IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
Company Petition (IB)No.291/ALD/2019

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

IN THE MATTER OF

YATISH AGARWAL AND ANOTHER
…..……..Applicants/Financial Creditors

VERSUS

PUSHPANJALI CONSTRUCTIONS PRIVATE LIMITED

………………Respondent/Corporate Debtor

ORDER DELIVERED ON :07.07.2021

CORAM:
Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Financial Creditor: Ashmita Chaudhary, Devesh Saxena,Adv

For the Respondent/ Corporate Debtor: Krishna Dev Vyas, Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition has been filed by the financial creditor (herein referred as "petitioner") i.e. ***"Yatish Agarwal and another"*** under Section 7 of the Insolvency & Bankruptcy Code,2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor i.e ***" M/s Pushpanjali Constructions Private Limited"*** on grounds of its inability to liquidate its financial debt.

2. As per averments made in the petition, the Financial Creditor/ Applicants are husband and wife who have purchased the plots in its various projects and have even made payments against the same, but

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failed to get the possession despite their being an order from Hon'ble RERA, Meerut and even after repeated reminders, for the reason being of illegality and fraud committed by the Corporate Debtor.

3. The Financial Creditor has purchased the property, a total of 20 flats and 23 plots during 2010-2011 which were allotted in their name by the Corporate Debtor in the projects being developed by the Corporate Debtor. In lieu of the purchase, the Applicants have honoured the demands as and when raised by the Corporate Debtor between 08.08.2011 to 28.08.2012 and till date has paid a total sum of rupees 32,00,000/-, vide cheques and RTGS which has been acknowledged by the Corporate Debtor on its Letter Head.

4. Further, it is argued that the Corporate Debtor has asked the Applicant to transfer the money in the account of different company although the receipt were issued by the Respondent himself.

5. It is further submitted that the Respondent did not executed any Agreement to sale with the Applicant, despite the repeated request. However, during mutual discussion before making the initial payment, as an implied agreement between the parties it was assured and promised by the Corporate Debtor that the possession of the flats will be handed over within three years and of the plots within two years from the date of initial payment and further in case of delayed payment the Respondent shall charge an interest of 18% as penalty.However, even after lapse of more than 8 years from the date of booking, the possession of the same could not be given to the Applicant.

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6. In reply to the above the counsel for the Corporate Debtor submitted that since there is no privity of contract between the applicant and the respondent, the debt of the Applicant does not fall within the meaning of Financial Debt as mention in Section 5 (8) (f) of the IBC, 2016. Further stated that the Applicant has fail to prove the existence of default on part of the Respondent and there is no document referred by the Applicant except the letter of allotment which does not even reflect any date of possession on which the said flats were to be handed over the Applicants. And also stated that the Application is barred by limitation as the date of default as stated by the Applicant has occurred in the year 2013-14 and the present petition is filed in the year 2019, thus it is not maintainable.

7. Here the case in hand , before considering the aspect of debt and default, the aspect of maintainability of petition with respect to the applicant being the hombuyers is needed to be dealt with and in the present matter, the petition is being filed by the financial creditors "herein reffered as applicants" who are the two homebuyers and has purchased flats and plots from the respondent company .

8. Reffering to the judgment of Hon'ble Apex Court in the matter of ***"MANISH KUMAR VS. UNION OF INDIA AND ANR [WP(C) NO 26 OF 2020]"*** which upheld *The Insolvency and Bankruptcy Code (Amendment) Act,2020 in which for intiatiating CIRP,the minimum threshold for financial creditors who are allottees under a real estate project, 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.*

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9. In view of the amendment made in the Code, this court is of the opinion, that as the present application as being filed by the single homebuyer thus is not maintainable .

Accordinlgy, it is therefore,

ORDERED that the prayer to initiate proceedings U/S 7 IBC against the "M/s Puspanjali Constructions Pvt. Ltd" is hereby rejected and the application stands dismissed as not being maintainable.

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JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date:07.07.2021

Swati Gupta
(LRA)