

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, DELHI
BENCH III**

IB-1722/ND/2018 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 **Jasmine Buildmart Private Limited***

Mrs. Meera Ahuja & Ors.

....Financial Creditors

Versus

Jasmine Buildmart Private Limited

....Corporate Debtor

Order delivered on 28th November, 2019

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
K.K. VOHRA, MEMBER (TECHNICAL)

*For the Operational Creditor: Mr. Lokesh Bhola,
Mr. Karan Grover,
Ms. Harshita Agrawal, Advocates.*

For the Corporate Debtor: Ms. Bina Gupta, Advocate

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under adjudication is an application bearing No., IB-1722/ND/2018 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 ('IBC, 2016'). The Financial Creditors have jointly filed the present application seeking an order to initiate Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor viz. '*Jasmine Buildmart Private Limited*', declare moratorium and appoint Interim Resolution Professional ('IRP'). The Financial Creditors have claimed an amount of Rs. 6,93,02,755/- as outstanding against the Corporate Debtor.

2. Heard the Ld. Counsels for the Financial Creditors ('FCs'), the Corporate Debtor ('CD') and perused the pleadings alongwith the documents placed on the case file.

Brief facts narrated by FCs:

3. It is stated that the CD and the FCs have entered into an Apartment Buyers' Agreement (herein after referred as Agreement) dated 07.08.2012 for the Unit No. 1101, Floor 12th , Tower C, admeasuring 5,800 Sq. ft. (538.83 Sq. mts.) in project named "*Krrish Provence Estate*" located in Gwal Pahari, Gurgaon, Faridabad Road, Gurgaon (hereinafter referred as Subject Property). The CD had issued a letter dated 25.10.2018 whereby the date of the Agreement was rectified from 07.08.2011 to 07.08.2012. The Subject Property was transferred by the Original buyers viz., Mr. Manohar Ahuja and Mr. Om Prakash Ahuja to the FCs vide Transfer Application Form dated 05.05.2012. The substitution and credit of Rs.1,33,86,191/- in the name of FCs was confirmed by the CD vide letter dated 05.07.2012.

4. Clause 3.1 of the Agreement dated 07.08.2012 provides that the CD had proposed to handover the possession of the Subject Property to the FCs within a period of 36 (Thirty Six) months from the date of commencement of the construction or execution of the Agreement, whichever is later. After expiry of the said period the CD was entitled to a grace period of 180 (One Hundred and Eighty) Days for applying and obtaining the Occupation Certificate in respect of the project from the concerned Authority. In other words, the Subject Property was to be handed over to FCs by 1st week of February 2016. The said clause also provides that the CD shall give Notice of Offer of Possession in writing to the FCs with regard to the handing over of the possession, where after, within 30 days the FCs shall clear their outstanding due and complete documentary formalities and take possession of the Subject Property.

5. The FCs have already paid an amount of Rs. 2,75,55,186/- against the total sale consideration of Rs. 3,80,10,000/- of the Subject Property. However, a notice of cancellation/ termination of Agreement dated 26.06.2015 was issued by the CD demanding balance payment of Rs. 58,93,393.90/-, to be paid within 15 (Fifteen) days from the receipt of the same failing which the allotment shall stand cancelled/ revoked and the Agreement shall stand terminated.

6. The FCs have sent a demand notice on 28.07.2015 for recovery of amount already paid to the CD with simple interest @ 24% P.A. and withdrawal of notice of cancellation/ termination of the Agreement. Thereafter, the CD sent an e-mail on 22.12.2016, which reflects that the allotment was not cancelled. Again on 25.10.2018 the CD sent an e-mail attaching the Statement of Accounts which confirmed that an amount Rs. 2,75,55,186/- was paid by the FCs towards the purchase of the Subject Property to the CD.

