

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

CP (IB) No.52/Chd/Pb/2018

Under Section 7 of IBC, 2016.

In the matter of:

1. Daljit Singh son of Bir Singh,
resident of #172/17,
Near Santoshi Mata Mandir,
Magazine Mohalla,
Sangrur, Punjab.
2. Sachin Singh son of Nanku Singh,
Resident of #15/16,
Old Grain Market, Sunami Gate,
Sangrur, Punjab.
3. Jiwan Sharma son of Rampal Sharma,
Resident of Village Dhandiwal,
Sangrur, Punjab. ...Petitioners-Financial Creditors

Vs.

M/s SMD Infra Ventures Pvt. Ltd.
having its registered office
Above IDBI Bank,
Outside Sunami Gate,
Sangrur, Punjab. ...Respondent-Corporate Debtor

Judgement delivered on 03.04.2018.

**Coram: Hon’ble Mr.Justice R.P.Nagrath, Member (Judicial)
Hon’ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Petitioners : Mr. Puneet Kansal, Advocate

For the proposed : Mr. Deepak Gupta, Resolution Professional.
Interim Resolution
Professional.

For the respondent: Mr. Deepankur Sharma, Advocate.

Per: Pradeep R. Sethi, Member(Technical)

JUDGEMENT

The instant petition has been filed by three petitioners as financial creditors under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as the Rules) for initiating the corporate insolvency process against the respondent-corporate debtor. It is contended that as per Section 7(1), a Financial Creditor can file an application jointly with other financial creditors. It is further stated that in view of Rule 4 (4) of the Rules, where the application is made jointly by financial creditors, they may nominate one amongst them to act on their behalf. Annexures A-10 and A-11 of the application are authority letters of petitioners No. 2 and 3 authorising petitioner No.1 to act on their behalf.

2. M/s SMD Infra Ventures Pvt. Ltd., the respondent was incorporated on 23.08.2011 and allotted CIN is U70109PB2011PTC035395. The registered office of the corporate debtor is, above IDBI Bank, Outside Sunami Gate, Sangrur (Punjab)148001. Therefore, the matter falls within the jurisdiction of this Tribunal.

3. It is stated that the respondent is deeming into real estate business and that as per the representation and assurances given by the respondent to the petitioners, if one would invest in the schemes of the respondent, then a plot of specific size dependent upon his/her investment will be allotted to him within a maximum period of 250 days and in case the

corporate debtor is unable to allot the plot in 250 days, then, after the expiry of period of one year, the corporate debtor will pay the invested money along with interest and this maturity amount has been shown as Projected Value in the instrument termed as Receipt-cum-Acceptance Letter issued by the respondent to its investors including the petitioners. It is stated that based upon such representations of the respondent, the brochures of the respondent and the schemes mentioned therein, the three petitioners invested a total amount of ₹11,10,000 as per details in column No.1 of Part-IV of Form 1. The copies of the Receipt-cum-Acceptance Letter as well as copy of terms and conditions have been filed as Annexure A-1 to A-5 of the application. It is submitted that the respondent failed to allot any plot to the petitioners within 250 days of the issue of the Bond/ Receipt-cum-Acceptance Letter despite number of visits and therefore, the petitioners approached the respondent after expiry of period of respective one year for the payment of the maturity value of investment/deposit, but the maturity amount as reflected in the instruments as Projected Value was not paid to any of the petitioners. It is stated that from the information available in the market and other persons who invested money with the corporate debtor, it is clear that under the garb of allotting land to the public the respondent has been borrowing/accepting deposits/loans from the public by showing it as investment against property and to the knowledge of the petitioners, the respondent has not allotted any plot so far to any of the investors.

4. The dates of default and the amount claimed to be in default are given in column 2 of Part-IV of Form 1. The date of default is shown on the

basis of expiry of one year from the date of the deposit. The dates are reflected in the Receipt-cum-Acceptance Letters (Annexure A-1 to A-4 of the application) as “maturity date of agreement”.

5. In part III of Form 1, C.A. Deepak Gupta, Regn. No.IBBI/IPA-001/IP-P00281/2017-18/10525 has been proposed as Interim Resolution Professional. Form 2 is attached as Annexure A-12 of the application and the affidavit of Shri Deepak Gupta, Chartered Accountant is also filed as Annexure A-14 of the application. Postal receipt for forwarding copy of the petition to the respondent is attached as Annexure A-17 of the petition.

6. Notice of this petition was directed to be issued to the respondent-corporate debtor. Mr. Deepankur Sharma, Advocate was present for the corporate debtor and accepted notice on behalf of the respondent. The matter was adjourned for today for submission of reply/objections, if any, and for arguments.

7. Reply has been filed by the respondent submitting that there is some delay on the corporate debtor's part in returning the amount of the financial creditors as promised on account of real estate market being in bad shape and thus, the projects did not get expected profits. It is stated that the corporate debtor has no bad intention and is also trying its level best to return the maturity money of the financial creditors at the earliest and the present application under Section 7 of the Code has been filed only as a means to arm twist the corporate debtor and may be dismissed.

