

NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO:II

SPECIAL BENCH(Video Conference)

CORAM:HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL  
HON'BLE VEERA BRAHMA RAO AREKAPUDI-MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 18.06.2021 AT 10:30 AM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.394/7/HDB/2020
NAME OF THE COMPANY	Emaar Hills Township Pvt Ltd
NAME OF THE PETITIONER(S)	Srinivas Manthena & Others
NAME OF THE RESPONDENT(S)	Emaar Hills Township Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

The case is fixed for pronouncement of order.

Maintainability of this CP(IB) No.394/7/HDB/2020 in view of Judgement of Hon'ble Supreme Court in relation to homebuyers disposed vide separate sheet.

  
**MEMBER TECHNICAL**

  
**MEMBER JUDICIAL**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CP(IB) No.394/7/HDB/2020  
Under section 7 of the IB Code, 2016  
Read with Rule 4 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016

**In the matter of:-  
M/s. Emaar Hills Township Private Limited**

**Between:**

1. Mr. Srinivas Manthena  
R/o 6717 Aspen Hills Drive,  
Moorpark, California 93021, USA.
2. Mrs. Padmaja Manthena  
W/o Mr. Srinivas Manthena,  
R/o 6717 Aspen Hills Drive,  
Moorpark, California 93021, USA.

**...Applicants/  
Financial Creditors**

And

M/s. Emaar Hills Township Private Limited,  
Regd. Office: Boulder Hills Golf & Country Club,  
Opp. ISB, Manikonda Village, Gachibowli,  
Hyderabad – 500032, Telangana State.

**...Corporate Debtor**

**Date of order: 18.06.2021**

**Coram: Madan B. Gosavi, Member Judicial.  
Veera Bramha Rao Arekapudi Member Technical.**

**Parties/Counsel present:**

For the Financial Creditor : Mr. M.S. Srinivasa Iyengar, Counsel

For the Corporate Debtor : Mr. Ravi Charan along with Ms. Niharika  
Agarwal, Counsel

**[Per Bench]**

**ORDER**

1. There are numbers of home buyers filed Application under section 7 of IBC, 2016 against the builders/developers and these are pending for consideration. Most of the Applications are filed by single home buyer independently. However, on 13.03.2020 section 7(1) of I&B Code, 2016 has been amended third proviso makes it mandatory that for Financial Creditor

who are allottees under a real estate project, an application for initiating CIRP against the Corporate Debtor shall be filed jointly by not less than one hundred of such allottees under same real estate project or not less than 10% of total number of such allottees under the same real estate projects whichever is less.

2. In view of the above, Amendment in procedure to file application under section 7 of IBC by Allottee/Financial Creditor against the Corporate Debtor, the question before this Adjudicating Authority is whether the Application filed by single allottee under section 7 of IBC and pending for consideration of this Adjudicating Authority is to be rejected holding to be not maintainable or allottees in same project who has already filed such applications and pending for consideration are allowed to peruse their application jointly?
3. On this aspect, we heard learned counsel for the Applicant/Financial Creditors and learned counsel for the Corporate Debtor.
4. Learned counsel for the allottees/Financial Creditors brought to our notice of judgment of Hon'ble Supreme Court in case of Monish Kumar Vs Union of India (CP No.26/2020). We have gone through the ruling Hon'ble Supreme Court explained proviso 3 in following words:

*“Now, the third proviso, thus, indeed, does not say that as on the date of filing of the applications, the law was what is contained in the first and the second proviso. In that sense, it could be said that it was not retrospective. We have found that when invoking the unamended section 7 applications stood moved, they evinced creation of vested rights to continue with the proceeding. The applications were, no doubt, at the stage, prior to the admission under section 7(5). It is at this stage that through the device of the third proviso, the parliament has applied the principle of first and second proviso of threshold requirement, in respect of pending application, which is made to appear as it would have operation in the future. Now here we must address an argument of the 3<sup>rd</sup> proviso going to mere procedure. The financial creditor covered by the 3<sup>rd</sup> proviso were clothed with a statutory right under section 7. This right was available to be exercised by an individual creditor, by himself or jointly with others. The imposition of a threshold requirement being a mandatory and irreducible minimum even, it is to be achieved as and after the date of the amendment, constitutes an intrusion into the substantive right of action vested in the individual creditor. The action of the creditor was not a completed transaction. As regards his conduct in the past viz., moving under section 7, it is incomplete but the action was commenced. But the law (the 3<sup>rd</sup> proviso) impairs the past action qua the future. We would find as follows. Imposing the threshold requirement under the 3<sup>rd</sup> proviso, it not a mere matter of procedure. It impairs vested rights. It has conditioned the right instead of the manner*

*provided in the first and second proviso. We have already upheld the first and second proviso, which, in fact, operates only in the future. In that sense, the Legislature has purported to equate persons who had not filed applications with persons like petitioners who had filed the applications under the unamended law.”*

Thereafter, the Hon’ble Apex Court granted following reliefs:

*“372. We uphold the impugned amendments. However, this is subject to the following direction, which we issue under Article 142 of the Constitution of India:*

- i. If any of the petitioners move applications in respect of the same default, we alleged in their applications, within a period of two months from today, also compliant with either the first or the second proviso under section 7(1), as the case may be then, they will be exempted from the requirement of payment of court fees, in the matter, which we have detailed in the paragraph just herein before.*
- ii. Secondly, we direct the if applications are moved under section 7 by the petitioners, within a period of two months from today, in compliance with either of the provisos, as the case may be, and the application would be barred under Article 137 of the Limitation Act, on the default alleged in the applications, which were already filed, if the petitioner filed applications under section 5 of the Limitation Act, 1963, the period of time spent before the Adjudicating Authority, the Adjudicating Authority shall allow the applications and the period, during which, the earlier applications filed by them, which is the subject matter of the third proviso, was pending before the Adjudicating Authority.*
- iii. We make it clear that the time limit of two months is fixed only for conferring the benefits of exemption from court fees and for condonation of the delay caused by the applications pending before the Adjudicating Authority. In other words, it is always open to the petitioners to file applications, even after the period of two months and seek the benefit of condonation of delay under section 5 of the Limitation Act, in regard to the period, during which, the applications were pending before the Adjudicating Authority, which were filed under the unamended section 7, as also thereafter.”*

5. In short upon going through the ruling of Hon’ble Supreme Court, we are of considered opinion that single allottee’s application filed prior to amendment cannot be rejected. We further hold that the allottee’s in same project against same corporate debtor are allow to pursue their applications jointly. We direct that all such applications shall be heard jointly.

6. The Registry is directed to club such applications together and place before this Bench for hearing.

- Sd/-

**Veera Brahma Rao Arekapudi**  
Member Technical

- Sd/-

**Madan B. Gosavi**  
Member Judicial