7. Besides the above, the FCs have sent two demand notices on 05.11.2018 at the registered office and site office of the CD. The FCs called upon the CD to refund the total amount of Rs 2,75,55,186/- along with interest @ 24% P.A., totalling to Rs. 6,93,02,755/-, on the ground that the CD has miserably defaulted to hand over the possession of the Subject Property in terms of the agreement dated, 07.08.2012.

8. The CD on 22.11.2018 replied to the demand notice stating therein that the Agreement was already cancelled by virtue of the termination notice dated 26.06.2015 and that the FCs wilfully breached the conditions of the Agreement and committed a default by not paying the amounts in terms of the Agreement, therefore the FCs rights were forfeited. Further, it was stated that the FCs were liable to pay Rs. 58,93,393.90/- inclusive of Service Tax.

Reply of the CD:

9. The CD filed its reply on 18.09.2019 and submitted that it does not owe Rs.6,93,02,755/- inclusive of the interest. The CD has submitted that Agreement was entered between FCs and CD and the transfer application dated 05.05.2012 along with the name substitution was done vide its letter dated 05.07.2012. Further, the CD submits that it has regularly demanded payments and there has been delays in making the payments on the part of FCs. It is stated that time being the essence of the Agreement; the CD continued the construction even though FCs defaulted in making timely payments despite continuous reminders. It is further stated that the CD exercised its rights to cancel/terminate the Agreement and forfeited the booking amount paid by the FCs. The CD further submitted that a letter dated 05.03.2019 was sent to FCs with request to collect their refund cheque of Rs.1,51,34,908/- after the forfeiture of the amount as per the Agreement.

10. The CD in its reply has raised the objection that the Application is barred by limitation and that there are alternative remedies available to the FCs under 'The Real Estate (Regulation and Development) Act, 2016 (RERA)' and Consumer Protection Act, 1981 (CP Act). It is informed by the CD that the FCs have also filed a separate complaint before the National Consumer Dispute Redressal Commission with the similar prayer.

Rejoinder of the FCs:

11. The FCs have filed Rejoinder to the reply of the CD, wherein it is stated that the CD was granted extension with regard to the Phase- I, which includes tower 'A' & 'B'. The Ld. Counsel for the FCs has submitted that the CD has failed to comply with the timeline as submitted before RERA i.e. 31.12.2018. The FCs booked the Subject Property in Tower 'C', which falls in Phase II and in this regard, the CD has not annexed any proof to show as to whether or not the RERA Authority has granted extension. It is further submitted by the Ld. Counsel for the FCs that the CD has not even produced any proof to show

that it had applied to get all the relevant approvals and the CD has not offered possession even to a single Allottee of Tower 'C' in the project.

12. Further, the FCs in their rejoinder have submitted that the CD demanded payment of VAT vide its letter dated 16.12.2016, wherein it was stated that the applicable rate of tax is 1.0005% including surcharge of the entire aggregate received or receivable by the company upto 31.03.2014. It is on record that a corrigendum to the said letter was issued on 20.12.2016 providing that the applicable rate of tax is 1.05% which comes to Rs. 3,00,615/- instead of Rs 2,86,443/-. As per the submissions of the FCs they have paid Rs 3,00,615/- on 31.01.2017 as demanded by the CD towards VAT payment, which is reflected in the Statement of Accounts dated 25.10.2018 placed on record.

13. On perusal of the pleadings of the parties the issues that arises are follows:

- (i) *Whether the Application is time barred?*
- (ii) *Whether the Financial Creditors have defaulted in making the payments?*
- (iii) *Whether other efficacious remedies are available to the Financial Creditors?*

14. **Issue No. 1:** It is noted that various communications have been sent by the CD to the FCs by which the rights and the claims of the FCs are confirmed. In this connection, a reference may be made to the communication dated 20.12.2016 sent by the CD to the FCs for deposit of the amount of VAT of Rs. 3,00,615/-. Further, on 22.12.2016 an e-mail was sent by the CD to the FCs attaching the statement of account for the unit allotted to the FCs. There is another communication sent by the CD to the FCs on 05.03.2019 with the request to collect the refund cheque for an amount of Rs. 1,51,34,908/-. In view of these communications, the Application is not barred by limitation. Therefore, the issue no. 1 is decided in favour of the FCs and against the CD.

