

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH-III

C.P.No.IB-850/ (ND)/2019

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

In the matter of:

Sahib Ram Sehrawat and Ors.

..Financial Creditors/Applicants

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Jasmine Buildmart Pvt. Ltd.

..Corporate Debtor/Respondent

Memo of Parties:

Sahib Ram Sehrawat,

R/o Flat 702, Tower 4, The Close North,

Nirvana Country, Sector- 50

Gurugram-122018, Haryana.

Also at:

7 Brook Meadow, Fareham, Hampshire,

PO15 5LH, England.

Smt. Sunaina Sehrawat,

Through her husband, GPA holder, Applicant No. 1.

73 years old, NRI (Applicant No. 2)

R/o Flat 702, Tower 4, The Close North,

Nirvana Country, Sector- 50

Gurugram-122018, Haryana.

Also at:

7 Brook Meadow, Fareham, Hampshire,

PO15 5LH, England.

Sudhir Sehrawat,

Through his father, GPA holder, Applicant No.1

44 years old, NRI (Applicant No. 3)

R/o Flat 702, Tower 4, The Close North,

Nirvana Country, Sector- 50

Gurugram-122018, Haryana.

Also at:

7 Brook Meadow, Fareham, Hampshire,

PO15 5LH, England.

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Jasmine Buildmart Private Limited.

Registered Office:

406, 4th Floor, Elegance Tower 8, Jasola District Centre,
New Delhi-110025 India.

Also at:

Unit No. 201 and 202, 2nd Floor
Elegance Tower, Jasola District Centre, Jasola,
New Delhi-110025

..Applicant

Coram:

R.VARADHARAJAN,
Hon'ble Member (Judicial)
K.K. VOHRA,
Hon'ble Member (Technical)

Counsel for the Applicant: Mr. Anshul Rai, Advocate



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ORDER

Date: 30.09.2019

1. This is an application which has been filed by the Applicant under the provisions of Insolvency and Bankruptcy Code, 2016 (IBC) who claim to be the Financial Creditor (FC) of the Respondent Company which has been termed as the Corporate Debtor (CD). The transaction leading to filing of the present Application as reflected in the application is stated to be as under:

- a. The FC on 30.06.2012 booked Unit 701, Tower C, 5800 square feet area, Krrish Provence Project, Gwal Pahari, Faridabad Road, Gurgaon and paid Rs. 2,60,43,294/- by cheques. CD issued the Receipts against the payments so received.
- b. The CD on 04.07.2012 issued Allotment Letter for the said Unit 701.
- c. An Apartment Buyer's Agreement dated 14/09/2011 was signed by both the parties and the CD agreed to hand over the possession of Unit 701 on or before June-July 2014 vide Term Sheet attached thereto. But the CD miserably failed to deliver the possession of the said unit 701 in Tower C on or before June- July 2014 to the FCs.

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- d. The FCs on 30.01.2018 served Legal notice on the CD for demanding Principal amount with interest. And they further filed a complaint on 12.03.2018 before the Haryana Real Estate Regulatory Authority (RERA) Gurugram against the CD.
- e. The RERA Gurugram on (07.09.2018) passed an order against the CD to hand over possession by 31.12.2018 with the Occupation Certificate, failing which the entire amount with prescribed rate of interest @10.45% pa was to be paid within 90 days starting from 31.12.2018.
- f. The period of 90 days expired but the CD did not refund the amount.
- g. The total amount claimed to be in default is Rs. 4,44,37,814/- and the amount of claim of interest at the prescribed rate of 10.45% pa awarded by RERA in its decision dated 07.09.2018 is calculated till 31.03.2019.

2. The following documents (Copies of) are attached to the application in order to prove the existence of financial debt:

- a. Payment Receipt Nos. 865 dated 30.06.2012 for Rs. 2,00,00,000/- and Receipt No. 887 dated 13.07.2012 for Rs. 60,43,294/- issued by the CD to the Applicants.

- b. Allotment letter dated 04.07.2012 issued by the CD as listed in Para 1 and 5 of Part V of the present application.
- c. Apartment Buyer's Agreement dated 14.09.2011.
- d. Legal Notice dated 30.01.2018 to the CD.
- e. Order dated 07.09.2018 passed by RERA as listed in Para 2 and 8 Part V of this Application.
- f. Order dated 15.02.2019 of the RERA.
- g. Application dated 13.02.2019 filed by CD to RERA.
- h. Order of RERA Dated 11.03.2019 dismissing the Application of CD.

3. Having heard the learned Counsels for the Applicant and having perused the paper books, it is beyond doubt that the default has occurred with respect to the payment of the financial debt due to the Applicants.

