THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No.131/Chd/Hry/2021

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

<u>In the matter of:</u>

1. **Mr. Sushil Kumar Singla,**
   having its residence at
   H.No. 25, Housing Board Colony,
   Jharsa Road, Gurgaon,
   Haryana-122001
   PAN No. AIBPS3616B

2. **Mr. Rajesh Jaiswal/Kiran Jaiswal,**
   having its residence at
   B-602, Parsvnath Green Ville,
   Sector-48,Sohna Road
   Gurgaon,Haryana-122001
   PAN No. AARPJ0019R

3. **M/s Parnami Goods Carrier Pvt. Ltd.**
   having its residence at
   92 Transport Centre Punjabi Bagh,
   New Delhi
   PAN No. AARPP6531E

4. **Mr. Mukesh Singla**
   having its residence at
   H.No. 241/P Sector-15 Part-1
   Gurgaon,
   PAN No. AXDPS7689B

5. **Mr. Suresh Chand Singla**
   having its residence at
   H.No. 23, Housing Board Colony
   Jharsa Road, Gurgaon,
   Haryana-122001
   PAN No. ABSPC1010B

6. **Mrs. Zarina Rashid/Rashid Ali**
having its residence at
E-115, Sushant Lok-1
Gurgaon, Haryana-122001
PAN No. AHLPR5964N

7. **Mrs. Veena Singla**
having its residence at
26, Housing Board Colony,
Jharsa Road, Gurgaon,
Haryana-122001
PAN No. AIBPS3643Q

8. **Suman Gupta**
having its residence at
B-298, Prashnt Vihar,
New Delhi,
PAN No. AEHPG5384E

9. **Kanchan Nagpal & Veena Nagpal**
having its residence at
R/o 98B, LIG Flats Vikrant Enclave,
Mayapuri Delhi-110064
PAN No. ANIPN4595N

10. **Mohinder Kaur Sachdeva**
having its residence at
H.No. 751/11, Behind Dayal Market
Shiv Puri, Gurgaon-122001
PAN No. ACXPS5200R

…Petitioners-Financial Creditors

Versus

Suman Villas Private Limited
having its registered office at
Parnami Tower, SCO 50-51, 1st Floor Old Judicial Complex,
Civil Lines, Gurgaon, Haryana-122001,

…Respondent-Corporate Debtor

Judgment delivered on: 08.04.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing:

For the Petitioners/Financial Creditors	:		Mr. G.S. Sarin, Practising Company Secretary.
For the Respondent/Corporate Debtor	:	1.	Mr. Rupinder Khosla, Senior Advocate
		2.	Mr. Sarvesh Malik, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

The present petition has been filed, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **'Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as the **'Rules'**) by Mr. Sushil Kumar Singla **('Petitioner/Financial Creditor No.1'**) and nine others, to initiate the Corporate Insolvency Resolution Process (**'CIRP'**) against Suman Villas Private Limited (hereinafter referred to as **'Respondent/Corporate Debtor'**). The petition is signed by Mr. Sushil Kumar Singla. Authority letters executed by the remaining Financial Creditors in favour of Mr. Sushil Kumar Singla have been attached as Annexure-2 of the petition. The master data of the Corporate Debtor has been annexed as Annexure-A3 of the Petition. A perusal whereof shows that the Corporate Debtor is incorporated on 09.03.2006 and is a real estate company having its registered address at Parnami Tower, SCO 50-51, 1st Floor Old Judicial Complex, Civil Lines, Gurgaon, Haryana-122001. Therefore, the jurisdiction lies with this Bench of the Adjudicating Authority.

2. The facts of the case as briefly stated in the petition are that the Corporate Debtor developed a Group Housing Colony under the name and style of '*JHAJJAR ONE RESIDENTIAL COMPLEX*' at Sector 8 in the revenue estate of

Jhajjar, Tehsil and District Jhajjar, which were offered for allotment and sale. Pursuant to the project offered by the Corporate Debtor, various Homebuyers entered into the 'Flat Buyer Agreement' with Corporate Debtor for which they agreed upon certain terms and Conditions. Copy of the 'Flat Buyer Agreements' entered by the Financial Creditors is annexed as Annexure-A-6. It is stated that each Flat buyers/ Homebuyers duly paid their requisite amount-Basic Sale Price (B.S.P.) as per the Agreement's Annexure-1 and most of them have almost all the amount upfront.

