



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**CP(IB) 987/(PB)/2019**

Order under section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**IN THE MATTER OF:**

**RITA KAPUR  
FLAT NO.381, A.T.S. VILLAGE, SECTOR 93-A,  
NOIDA (U.P.).**

**Applicant/ Financial Creditor**

**Versus**

**INVEST CARE REAL ESTATE LLP  
307-308, ROOTS TOWER, LAXMI NAGAR  
DISTRICT CENTRE  
NEW DELHI 110092.**

**...Respondent No.1/Corporate Debtor**

**SH. SAMAR VIJAY,**

**PROMOTING/ DESIGNATED PARTNER;**

REGD. OFFICE 307-308, ROOTS TOWER,

LAXMI NAGAR DISTRICT CENTRE,

DELHI-110092

**.... Respondent No.2.**

**SH. AJIT SINHA,**

DESIGNATED PARTNER; 307-308,

ROOTS TOWER,



LAXMI NAGAR DISTRICT CENTRE,  
DELHI-110092.

.... Respondent No. 3.

**Sh. AJIT KUMAR MISHRA,**  
DESIGNATED PARTNER;  
307-308, ROOTS TOWER,  
LAXMI NAGAR DISTRICT CENTRE,  
DELHI-110092.

.... Respondent No.4.

**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)  
SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**Appearances**

Counsel for Applicant/ FC: Mr Ranvir Singh, Advocate  
Counsel for Respondent/ CD: Mr. Anubhav Goel, CA,  
Ms. Preeti Goel, Mr. Siddhartha  
Jain, Advocates for the CD

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

**Pronounced on: 24.04.2023**

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Ms. Rita Kapur, Financial Creditor, resident of 381, A.T.S. Village, Sector 93-A, NOIDA



(U.P.) to initiate Corporate Insolvency Resolution Process (“CIRP”) against Invest Care Real Estate LLP CIN No.U65990DL2009PTC190834, incorporated on 30.11.2012, Identity No. AAB-2368 of 2012 (Hereinafter referred to as “Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default on the part of the Corporate Debtor/ Respondent for an amount of Rs.89,38,666/- ( Rupees Eighty Nine Lakh Thirty Eight Thousand Six Hundred Sixty Six) as on 08.03.2019 with pendente lite interest to be paid to the Financial Creditor/ Applicant. Rate of interest fixed in the Agreement dated 09.07.2013 is Rs.12.174% and additional interest of 0.5% in terms of Clause 6 of the Loan Agreement. The date of Default as per the applicant is 08.03.2019

2. The Corporate Debtor was incorporated on 30.11.2012, under the provisions of Companies Act, 1956. Its registered office is 307- 308, Roots Tower, Laxmi Nagar, District Centre, Delhi 110092. Therefore, this Bench has the territorial jurisdiction to deal with this petition.



3. We have heard the Ld. Counsels for both the parties on merits. On perusal of the documents on record it is observed that initially this petition was dismissed vide order dated 26.11.2019. The Petitioner, i.e. Ms. Rita Kapur filed an appeal against the aforesaid order under section 61 of the Insolvency and Bankruptcy Code, 2016 bearing Company Appeal (AT) (Insolvency) No 111 of 2020. The Hon'ble NCLAT upheld the order of NCLT and the said appeal was dismissed vide order dated 02.09.2020.
4. Thereafter the petitioner filed an appeal before the Hon'ble Supreme Court under Section 62 of the Insolvency and Bankruptcy Code, 2016, bearing Civil appeal No 3511 of 2020. The Hon'ble SC vide order dated 25.02.2022, allowed the appeal and set aside the order of Hon'ble NCLAT dated 02.09.2020 with the directions to the Hon'ble NCLAT for disposal of the matter afresh. Accordingly, after hearing the matter the Hon'ble NCLAT vide order dated 01.09.2022 set aside the order of the NCLT order dated 26.11.2019 with the directions to formally admit the application. The finding of the Hon'ble NCLAT is reproduced as under: -



“7. .... It is, thus, the case of the Respondent that the Appellant being a general partner had agreed voluntarily to convert their shares of loan into equity.

8. We have heard Counsel for the parties.

9. The facts are not much in dispute but, during the course of the hearing, Counsel for the Respondent was pertinently asked to show any document available on record indicating the consent by the Appellant for converting her loan into capital contribution. It is pertinent to mention that no such document was shown by Counsel for Respondent. Thus, in view of the fact that the loan advanced by the Appellant has been converted into capital contribution without her consent cannot be treated as a capital contribution in order to dismiss the application filed under Section 7 of the Code by her. No other point has been raised.

10. In view of the aforesaid facts and circumstances, we are of the considered opinion that **this appeal is meritorious and the same is hereby allowed and the impugned order is set aside. The matter is remanded back to the Adjudicating Authority for**



***further proceedings after formally admitting the application filed under Section 7 of the Code by the Appellant. The parties are directed to appear before the Adjudicating Authority on 10<sup>th</sup> October, 2022.”***

Hence, in compliance of order of Hon’ble NCLAT, this Adjudicating Authority allows the application filed by the Financial Creditor and initiates the CIRP with immediate effect.

5. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Abhishek Anand for appointment as Interim Resolution Professional having registration number IBBI/IPA-IBBI/IPA-002/IP-N00038/2016-17/10077. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,



2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. It is observed that registration of Mr. Abhishek Anand, proposed Interim Resolution Professional, is suspended from 28.02.2023 Hence, from the panel of Insolvency Professional(s) (IPs) valid for the period – January, 1, 2023 – June, 30, 2023 issued by IBBI panel in terms of Section 16(4), this Adjudicating Authority, hereby appoints Mr. Rakesh Bhatia (Email – [iprakeshbhatia@gmail.com](mailto:iprakeshbhatia@gmail.com), Reg. No: IBBI/IPA-001/IP-P00978/2017-2018/11608, to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

6. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to



admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

7. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

8. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

9. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the



Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

10. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor'



and specific mention regarding admission of this petition must be notified to the public at large.

SD/-

**(RAHUL BHATNAGAR)**

**MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)**

**MEMBER (JUDICIAL)**