4. As per the Agreement signed between the FC and the CD, the CD was supposed to deliver the possession of the apartment in question by the committed date i.e. 14.3.2016. The same can be inferred from clause 3.1 of the Apartment Buyers Agreement dated 14.9.2011 as under,

“subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the seller and any restraints/restrictions from any courts/ authorities and subject to the purchaser having complied with all the terms & conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the seller, whether under this Agreement or otherwise, from time to

time the seller proposes to handover the possession of the apartment to the purchaser within a period of 36 months from the date of commencement of construction or execution of this Agreement, whichever is later, subject to Force Majeure. The purchaser agrees and understands that the seller shall be entitled to a grace period of 180 business days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Project from the Authority.”

Further, Clause 3.3 states that if the seller fails to offer possession of the apartment (except for any Force Majeure reasons), as per clause 3.1 above it shall be liable to pay to the purchaser compensation equivalent to the amount calculated on the basis of 10% per annum of the entire sum timely and promptly paid by the purchaser to the seller for the delayed period of offer to handover the possession of the apartment provided that the buyer has paid the entire amount to the Seller strictly on time or as demanded by the Seller and subject to the other terms mentioned in this Agreement.

5. Thereafter the CD committed to handover the possession of the said Unit by 31.12.2018 as per the declaration made by it in its RERA application.

6. Even after the expiry of the time limit given to CD to handover the possession, it has failed to do so and even failed to comply with the directions of the Order dated 07.09.2018 of RERA, Gurugram.

7. The Order in this matter could not be pronounced earlier as the issue concerning constitutional validity of explanation to sub section 8 (f) of Section 5 of IBC was subject matter of challenge before Hon'ble the Supreme Court in a bunch of petitions. In the lead case titled as Pioneer Urban Land and Infrastructure Limited and Another V. Union of India & Ors. (Writ Petition (Civil) No. 43 of 2019) the Judgment has now been pronounced on 09.08.2019. We have gone through the Judgment and find that the directions issued by the Hon'ble Supreme Court do not in any manner advance the case of the CD and the application deserves to be admitted.

8. It is evident from the record that the application has been filed on the format prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of IBC. This Tribunal is satisfied that a default has occurred and the application under Section 7 is complete.


9. All requirements of Section 7 of IBC for initiation of Corporate Insolvency Resolution Process (CIRP) stand fulfilled. Accordingly this Tribunal is of the considered view that this petition requires to be admitted and that CIRP process is required to be initiated against the CD.

10. From the Application filed it is seen that the Applicant has named an Interim Resolution Professional (IRP) in Part III of its Application whose details are as follow:

Mr Ajit Kumar, 1A, Sanskriti Apartment, GH-22, Sector 56, Gurugram-122011; Email: cmaajitjha@gmail.com.

11. It is also seen from the Application that the above named IRP has given a written consent in Form 2 wherein he has agreed to accept appointment as an IRP if Application is admitted. Further, it is also evident from the said Form 2 as filed by the IRP signed under his hand that he is not a related party to the CD and that he is eligible to be appointed as an independent director on the Board of the CD. Certificate of Registration of the IRP as issued by the Insolvency and Bankruptcy Board of India (IBBI) and self-attested has also been enclosed along with the Application by the proposed IRP and taking into consideration all the above, this Tribunal finds that this is a fit case to be admitted in terms of Section 7 of IBC and thereby initiate CIRP as against the CD with the following consequences:

a. Mr. Ajit Kumar, having registration no. IBBI/IPA-003/IP-P00062/2017-2018/10548, is appointed as the IRP and he shall strictly act in accordance with the provisions of IBC and the attendant Rules enjoined upon him;

b. In terms of Section 14, as reproduced hereunder, the CD shall be under moratorium on the following terms: 

(a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD 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 the possession of the corporate debtor.

c. However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the CD as may be specified

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shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

d. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC and for ready reference reproduced as follows:-

(4) The order of moratorium shall have effect from the date of such order till the completion of the CIRP: Provided that where at any time during the CIRP period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of CD under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

e. The powers of the Board of Directors of the CD shall stand suspended on and from this day as envisaged under Section 17 of the Code.

- f. In terms of Section 7(7)(a) of IBC, the registry of this Tribunal is directed to communicate the order to both the FC and the CD at the earliest. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

With the above directions, the application stands disposed of.

-sd/

(K.K. VOHRA)
MEMBER (TECHNICAL)

-sd/

(R. VARADHARAJAN)
MEMBER (JUDICIAL)