15. **Issue No.2:** As per the submission of the Ld. Counsel of CD the, FCs have delayed the balance payments and being defaulters are not entitled to any relief. In support of the arguments, the Ld. Counsel for the CD has relied upon the judgement of the Hon'ble Apex Court given in '**Pioneer Urban Land and Infrastructure Limited & Anr. vs Union of India & Ors**', reported in 2019 SCC online SC 1005. But, on perusal of the record placed on file, the FCs have paid an amount of Rs.2,75,55,186/- against the total sale consideration of Rs. 3,80,10,000/- against the Subject Property, which is a substantial payment. However, due to non-performance of the CD the balance payments were not made by the FCs, as the CD failed to honour the commitment in terms of the Agreement, which provides that the possession of the Subject Property was to be handover to the FCs by 1st week of February 2016. In view of it, the FCs cannot be said to be defaulters. In the light of the facts and circumstances involved in the case on hand, issue no.2 stands decided in favour of the FCs and against the CD.

16. **Issue No.3:** The Ld. Counsel for the CD would contend that there are alternative remedies available to the FCs under 'The Real Estate (Regulation and Development) Act, 2016 and Consumer Protection Act, 1981. In reply to this, the Ld. Counsel for the FCs has referred to the judgement of the Hon'ble **Apex Court** given in Pioneer Urban land and Infrastructure Limited & Anr., V/s Union of India (Supra), wherein it was observed that the remedies available under the Code, Consumer Protection Act, and RERA are concurrent remedies. Therefore, the FCs are not legally barred to invoke the provisions of IBC, 2016 in the case on hand. Accordingly, the Issue no. 3 is decided in favour of the FCs and against CD.

Conclusion:

17. In the facts and circumstances of the case noted above, it becomes clear that the CD has not handed over the possession of the Subject Property to the FCs, as the construction work could not be completed within the stipulated time and there is no proof for extension of time by the concerned authority. Therefore, there is debt, due and payable, which the CD failed to

pay. Thus, the *default* on the part of the CD is ascertained based on the documentary evidenced placed on record by the FCs.

18. In the light of the above, the Application of the FCs is complete in all respect. The FCs have also proposed the name of Resolution Professional viz., Mr. Jugraj Singh Bedi after seeking his consent in Form 2. There is no disciplinary proceeding pending against the IRP as evidenced from Form-2. Therefore, application is **admitted** and CIRP is initiated against the CD, which shall ordinarily be completed within 180 days, reckoning from the day this order is passed. The IRP is directed to take charge of the CD's management immediately. He is directed to cause public announcement as prescribed under Section 15 of I&B Code, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

19. The moratorium is hereby declared which shall have effect from the date of this Order till the completion of corporate insolvency resolution process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is hereby ordered to prohibit all of the following, namely:

- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD.

20. The supply of essential goods or services of the CD/Guarantor shall not be terminated, suspended, or interrupted during moratorium period. The

provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

21. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the IBC, 2016. The Directors of the CD, its promoters or any person associated with the Management of the CD are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the IBC, 2016.

22. The FCs and the Registry are directed to send the copy of this Order with immediate effect to the IRP so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IB, 2016. A copy of this Order shall be provided to the CD free of cost. The address details of the IRP are as follows:

Mr. Jugraj Singh Bedi

Reg No.: IBBI/IPA-001/IP-P00731/2017-18/11208

Address: C/o Yogesh Mittal

B-36, Jhilmil Industrial Area

Delhi-110092.

Mobile: 9810272652

E-mail ID: jb@jsba.in

23. There is no order as to cost. The Order is pronounced in the open court.



(K.K. VOHRA)

MEMBER (TECHNICAL)

U.D.Mehta/G



(CH. MOHD SHARIEF TARIQ)

MEMBER (JUDICIAL)