NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No.366/Chd/Hry/2018

Under Section 7 of Insolvency and Bankruptcy Code, 2016

In the matter of:

1. **Jatinder Verma**
S/o Sh. Rajpal Verma
aged about 46 years
Residing at
House No.983, Sector-70,
Mohali (Punjab).

2. **Shehzad Ali Azad**
S/o Sh. Naushad Ali
Aged about 46 years
Residing at
A-536, Sector-19,
Gautam Budh Nagar
Noida (U.P.) – 201301

3. **Saket Agarwal**
S/o Sh. Ved Pal
Aged about 47 years
Residing at
A1 / 406, Silver Estate
F-20, Sector-50
Gautam Budh Nagar
Noida (U.P.) – 201301

4. **Lokesh Gupta**
S/o Sh. Ramesh Chand Gupta
Aged about 46 years
Residing at
B-1 / 024, Tower-16,
Purvanchal Silver City, Sector-93A
Gautam Budh Nagar
Noida (U.P.) – 201301

5. **Sonia Khosla**
W / o Rajan Khosla
Aged about 48 years
Residing at

392, Sector-17
Panchkula (Haryana) – 134109

6. **Ekta Nigam**
W / o Amit Nigam
Aged about 43 years
Residing at
House No.B-303, Residency Apartment
Adree City, Sector-52,
Gurugram (Haryana) – 122003

….Applicants / Financial Creditors.

Versus.

Vatsin Infrastructure Limited
(Formerly known as M/s Egon Infrastructure Limited)
Having its registered office at,
Plot No.460, Sector 30,
Faridabad
Haryana - 121003

….Respondent/Corporate Debtor.

Judgment delivered on: 13.12.2019

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)

For the Applicants : 1) Mr.Pradeep Nauharia, Advocate
2) Mr.Suvigya Awasthy, Advocate

For the Respondent : Mr.Gaurav Mankotia, Advocate

<u>Per: Ajay Kumar Vatsavayi, Member (Judicial)</u>

JUDGEMENT

The present application is filed by Sh. Jatinder Verma (Applicant No.1), Shehzad Ali Azad (Applicant No.2), Saket Agarwal (Applicant No.3), Lokesh Gupta (Applicant No.4), Sonia Khosla (Applicant No.5) and Ekta Nigam (Applicant No.6) here-in-after jointly referred to as 'Applicants' under Section 7 of the Insolvency & Bankruptcy Code, 2016 (**Code**) read with Rule 4 of Insolvency & Bankruptcy Board of India

(Application to Adjudicating Authority) Rules 2016 for initiation of Corporate Insolvency Resolution Process **(CIRP)** in the case of Vatsin Infrastructure Limited **(**Formerly known as M/s Egon Infrastructure Limited) (Respondent-Corporate Debtor). As per Master Data (Annexure A of the petition), the registered address of the Respondent-Corporate Debtor is Plot No.460, Sector 30, Faridabad, Haryana - 121003. Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. The application in Form 1 is signed by Sh. Jatinder Verma (Applicant No.1), Shehzad Ali Azad (Applicant No.2), Saket Agarwal (Applicant No.3), Lokesh Gupta (Applicant No.4), Sonia Khosla (Applicant No.5) and Ekta Nigam (Applicant No.6). The affidavits verifying the contents of the application are from pages 35 to 52 of the petition.

3. In Part-III of Form 1, Sh. Vinod Kumar Mahajan, Registration No. IBBI/IPA-002/IP-N00238/2017-18/10689 has been proposed as Interim Resolution Professional. The copy of the written communication in Form 2 is attached as Annexure-I of the petition.

4. It is stated that the respondent-corporate debtor has advertised regarding its project “Avenue 72” in Bhiwadi, in the State of Rajasthan. It is submitted that the applicants upon the representations made by the corporate debtor and its Directors & Promoters, made investments in the above project and have been promised timely repayment of the amount invested along with the assured profits/interests as consideration.

5. It is also stated that a Memorandum of Understanding (MoU) was executed by all the applicants in the month of December, 2014 and each applicant invested a sum of ₹15,00,000/- as per the terms of MoU under

assured profits/interests amounting to ₹4,50,000/-, which the corporate debtor has agreed to pay back in a year from the date of execution of the MoU. The applicants stated to have made investments to the tune of ₹90,00,000/- to the corporate debtor. Copies of the MoU's executed between the applicants and the corporate debtor have been found attached as Annexure D (Colly) of the petition.

