



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1420/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

M.S. Gopikrishnan

...Financial Creditor/Applicant

V/s

KD Lite Developers Private Limited

[CIN: U70101MH2012PTC234084]

...Corporate Debtor/Respondent

Order Dated: 08.02.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Abhay Jariwala, Advocate.

For the Respondent(s) : Mr. Rohit Gupta a/w Mr. Viraj Parikh, Ms. Shivani Khanwilkar and Mr. Abhishek Kothari i/b DSK Legal, Advocates.

Per: Prabhat Kumar, Member Technical

1. This is an Application being C.P. (IB) No. 1420/MB/C-IV/2020 filed by M.S. Gopikrishnan, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against



KD Lite Developers Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed on 04.12.2020 by 20 Allottees of a Residential Project, namely “Ruparel Orion”, developed by the Corporate Debtor. Out of this, 2 Allottees, namely Petitioner No. 9 & 12, have withdrawn from the petition subsequent to its filing, consequent upon the settlement of their claim by the Corporate Debtor. The Applicants have stated that there were 243 Apartments in the proposed residential complex of which 124 were booked as per information available on MahaRera website on 12.03.2020, hence, they constitute more than 10% of the Allottees satisfying the eligibility criteria provided in second proviso to Sec. 7(1) of the Code. The copy of the petition was served on the Corporate Debtor on 04.12.2020
3. The Corporate Debtor has submitted a List Of Allottees vide reply dated 12.07.2021 containing particulars of 209 Allotments up till 14.01.2021 and submitted that as on 03.12.2022 the number of allottees were 203. Accordingly, the Corporate Debtor has pleaded that threshold limit as provided in second proviso to section 7(1) of the Code. The Corporate Debtor has also stated that it is willing to suit on the table with all the remaining Petitioners and arrive at a settlement guided by the provisions of the Real estate (Regulation and Development) Act, 2016. The Corporate Debtor has also stated that the eligibility criteria must be determined as on the date of decision of the petition.
4. The Corporate Debtor has also raised the issue of maintainability on the ground of limitation that the purported date of default is 30.12.2015 and the Applicant Petitioners have contended that a fresh cause of action arose on account of receipt of part payments from the



Corporate Debtor. It has also been submitted that the petitioners are not mere allottees but are investors and if present petition is allowed, it will have impact on 312 slum dwellers who are being rehabilitated in the project.

5. The Applicant Financial Creditor has filed a Rejoinder vide Affidavit dated 22.07.2021 and pleaded the leave to file an application under sec. 5 of the Limitation Act in case any one Applicant is not within limitation to seek condonation of delay. The Applicants have further pleaded that they fall squarely within the definition of "Allottee" as the letters of allotment issued in favour of the Petitioners make it evident that the monies paid by the Petitioners to the Corporate Debtor were in view of the allotments of their respective flats.
6. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.
7. Sec 7(1) of IBC reads as under-

Section 7: Initiation of corporate insolvency resolution process by financial creditor.
**7. (1) A financial creditor either by itself or jointly with 1[other financial creditors, or any other person on behalf of the financial creditor, as may be notified² 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 subsection (6A) of 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 per cent. of the total number of such creditors in the same class, whichever is less:



Provided further that for 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 per cent. 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 and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

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.”

8. The Hon'ble NCLAT New Delhi in Tiger Logistics (India) Ltd. Vs. Jaguar Overseas Ltd. held that-

“5. Ld. Counsel for Appellant after going through the judgments passed by this Tribunal on the same issue was not in a position to distinguish this case from other cases decided by this Tribunal in CA(AT)(Ins) No. 497/2021 – M/s Gupta Exim (India) Pvt Ltd vs. M/s Knitcraft Apparels International Pvt Ltd and CA (AT)(Ins) No. 813 of 2021 in Jumbo Paper Products Vs. Hansraj Agrofresh Pvt. Ltd. It has already been held that threshold limit is to be seen on the date of filing of application under Section 9 of the Code. In view of the notification dated 24.03.2020 issued under Section 4 of the



Code, the pecuniary limited from Rupees One Lac to Rupees One Crore was enhanced. Admittedly the default claim in the application of appellant was of Rupees Twenty-four lac and odd and as such the Ld. Adjudicating Authority has not committed any error in rejecting the same.”

9. The Applicant has proposed the name of Mr. Arihant Nenawati, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00456/2017-18/10799] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 1420/NCLT/MB/C-IV/2020 filed under Section 7 of I&B Code, 2016, filed by M.S. Gopikrishnan, Financial Creditor/ Applicant against KD Lite Developers Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 Securitization 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.



- VI. That this Bench appoints Mr. Arihant Nenawati, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00456/2017-18/10799], Email: arihantn@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)