

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

**CP (IB) No.1069/MB-IV/2021**

Under Section 7 of the IBC, 2016

*In the matter of*

Satya Prakash Aggrawal

Proprietor of R.C Developers

[PAN CARD NO: AALPA5384L]

...Financial Creditor

v/s.

Rashmi Infra-Structure Developers

[CIN: 45200MH1999PLC121633]

...Corporate Debtor

**Order Delivered on: 16.05.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner:

Mr. Amir Arsiwala, Ld. Counsel.

For the Respondent:

Mr. Rahul Sarada, Ld. Counsel.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) Satya Prakash Aggarwal proprietor of R.C Developers, ("the Financial Creditor"), seeking initiation of Corporate

Insolvency Resolution Process (CIRP) in the case of Rashmi Infra-Structure Developers Limited, (“the Corporate Debtor”).

- 1.1. The total amount outstanding is Rs. Rs. 22,40,18,273/- due and payable to the Corporate Debtor. The date of default as Specified in Part IV of the application *“as per the four Memorandum of Understanding and letter dated 18.04.2019 the date of default corresponds to 30.09.2019”*.
2. Prior to 2004, One M/s Amalgamated Building Corporation obtained a letter of intent from the slum rehabilitation Authority for development of the Slum project area. The Corporate Debtor obtained Development Rights and power of Attorney from M/s. Amalgamated Building Corporation for developing the Slum Project on the said land.
  - 2.1. Accordingly, four MOU dated 08.01.2018, 08.05.2018, 28.08.2018 and 01.04.2019 came to be executed between the Corporate Debtor and the Financial assistance for the purpose of developing the slum project on the said land.
  - 2.2. On 30.09.2019, the Corporate Debtor was supposed to obtain the approvals for the IOD and CC concerning the 2<sup>nd</sup> sale Building of the Slum Project. Since the IOD and CC approvals were not obtained for the longest period, the Financial Creditor was left thinking as to whether there was a legitimate and appropriate utilization of the amounts disbursed by way of financial assistance to the Corporate Debtor, towards completion of the Slum Project.
  - 2.3. Pursuant to the agreements executed between the parties, the Corporate Debtor from 18.01.2018 to 14.11.2019, consistently sent letters requesting the Financial Creditor to disburse the amounts in favour of one M/s.

Limpid Developers Pvt. Ltd. by debiting the amounts in the Corporate Debtors Bank Account.

- 2.4. The approval for the IOD and CC for the 2nd Sale Building of the Slum Project which were initially supposed to be obtained by 31" March 2019 and later extended till 30 September, 2019 by Letter dated 18 April, 2019, were not obtained for reasons unknown to the Financial Creditor.
- 2.5. Being aggrieved by the conduct of the Corporate Debtor, the Financial Creditor sent a Legal Notice to the Corporate Debtor concerning the same, wherein the Corporate Debtor was called upon to allot the specified area in consonance with the four executed Agreements or in the alternative, credit the amount equivalent to the market value of 30,000 sq. ft. carpet area on FSI basis in the 2nd Sale Building of the Slum Project, along with interest applicable @ 24% per annum. within a period of seven days from receiving the Legal Notice. A copy of the Legal Notice dated 31 August, 2021 is annexed and marked herewith as "Annexure 13". It is pertinent to note that till date, the Financial Creditor has not received any response to the Legal Notice 31" August, 2021, from the Corporate Debtor.
3. The Corporate Debtor in its reply has stated that, the Financial Creditor is an investor / partner who had entered into Memorandum of Understandings; Under the MOUS, there was no agreement between the Financial Creditor and the Corporate Debtor to repay the amounts. Therefore, the transaction between the parties was a pure business transaction of purchasing carpet area on FSI basis and payment of consideration. The relevant clauses of one of the MOU is reproduced hereinbelow;

*"M/s. R. C. Developers agreed to provide Rs. 150 lacs to the M/s. Rashmi Infrastructure Developers Limited subject to allotment of 5000 Sq. Ft. Carpet Area on FSI basis (ie., all pro-rata expenses towards approvals and constructions shall be borne by M/s. RC Developers) In the 2<sup>nd</sup> sale building of the slum project."*

*"1. M/s. R C developers agrees to provide further funds to the extent of Rs. 150 lacs for the implementation of the slum project, Rs. 50 lacs now and Rs. 100 Lacs at the time receiving approvals/IOD/CC of the 2<sup>nd</sup> sale building without any delay. It is expected that these moneys will be required during May and June 2018."*

