

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT-III

IB-530(ND)/2023

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

IN THE MATTER OF:

Mr. Rajesh Khanna & 82 Ors.

.... Financial Creditors

Vs.

M/s. Vardhman Infradevelopers Pvt. Ltd.

.... Corporate Debtor

Order delivered On: 15.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Milan Negi, Adv.

For Respondent :

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

- 1.** The present application has been filed by 83 Applicants under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of CIRP of M/s. Vardhman Infradevelopers Private Limited, the Corporate Debtor herein.
- 2.** It is claimed by the Applicants that 209 allottees of the Corporate Debtor have filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016, in the project namely Vardhman Alfa Square, a commercial mall/complex, situated at plot no. 03A, Sector Alpha-I, Greater Noida, Uttar Pradesh admeasuring 11600 sq. mtrs. (project).
- 3.** It is submitted that in the said commercial project there are 929 commercial units and the Applicants herein have 209 units allotted to them out of the 929 units in the project.

4. It is noted that on 13.03.2020, the Government of India passed the Insolvency and Bankruptcy (Amendment) Act, 2020 (No.1 of 2018) wherein by virtue of Section 3 of Amending Act, 2020 the proviso was added to Section (7) of Code:

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

“7. (1) A financial creditor either by itself or jointly with 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”.

.....

The 2nd proviso to Section 7(1) states as follows:-

"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 percent of the total number of such allottees under the same real estate project, whichever is less"

5. The constitutional validity of Section 3 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 has been duly upheld by the Hon'ble Supreme Court in **Manish Kumar v. Union of India**, reported in 2021(5) SCC 1, decided on 19.01.2021. An application for initiating CIRP against the Corporate Debtor by allottees under a Real Estate Project is required to satisfy the second proviso of Section 7(1) of IBC, 2016 as held by the Hon'ble Supreme Court of India in **Manish Kumar Case (supra)**.
6. On 13.09.2023, the Applicant was directed to satisfy this Adjudicating Authority on the issue of threshold and maintainability of the present application by filing an affidavit indicating therein as to how many numbers of allottees have been allotted with the units in the project in question and as to how many allottees have filed the present application along with relevant documents.

7. In compliance with the order dated 13.09.2023, the Applicant filed an additional affidavit on 26.09.2023. The Applicant has stated in the said affidavit that as per the requirement of law and as per the law laid down by the Hon'ble Supreme Court in the matter of **Manish Kumar Case (supra)**, the minimum threshold as per Section 7(1) of the Insolvency and Bankruptcy Code, 2016 is to be seen on the basis of the number of allotments/units in such projects and not the number of allottees/persons, who have either singly or jointly booked their respective units.

The relevant paragraphs of the Affidavit are reproduced below:

"6. It is well settled by the Hon'ble Supreme Court in the matter of Manish Kumar vs. Union of India cited in (2021) 5 SCC 1 that the minimum threshold under Section 7(1) of IBC is basis the number of allotments/ units in such project and not the number of allottees/ persons, who have either singly or jointly booked their respective units. The relevant paragraphs of the said judgment are quoted herein below for ready reference:

Given the above settled position of law, it is clear that what has to be counted for the purposes of satisfaction of the threshold, of 100 allottees or 10% allottees of the same real estate project, is the allotment of one plot, or apartment, or building, as the case may be.

8. This being the admitted position, the allottees, preferring the present application, being 209 in number are way above the minimum threshold of 100 allottees and/or 10% (i.e. 93). Therefore, the present petition fully satisfies the minimum threshold envisaged under Section 7(1) of IBC."

8. Although the Applicant has claimed that the present application has been filed by 209 allottees, the Applicant has not properly explained as to how or in what manner, the 209 Allottees have come into the picture. It is seen from the array of parties/memo of parties filed along with the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 that the present application has been filed by 83 Applicants who are the allottees in the said project and not by 209 Applicants.

- 9.** We are therefore unable to accept the submissions made by the Ld. Counsel appearing for the Applicant that the threshold for filing the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 has been met.
- 10.** We therefore hold that the present application is not maintainable and accordingly **dismissed**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)