3. It is submitted that the Corporate Debtor entered into a Memorandum of Understanding (MoU) with Financial Creditor No.10, Mrs. Mohinder Kaur Sachdeva, from whom it took a loan and has not repaid the amount till date. Details of financial creditors including home buyers are as follows:-

Sr. No	Name of Allottee	No. of units	Tower No.	Flat No.
1.	Sushil Kumar Singla	9 units	B & D	011,014,005,009,010, 011,014,015 & 19
2.	Rajesh Jaiswal / Kiran Jaiswal	1 unit	B	507
3.	Parnami Goods Carrier Pvt. Ltd.	3 units	B & D	004, 018 & 21
4.	Mukesh Singla	1 unit	D	006
5.	Suresh Chand Singla	1 unit	D	020
6.	Zarina Rashid / Rashid Ali	1 unit	D	106
7.	Veena Singla	1 unit	D	313
8.	Suman Gupta	1 unit	D	510
9.	Kanchan Nagpal &	1 unit	B	506

	Veena Nagpal			
	Total Units	19 units		

One FINANCIAL CREDITOR is at Sr. No. 10 Mrs. Mohinder Kaur Sachdeva.

4. It is stated in Part-IV of Form No.1 that the total amount of financial debt as regards the Financial Creditors is Rs 12,30,61,403/- (Rupees Twelve Crore Thirty Lakh Sixty One Thousand Four Hundred And Three Only), which includes the principal of Rs.5,39,65,011/- (Rupees Five Crore Thirty Nine Lakh Sixty Five Thousand and Eleven only) collected by the Corporate Debtor from the Homebuyers in the form of Investment for allotment of Flats plus interest @15% i.e. Rs 3,89,04,009/- (Rupees Three Crore Eighty Nine Lakh Four Thousand and Nine Only) & Loan amounting to Rs. 2,07,50,000/- (Rupees Two Crore Seven Lakh Fifty Thousand Only)from the Petitioner/Financial Creditor No.10 along with interest @ 12% amounting to Rs. 94,42,383/- (Rupees Ninety Four Lakh Forty Two Thousand Three Hundred Eight Three Only) which continues to stand due till date. For ease of reference, a table showing amount due to corporate debtor is as under;

S, No	Particulars	Principal Amount (Rs)	Interest(Rs)	Total (Rs)
1.	Home Buyers	53965011.00	38904009.00	92869020.00
2.	Mohinder Kaur Sachdeva (Financial Creditor)	20750000.00	9442383.00	30192383.00
	Total Amount of Debt	74715011.00	48346392.00	123061403.00

It is further stated that the date of disbursement of money/loan on various dates starts from the year 2011-12 & 2012-13. Details depicting the amount due in the

Summary (Calculation) sheet depicting the Amount Paid, Date on which the debt fell due and interest thereon is annexed with the petition as Annexure-5.

5. It is observed from the record that the petitioners have proposed the name of Mr. Anil Kumar as Interim Resolution Professional bearing IBBI registration No. IBBI/IPA-001/IP-P00144/2017-2018/10308. However the petitioners through additional affidavit filed vide Diary No. 00597/4 dated 07.03.2022 have proposed to change the name of Mr. Anil Kumar Interim resolution Professional with Mr. Sanjay Garg, an Insolvency Professional, bearing IBBI registration No. IBBI/IPA-001/IP-P-01865/2019-2020/12919, as the proposed IRP. A copy of Form 2 along with valid AFA and IBBI Registration Certificate obtained from the proposed IRP (Mr. Sanjay Garg) is enclosed as Annexure A to the said affidavit.

6. The petitioners vide order dated 07.03.2022 through compliance affidavit by Diary No. 00597/5 dated 09.03.2022 have further submitted the no objection certificate has been obtained from previously proposed IRP i.e. Mr. Anil Kumar, wherein he has by email dated 07.03.2022 gave no objection for appointment of any other insolvency professional by citing the reasons of his ill health and accordingly withdrew his consent for acting as IRP in the present matter. Copy of email dated 07.03.2022 received from Mr. Anil Kumar stating his no-objection is enclosed as Annexure A-1 to the said affidavit.