*"4. it is mutually known to both M/s. RIDL and M/s. R. C. Developers that for the 2nd sale building the IOD and CC are yet to be obtained and the same are expected by 31/03/2019."*

3.1. The Corporate Debtor further submits that, there is no creditor-debtor relationship between the Financial Creditor and the Corporate debtor. The Financial Creditor has not complied with its obligations under the MOUs. The Corporate Debtor is ready and willing to allot the area to the Financial Creditor as per the terms and conditions of the MOUS after obtaining IOD/CC and subject to the Financial Creditor agreeing to release the balance payment of 397.25 lacs as well as amounts bearing its proportionate /pro-rata expenses towards approvals and construction; The said MOUs are insufficiently stamped and not registered. The said MOUs cannot be tendered in evidence.

3.2. As it was agreed that the Financial Creditor would provide amounts to the Corporate Debtor subject to the allotment of carpet areas as mentioned in the MOUs on FSI basis, all pro-rata expenses towards approvals and

construction would be borne by the Financial Creditor. The Financial Creditor was to pay amounts and the said amounts were to be utilized for the SRA project and associated cost only. The Corporate Debtor was planning to construct a second sale building and the Financial Creditor was informed that the IOD and CC are yet to be obtained. It was always agreed between the parties that the allotment of the area was to be done on the IOD and CC being obtained. Therefore, the entire intention of the parties was to pay amounts subject to carpet area being allotted. The Corporate Debtor therefore, is not a debtor which has to pay a financial debt to a Financial Creditor as alleged.

Findings:

4. We have heard both the parties and perused the material on record.
5. There is no dispute that the applicant has paid a debt of Rs. 3,52,75,000/- towards development of slum project and this loan was to be repaid by the allotment of 10,000 Sq. Ft carpet area on FSI basis in the second building of the slum project. The MOU executed between the parties in relation thereto also contains the expected date by which IOD and CC are to be obtained. Besides, this it also provides that, the applicant shall bear expenses towards approvals and constructions pro-rata to its share in the FSI. This bench notes that the applicant was entitled to total area of 30,000 Sq. ft under 4 MOUs; and the applicant has claimed ready reckoner value of such area for claiming an amount of Rs. 22,40,18,273/- in default on account of failure of the Corporate Debtor to deliver stipulated FSI.
6. The Corporate Debtor has claimed that the delivery of that area was dependent on abstention of IOD and CC, which was beyond its control, however, the Operational Creditor was a joint venture party to the project.

The Corporate Debtor relies on decision of Hon'ble NCLAT in case of M/s Jagbasera Infratech Pvt. Ltd. Vs. Rawal Variety Construction Ltd. (2022) ibclaw.in 324 NCLAT wherein it was held that "*the amount invested in the Joint Venture Project by the Appellant herein in his capacity as a Promotor and Investor does not fall within the ambit of the definition of 'Financial Debt' as defined under Section 5(8) of the Code.*

7. This bench is of the considered view that the present transaction was at best be termed as transaction for transfer of FSI available to the Corporate Debtor in terms of Slum Rehabilitation Agreement, even if contention of the arrangement being a joint venture is not found in order. The bench finds that the amount paid by the applicant is not a financial Debt, as the applicant is an investor only. This conclusion is also supported by the fact the amount claimed in default represents the ready reckoner value of FSI. Further, this bench notices that in the case of *Ankit Goyal vs. Sunita Agarwal [Company Appeal (AT)(INS) No. 1020/2019]*, the Hon'ble NCLAT held that "*in a situation where the allottee seeks to benefit from a "lucrative agreement" when he is "securing" his money by way of the agreement which gives him a lien over the flat/s, he cannot be considered a financial creditor but is a speculative investor who cannot be given benefit as a financial creditor under section 5(8)(f) of the IBC.*" Further, 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.*"
8. In view of the foregoing, as per the material on record this Bench is of the view that it is a fit case for dismissal u/9 of IBC,2016.

**ORDER**

9. The petition bearing CP(IB) 1069/MB-IV/2021 filed by M/s. Satya Prakash Aggarwal proprietor of R.C Developers, (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the case of Rashmi Infra-Structure Developers Limited, (“the Corporate Debtor”) is **Dismissed.**
10. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

PRABHAT KUMAR  
MEMBER (TECHNICAL)  
16.05.2023.

Sd/-

KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)