6. In para IV of Form 1, the details of the disbursement of debt granted on different dates ranging from 01.12.2014 to 01.01.2015 are mentioned are as under:-

Particulars of the Financial Debt				
Total amount of debt granted, Date(s) of Dis-imbursement	Name of FC(s)	Date of Dis-imbursement	Amount Disbursed (in Rs.)	Total Amount (in Rs.)
	Jatinder Verma	01.12.2014	15,00,000/-	90,00,000/-
	Shehzad Azad Ali	25.11.2014	1,50,000/-	
		01.12.2014	13,50,000/-	
	Saket Agarwal	25.11.2014	1,50,000/-	
		01.12.2014	13,50,000/-	
	Lokesh Gupta	01.12.2014	15,00,000/-	
	Sonia Khosla	16.12.2014	4,00,000/-	
		22.12.2014	7,00,000/-	
		23.12.2014	4,00,000/-	
	Ekta Nigam	01.01.2015	15,00,000/-	

The amount claimed to be in default is stated to consist of principal of ₹90,00,000/- and interest calculated @ 30% amounting to ₹1,87,42,592/-, aggregating to ₹2,84,17,592/- and the date on which default occurred is stated to be 10.12.2015. Copy of the details and workings for computation of total amount of default is appended with the petition as Annexure C.

7. It is stated that the Corporate Debtor in December, 2014, had issued post-dated cheques in lieu of the principal amount of Rs.15,00,000/- and cheques for Rs.4,05,000/- as interest in favour of the applicants-financial creditors for the purpose of repayment of the monies invested by the financial creditors. The Corporate Debtor in December, 2015 is stated to have made a payment of Rs.4,05,000/- as per the terms of MoU to applicant No.1, applicant No.3 & applicant No.4 and cash advances of Rs.4,05,000/- in favour of applicant No.2 and applicant No.5. It is also stated that no payment of Rs.4,05,000/- was advanced by the Corporate Debtor in favour of applicant No.6.

8. Learned counsel for the applicants submitted that the post-dated cheques issued in favour of applicants / financial creditors, by the Corporate Debtor got dishonoured upon presentation in the year 2016. Copy of the dishonoured cheques are appended with the application as Annexure-E (Colly).

9. It is contended that no single payment has been made by the Corporate Debtor to the applicants inspite of various reminders and correspondence by the applicants.

10. In Part-V of Form 1, it is stated that the applicants have also filed complaints before the Commissioner of Income Tax, Chandigarh, Commissioner of Police, Faridabad, Haryana on 30.05.2018 and also with the Registrar of Companies (Delhi and Haryana) and the same is pending adjudication till now. Copies of these complaints are annexed as Annexure-F (Colly) of the application.

11. Notice of this petition was directed to be issued to the respondent-corporate debtor for 21.01.2019 to show cause as to why this petition be not admitted.

12. The Corporate Debtor filed its reply vide Diary No.4702, dated 11.09.2019. It is submitted that that the applicants had written various letters and e-mails more specifically in the e-mail dated 20.11.2018, wherein it has been stated that they want money instead of the plots in which they had originally invested. It is also submitted that the applicants are not in need of the said plots and want the refund of their entire money instead.

13. Rejoinder was filed vide Diary No.4994, dated 23.09.2019 wherein the averments in the petition were reiterated.

14. The learned counsel for the corporate debtor relied upon the judgment of Hon'ble National Company Law Appellate Tribunal, titled as ***"Pioneer Urban Land and Infrastructure Limited and Another V. Union of India and Others.", 2019 SCC OnLine SC 1005.*** It was stated that the applicants herein do not fall under the category of financial creditors and cannot take recourse to file petition under Section 7 of the Code as they fall under the exceptions of the aforesaid judgment. Also reliance was placed upon another judgment of Hon'ble National Company Law Appellate Tribunal,

titled as ***"Mrs.Inderpreet Kaur & Ors Vs. M/s Real Tech Construction Pvt.Ltd."*** wherein it was decided that where the Corporate Debtor has neither denied for payment nor there is any refusal to give possession and execute the sale deed, the petitioners had no case to initiate CIRP proceedings. Accordingly, the petition was dismissed.

15. During the course of hearing, the learned counsel for the applicants was heard. Reliance was placed on the judgment of Hon'ble National Company Law Appellate Tribunal in "Nikhil Mehta & Sons Vs. AMR Infrastructure Ltd." [Company Appeal (AT) (Insolvency) No.07 of 2017] wherein it was stated that a financial debt is a debt along with interest which is disbursed against the consideration for the time value of money and may include any of the events enumerated in Section 5 (8) (a) to (i).