7. The respondent-Corporate Debtor has submitted in its reply filed vide Diary No. 00597/1 dated 02.09.2021 that each Flat Buyer/Home Buyer have duly paid the requisite Basic Sale Price (B.S.P) amount as per the agreement. Most of them have paid the entire amount upfront as per Annexure A-15 of the petition. It is further submitted that the respondents were unable to make timely delivery of the flats due to some unavoidable circumstances. It is admitted that respondents have taken a loan of Rs. 1,30,00,00/- from Mrs. Mohinder kaur

(Financial Creditor No. 10) on various dates. The petitioner No. 10 (Financial Creditor) has written to respondent vide letter dated 16.11.2020 against which the acknowledgement from the respondent addressing its inability to pay, due to lack of funds, has been duly informed to the petitioners. It is averred that the Company has been experiencing a severe financial crisis owing to the devastation of the business operations due to COVID-19 and some unavoidable circumstances. The Corporate Debtor admitted has thus admitted its liability and showed the inability to arrange the funds for the settlement.

8. We have heard the Authorised Representative for the petitioners and learned senior counsel for the respondent-corporate debtor and have also perused the record carefully.

9. Section 7(5)(a) of the Code is as follows:-

> *"5) Where the Adjudicating Authority is satisfied that—*
>
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

10. In the present case, the occurrence of default is evidenced by the copy of Flat Buyer Agreements entered by the Financial Creditors (Annexure A-6) and also from the supplementary agreements entered with some of the Financial Creditors for extending the time for the delivery of the possession (Annexure A-10). The same is inferred from the copy of letter by Financial Creditor No.10 dated 16.11.2020 and balance confirmation by the corporate debtor on 31.12.2020. The respondent-corporate debtor has also filed a reply wherein it has been stated that the default mentioned in the petition is due towards the petitioner for not providing of the possession of the plots/flat.

11. The other issue for consideration is whether present application is filed within limitation. It can be seen from the records that corporate debtor had to deliver possession of the Flat No. 011 to petitioner no.1 on or before 31.2.2019 further details with respect to other Financial Creditors about the allotment, amount paid and date of default is mentioned at Annexure A-15 of the petition. Copy of the Agreement with Mr. Sushil Kumar Singla, Financial Creditor No.1 and Builder Buyer Agreement for flat is attached as Annexure A-11 whereas the present petition is filed by Diary No. 00597 dated 20.04.2021. Therefore, the present petition is filed within limitation.

12. The another issue for consideration is whether the present petition 'by home buyers' is maintainable. As per Section 7 of IBC which is reproduced below :-

> *"Section 7 Initiation of corporate insolvency resolution process by financial creditor.*
>
> *(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 notified 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.*
>
> *[2][Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (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."*

13. It is submitted that the Financial creditors-"Home buyers and other Financial creditor" fulfils the criteria / limit under Section 4 of the 'I&B' Code. Further, stipulating that 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 10% of the total number of such allottees under the same real estate project, whichever is less. In the present case, there were total of 182 units in the project to be sold to 182 allottees out of whom these flats/plots were allotted, to 19 home buyers/19 units, i.e. more than 10% of the total units/allottees who have approached this Authority for the redressal of their grievances. In view of the judgement of the Hon'ble Supreme Court of India in ***Manish Kumar Vs. Union of India (UOI) and Ors. Writ Petition (C) No.26 of 2020 dated 19.01.2021***, the petitioners being more than 10% of Home Buyers are eligible to file the present petition under Section 7 of the IBC, 2016. Moreover, no such objection on the maintainability of the petition has been taken by respondent in its reply. Thus, the application filed in the prescribed Form No.1 is found to be complete.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt and default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14

of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

“(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 the possession of the corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.

(f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be."

15. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sanjay Garg and there is nothing adverse against him. In view of the above, we appoint Mr. Sanjay Garg, Registration No. IBBI/IPA-001/IP-P01865/2019-2020/12919, R/o 193 Agroha Kunj, Sector -13, Rohini, New Delhi-110085, Email: Rp.sanjaygarg@gmail.com, Mobile No. 9871324555 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

16. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

17. The Financial Creditor is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs) with the Interim Resolution Professional to meet the

immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the Operational Creditor to be recovered as the CIRP cost.

18. A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

April 08, 2022
HM/ASH