVED COLONY named Metcalfe Nirvana License No. LDC/ ADA/ 2011/5 dated 19/07/2011 situated at village Bishamber Pura/ Manawala/Jhitan Kalan, Metcalfe Nirvana at Distt. Amristar. The Corporate Debtor was desirous to sell the same. An Agreement to Sell was executed between the Applicant and the Respondent on 10<sup>th</sup> March, 2012. The Sale Deed in favour of the purchaser was to be executed before March 2013. Also, in case the seller failed to execute the sale deed in favor of the purchaser, then the seller was liable to return the entire amount received along with interest @ 24% per annum from date of payment of the amount till the actual payment.
10. Thereafter, due to delay in effecting the registry by the Corporate Debtor, various reminder letters from 15.04.2013 till 2020 were served by the Applicant to the Respondent to make the payment. In reply to these Letters, the Corporate Debtor, though did not effect registry, it transferred a sum of Rs.1,78,38,200.00 to the Financial Creditor during 2020 and 2021. However, according to the Applicant, a sum of Rs.3,21,61,800.00 was still outstanding as on 10.08.2021.
11. Again, the Financial Creditor gave the Corporate Debtor an option to effect the registry of land project in their name and transferred a sum of Rs. 50,00,000.00 on 21.10.2021. However, the Corporate Debtor demanded Rs.1.00 Crore to effect the registry. The applicant promised to pay the balance amount on the date of registry, however, neither the registry was effected nor the amount due was repaid by the Corporate Debtor. Thereafter, vide Letter dated 25.02.2022 the Corporate Debtor showed its inability to transfer the land project and proposed to convert the outstanding amount as loan and to repay the same with interest within four months after entering into the Settlement Agreement. The said Settlement Agreement was executed on 12.04.2022, according to which the Corporate Debtor agreed to repay a sum of Rs. 14,91,57,539.00 along with 24% interest on or before 22.07.2022 and if the repayment gets delayed then penal interest of 12% was also to be paid by the Corporate Debtor.



However, the terms of the said Settlement Agreement were not honoured by the Corporate Debtor.

12. Going by the aforementioned facts of the present case, it is to be determined whether the applicant herein is a Financial Creditor in terms of Section 5(7) and the money owed to the Applicant on the basis of the Settlement Agreement is a Financial Debt under Section 5(8). According to Section 5 (7) of IBC, 2016 "Financial Creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred;
13. In **Section 5 (8)** "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes–

(a) money borrowed against the payment of interest;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause, - (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

14. On the bare perusal of Section 5 (8) of the IB Code, 2016, we find that the debt owed to the Applicant is not a Financial Debt. In the instant case, the money was not disbursed as a loan with a consideration for the time value of money, but was paid as an advance for purchase of residential plots in the PUDA approved colony namely Metcalfe Nirvana. Therefore, the best case of the applicant is that it would fall under Section 5(8) (f) as an allottee in a real estate project. However, the facts of the case as averred by the Applicant itself clearly



indicate that it was not an 'allottee' of the real estate project, but a speculative buyer.

15. Initially, the agreement signed between the Parties was an Agreement to Sell Land, and due to default in registration of the subject land by March 2013, the Settlement Agreement was entered between the Applicant and the Respondent in the year 2022 i.e., after 10 years. Therefore, in our considered view the Settlement Agreement on the basis of which the Applicant has filed the Section 7 application, does not indicate that the transaction of advancing money for purchase of land has the commercial effect of a borrowing as admittedly the disbursements were made by the Applicant in the present case when the Applicant was a Speculative Buyer. Moreover, the terms and conditions laid down in the Settlement Agreement appears to be similar to the terms and conditions of Agreement to Sell dated 10.03.2012. The Settlement Agreement does not disclose any new fact other than those already mentioned in the Agreement to Sell. Also, Settlement Agreement on which reliance is being placed by the Applicant, has no ingredient of disbursement for time value of money, therefore, the Settlement Agreement is merely an acknowledgement of liability accruing under the original Agreement to Sell dated 10.03.2012.
  
16. We have also perused the Balance Sheet of the Corporate Debtor for the Financial Year 2011- 2012, 2012-2013, 2013-2014, 2020-2021 and 2021-2022, filed vide affidavit dated 17.09.2023, and from the perusal of the same, we observe that, it is not recorded in the Balance Sheet of the Corporate Debtor, that any loan was disbursed by the Applicant to the Corporate Debtor. Therefore, it is evident that the disbursement of amount by the Applicant to the Corporate Debtor, was by way of advancing money for the purchase of land, and it does not have commercial effect of a borrowing. The Applicant and the Respondent had entered into Agreement to Sell, and the disbursements were made by the Applicant, as an advance for purchase of land, and the money was not disbursed as a loan.



17. Hon'ble NCLAT in **Sudha Sharma vs Mansi Brar and Anr.** [Company Appeal (AT) (INS) No. 83 of 2020] emphasized:

*“that money deposited/invested for speculative purpose does not entitle a person to take advantage of clause (f) of section 5(8) and be considered a financial creditor by virtue of being an allottee of a housing unit/flat.”*

18. Also the subsequent order of Hon'ble Supreme Court in **Mansi Brar Fernandes versus Sudha Sharma and Anr.** [Civil Appeal No. 3826/2020] which affirms the order of Appellate Tribunal in the matter of **Nidhi Rekhan vs M/s Samyak Projects Private Limited**, Company Appeal (AT) (Ins) No. 1035 of 2020 stating that:

*“the purported allottee Mrs. Nidhi Rekhan, is actually a speculative investor earning a high rate of interest on her investment and is by no means interested in the construction, completion and possession of the said flats no. A-1201 and E-1301. Therefore, we have no hesitation in holding that Mrs. Nidhi Rekhan/Appellant cannot claim to be a “financial creditor” as defined under explanation of section 5(8)(f) of the IBC.”*

*“Thus, in our clear opinion, the Appellant, who is a speculative investor, cannot claim status and benefits as financial creditor under Explanation (i) of Section 5(8)(f) of the IBC, and is not interested in the financial well-being, growth and vitality of the Corporate Debtor, but is just interested in her investment and has come in the garb of an allottee. In such a situation, the Appellant is certainly not a financial creditor holding financial debt, which is in default of payment by the Corporate Debtor, and consequently we conclude that the Impugned Order does not require any interference. The appeal is, therefore, dismissed. There is no order as to costs.*



19. We are of the view that the status of “Financial Creditor” cannot be accorded to a person who, comes in the project as a speculative investor and later on files an application under Section 7 of the Code for mere recovery of monies with exorbitant interest. In the instant case, the applicant does not fall within the meaning of financial creditor, as it cannot claim the monies owed by the Corporate Debtor as ‘financial debt’ in terms of section 5(8)(f) of IBC. Therefore, the present application filed under section 7 of the IB Code 2016 against the Corporate Debtor is not maintainable.
20. In the light of the above this Adjudicating Authority concludes that, the instant petition bearing **COMPANY PETITION IB (IBC)/105(ND) 2023** cannot be admitted and is hereby dismissed.

**Sd/-**  
**DR. BINOD KUMAR SINHA**  
**Member (Technical)**

**Sd/-**  
**MAHENDRA KHANDELWAL**  
**Member (Judicial)**