16. We have carefully heard and considered the arguments of the learned counsel for the applicants and have also perused the record. The relevant provisions of Section 5 (7) and Section 5(8)(f) of the Code are as follows:-

> *In this Part, unless the context otherwise requires,—*
>
> *(7) "financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*
> *(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*
>
> *xxx xxxx xxxx*
>
> *(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing." x x x x x x x*

17. It is to be seen whether the amount paid by the applicants to the corporate debtor, fulfil the other condition of 'disbursement against

consideration of time value and money' to come within the definition of 'financial creditor'.

18. Clause 2 of the MoU executed between the applicants and the corporate debtor which is as under:-

> *"That the Second party is willing to invest an amount of INR.15,000,00/- (Fifteen Lacs Only) towards the booking of Plot admeasuring 100 Sq yards in the said project of the First party under assured profit / interest scheme offered by the First party."*

It is evident from the above clause that the applicants have invested their monies, which clearly comes under the 'disbursement against consideration of time value and money'. Thus, the applicants herein would fall under the category of 'Financial Creditors".

19. It is also to be seen whether the Corporate Debtor was ready to give possession and execute the sale deed in favour of the applicants / Financial Creditors.

20. It is categorically stated in the reply of the Corporate Debtor that it is ready to transfer land / plots admeasuring 100 sq. yards each to all the applicants / Financial Creditors as well as to settle their claims, whatever due and payable. It could also be observed that in the e-mail dated 20.11.2018 at 1.16 PM (Annexure K of Diary No.4994, dated 02.03.2019) it is communicated to Mr.Sandeep, representative of the Corporate Debtor that the applicants / Financial Creditors would need details of the title of units / plots / land proposed along with size and address, but the same was never reverted to by the Corporate Debtor. However, it could be seen that the Corporate Debtor never furnished the necessary ownership and commercial details to the petitioners. Also, it is observed that no demarcation of plots / land in

question was being made, nor there was any cogent evidence being led by the Corporate Debtor evidencing the obtaining of necessary certificates / approvals from the competent authority or the sale deed is executed by the Corporate Debtor in favour of the applicants / Financial Creditors. Hence, Mrs.Inderpreet Kaur (supra) is not applicable.

21. On occurrence of the default, the financial creditor has to move an application in the prescribed form which has been done in this case in Form 1 as prescribed in Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The petitioner has thus, been able to satisfy the requirement of Sub-section (1) and (2) of Section 7 of the Code.

22. Section 7(5)(a) of the Code reads as under:-

> *"(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"*

23. In the instant case, the petitioner-financial creditor has adduced abundant evidence to show the default which has been committed by the respondent-corporate debtor. Copies of the Bank Certificates issued by ICICI Bank, IndusInd Bank and HDFC Bank reflecting the payment of Rs.15,00,000/- in favour of the corporate debtor is attached as Annexure-G (Colly) of the petition. It is also stated that no payments have been received by these Banks by the corporate debtor in the Bank accounts of the applicants.

24. We have discussed above the contents of the application in Form No.1. We find that the application is complete and satisfies the

requirements of Section 7 of the Code and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

25. In view of the above discussion, we are satisfied that the conditions provided for in Section 7(5)(a) of the Code are satisfied. We therefore, admit the application filed for initiating CIRP against the corporate-debtor Vatsin Infrastructure Limited.

26. The moratorium in terms of sub-section (1) of Section 14 of the Code is declared as under:-

(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.

27. 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. 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 regulator and to a surety in a contract of guarantee to a corporate debtor.

28. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

29. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vinod Kumar Mahajan and there is nothing adverse against him. In view of the above, we appoint Mr. Vinod Kumar Mahajan, Registration No. IBBI/IPA-002/IP-N00238/2017-18/10689, R/o Flat No.309, RCS Society, Sector 48-A, Chandigarh – 160047, E-mail: vkmahajan586@gmail.com, as the Interim Resolution Professional with the following directions: -

i) The term of appointment of Mr. Vinod Kumar Mahajan shall be in accordance with the provisions of Section 16(5) of the Code;

ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational 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 filing the report of constitution of the Committee; and

vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order 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 email address forthwith.

Sd/-	Sd/-
(Pradeep R.Sethi)	(Ajay Kumar Vatsavayi)
Member (Technical)	Member (Judicial)

December 13th, 2019
Ashwani