

148

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 148
CP(IB) 339 of 2020

Order under Section 7 IBC

IN THE MATTER OF:

Magma Housing Finance Ltd
V/s
Aagam Infrabuild Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 02.08.2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Virendra Kumar Gupta, Hon'ble Member(T)

PRESENTS:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

CP (IB) No.339/7/NCLT/AHM/2020

An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of :

Magma Housing Finance Limited
Development House, Park Street,
Kolkatta-700016.

... Financial Creditor

Versus

M/s Aagam Infrabuild Private Limited.,
CIN:U45200GJ2010PTC062416
Registered Office at :
405-406, Shangrila Arcade,
Nr. Shymal Cross Road,
11 ft Prahladnagar Road, Satellite,
Ahmedabad, Gujarat-380015

.... Corporate Debtor

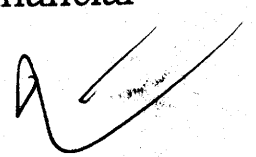
Date of Hearing: 26.07.2021

Date of Pronouncement of Order 02.08.2021

**Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance:

Learned Counsel Mr. Pratik Thakkar appeared for the Financial Creditor.



ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. The facts, in brief, are that the application is filed under Section 7 by Magma Housing Finance Limited - Financial Creditor to initiate CIRP against the Corporate Debtor M/s. Aagam Infrabuild Private Limited. The amount of debt in default has been claimed at Rs. 43,20,000/- including interest of Rs.6,44,804 thereon. The date of disbursement has been stated at 29.11.2018 and the date of default has been stated as 27.01.2020.

2. The matter has been heard ex-parte against the Corporate Debtor. Learned Counsel appeared on behalf of Financial Creditor submitted that there was tripartite agreement dated 30.11.2018 between the Applicant, m/s. Aagam Infrabuild Private Limited, Corporate Debtor and some individuals viz. Minesh B. Busha, Ms. Pravinaben Minesh Busha. As per this agreement, amount on behalf of these two individuals was given to the Corporate Debtor who has

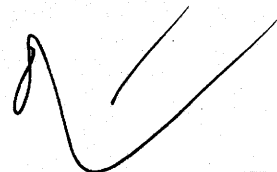
neither allotted flat or not refunded the money, hence, this application.

3. On the other hand, in the reply filed by the Corporate Debtor, it has been stated that the loan has been actually borrowed by Mr. Minesh B. Busha and Ms. Pravina M. Busha as housing loan from the Financial Creditor and they are liable to repay the same. The Financial Creditor sanctioned a loan of Rs.48,00,000/-but disbursed only Rs.43,20,00/-. The balance amount has not yet been paid to the borrower. The Corporate Debtor issued a letter of allotment dated 22.10.2018 wherein consideration for the sale of flat is shown at Rs. 63 lakhs. Borrowers had remitted Rs.13,25,000/- on 01.01.2018 and executed the agreement to sale. It has also been claimed that the flat is ready for delivery, however for non-payment of the balance consideration, the possession of same has not been given. It has also been claimed that in the said reply that Financial Creditor sent cancellation letter dated 24.10.2019 to cancel the allotment of the property to the borrower and refund the amount of Rs.55,13,880/-. In this

factual background, it has been claimed that the amount of loan has been disbursed to the said borrowers as housing loan though money has come to the Corporate Debtor but there is no liability to repay such amount on the part of the Corporate Debtor, as there is no privity of contract between them to this extent. It has also been claimed that Corporate Debtor is a going concern and viable company, hence, this application is liable to be dismissed for this reason also.

4. We have considered the submissions made by Learned Counsel for Financial Creditor and material on record. Apart from the tripartite agreement, it is noted that there is a loan agreement between the Financial Creditor and said two individual borrowers. As per the Schedule-1 of this agreement placed at page 78 of the paper book, name of the borrowers is mentioned as Mr. Minesh B. Busha and Ms. Pravinaben M. Busha. It is also to be noted that liability to repay the amount lies with them. There are several other documents which have been executed between Financial Creditor and such borrowers. Even in

the notice dated 24.10.2019 whereby the Financial Creditor requested for cancellation of allotment, it is stated that there is a default in repayment of loan by the said borrowers to the Financial Creditor, hence, Corporate Debtor is requested to cancel the said allotment. Thus, these facts are sufficient to hold that there is no liability of the Corporate Debtor to repay the loan, hence, there cannot be an event of default on the part of the Corporate Debtor. Even in the tripartite agreement relied on by the Financial Creditor, liability of Corporate Debtor to pay the amount of housing loan to the Financial Creditor on behalf of such borrower arise only in the event of cancellation and such event has not taken place as yet. Hence, even considering this clause, no liability to pay exists on date. Further, the Corporate Debtor is not a guarantor for this facility provided by Financial Creditor to the borrowers nor transaction falls into any of the clauses of section 5(8) of IBC, 2016 creating a relationship of a creditor or Corporate Debtor before the parties herein.

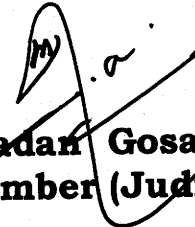


5. Accordingly, we find no merit in this application and hence, the same stands rejected and dismissed.

6. Urgent certified copy of this order may be issued to all concerned parties, if applied for, upon compliance with all requisite formalities.



**(Virendra Kumar Gupta)]
Member (Technical)**



**(Madan Gosavi)
Member (Judicial)**

Prakash