8. During the course of arguments, the learned counsel for the petitioners contended that the conditions prescribed in Section 7 of the Code read with Rule 4 of the Rules are satisfied and that the application may be admitted in view of the judgement of the Hon'ble National Company Law Appellate Tribunal in **Nikhil Mehta & Sons Vs. AMR Infrastructure Limited Company Appeal (AT) (Insolvency) No. 07 of 2017**. The learned counsel for the respondent on the other hand had submitted that this petition has been filed only as a means to arm twist the corporate debtor and may be dismissed.

9. We have considered the arguments of the learned counsel for the parties and also perused the records. Section 7 of the Code is as under:-

“7. (1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish —

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(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; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be”.

10. Having perused the application, the same is found to be complete in Form 1. We also find that a copy of the application was forwarded to the respondent by registered letter on 31.01.2018 as per copy of postal receipt at Annexure A-17 of the application.

11. Alongwith the application, the petitioners have furnished the copies of the Receipt-cum-Acceptance Letters issued by the respondent on dates between 23.10.2015 to 03.08.2016 as Annexures A-1 to A-4 of the application. The petitioners have stated that they are financial creditors since the maturity amount inclusive of investment/deposit of the investor alongwith interest has been shown as Projected Value in the instrument termed as Receipt-cum-Acceptance letter issued by the company to its investors including the petitioners. The petitioners have stated that it is clear that under the garb of allotting land to the public, the respondent has been

borrowing/accepting deposits/loans from the public by showing it as investment against property i.e. by showing the depositors to register for plots of specific measurements and also showing the Projected Value of the said investment/deposit/borrowing on the maturity date. Section 5(7) of the Code defines 'financial creditor' to mean a person to whom a financial debt is owed. Financial debt is defined in Section 5(8) of the Code to mean a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes *inter alia* any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing [Clause (f) of Section 5(8)].

12. In paragraph 18 of judgement dated 21.07.2017 in **Nikhil Mehta & Sons [supra]**, the Hon'ble National Company Law Appellate Tribunal has held as follows:-

"....From the provisions of Law and discussion as made and quoted above, we find following essential criteria's to be fulfilled for a Creditor to come within the meaning of 'Financial Creditor':-

- (i) A person to whom a 'Financial debt' is owned and includes a person whom such debt has been legally assigned transferred to*
- (ii) The debt along with interest, if any, is disbursed against the consideration for time value of money and include any one or more mode of disbursed as mentioned in clause (a) to (i) of sub-section (8) of Section 5".*

13. In the present case, the Receipt-cum-Acceptance Letters (Annexure A-1 to A-4 of the application) on the face of it state that they are for

acquisition of plot and registration for plot booked. However, the maturity date of agreement is given as one year after the date of registration and the Projected Value is given which is more than the consideration value given. Therefore, the time value of money has been built in and it has to be presumed that the Receipt-cum-Acceptance Letters, even though stated to be for registration of plot, have the commercial effect of borrowing. In view of sub-sections (7) and (8) of Section 5 of the Code (supra), the petitioners are to be treated as financial creditors.

14. In the reply and arguments, the respondent has not raised any objection that the petitioners are not financial creditors. In fact, in the reply filed by Diary 985 dated 02.04.2018, it has been specifically stated that *“it is submitted that there is some delay on the corporate debtor’s part in returning the amount of the **financial creditors**....”* [emphasis supplied]. Therefore, the status of the petitioners as financial creditors is very much accepted by the respondent. As discussed above, the dates on which the default occurred are given in Column 2 of Part-IV of the application and are taken as the period of one year from the date of the respective Receipt-cum-Acceptance Letter and which date is also shown as maturity date of agreement therein. The amounts shown as Projected Values are stated to be not paid and total to ₹12,32,000 (the individual amounts in default of the three applicants are above ₹1.00 lac). The factum of non-payment is accepted by the respondent in the reply submitted by Diary No.985 dated 02.04.2018.

15. In view of the above discussion, we are satisfied that default has occurred and the application under Section 7(2) is complete. We also find that the proposed Interim Resolution Professional Shri Deepak Gupta has filed

Form 2 dated 18.01.2018 (Annexure A-12 of the application) certifying that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. Therefore, we are satisfied that the conditions prescribed by Section 7(5)(a) of the Code are satisfied and the petition deserves to be admitted.

16. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code.

- 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 Securitisation 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.

17. It is further directed that the supply of essential goods or services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) of Section 14 of the Code shall however not apply to such transactions as may

be notified by the Central Government in consultation with any financial sector regulator.

18. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section(1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

19. The matter be posted on 11.04.2018 for passing formal order to appoint Interim Resolution Professional with further directions. Copy of this order be communicated to both the parties.

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

Sd/-
(Pradeep R. Sethi)
Member (Technical)

April 03, 2018
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