

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

Company Petition (IB)No.05/ALD/2018  
(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4  
of the Insolvency and Bankruptcy (Application to Adjudicating Authority)  
Rule,2016)

IN THE MATTER OF:

Dr. Rajinder Mohan Bedi & Ors.

.....Petitioner/ Applicant

**VERSUS**

M/s U.P Infraestate Private Limited.

.....Respondents/Corporate Debtor

**ORDER DELIVERED ON 13.12.2018**

**CORAM :**

Sh. Bikki Raveendra Babu Hon'ble Member (Judicial)  
Ms Saroj Rajware, Hon'ble Member (Technical)

For the Petitioner(s): Sh. Amitabh Agarwal, Adv.  
For the Respondent: None

MEMBER: Saroj Rajware, Member (Technical)

Order



The present petition is filed under Section 7 of Insolvency and Bankruptcy Code,2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the petitioner for initiation of Corporate Insolvency Resolution Process against the Respondent company M/s U.P Infraestate Pvt Ltd.

2. Brief facts of the case as stated are as under: -

- i. The Repondents M/s UP Infraestate Private Limited., incorporated on 08.10.2009 (Having its Registered Office at, A-49, Sec-63, Noida, UP 201301.



*[Handwritten signature]*

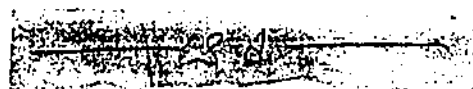
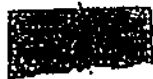
CIN U45400UP2009PTC038402). The authorised share capital of respondent is Rs. 12,00,00,000/- (Rupee Twelve Crore only) and Paid- Up share Capital is Rs.11,66,00,000/- (Rupee Eleven Crore Sixty Only).

- ii. It is stated that respondent is engaged in the Development of Hi-Tech Township in Greater Noida, Uttar Pradesh, under the project name of " Development Area-1" ( hereinafter referred to as " Said Projet".
- iii. Further stated that respondent approached the Financial Creditor for booking the residential flats to be built by the respondents and the Petitioner has paid an amount of Rs.55,00,000/- (Rupees Fifty Lakhs Only) on the assurance of the refund of the Principal Amount of Rs. 55,00,000/- after eighteen months and also interest of Rs.1,37,500 for the first 17 month and Rs. 49,500 for the last month to the petitioner against the payment of Rs. 55 Lakhs. The Corporate Debtor also reserved four residential plots in favour of the petitioner.



*(Copy of the allotment letter is annexed as Annexure 4 to the petition)*

- iv. Further it is stated that a buy back agreement dated 16.12.2014 was executed between the Petitioner, wherein it was mentioned that in addition to the assured return, after expiry of 18 months, the Respondent shall pay an amount of Rs. 55 Lakh as a full and final settlement and also issued 18 post-dated cheques to the Petitioner for the assured interest amount out of which 13

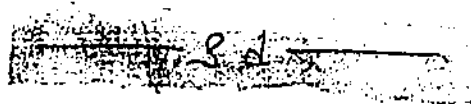


cheques were encashed. *(copy of the Buy Back Agreement cum Guarantee Deed dated 16.12.2014 for the reservation of the Residential Plot is Annexed as Annexure No.5 to the petition).*

- v. Petitioner stated that they deposited 3 cheques out of 5 un-encashed cheques as issued by the respondent on 31.05.2016, which were returned by bank. Thereafter respondent issued new cheques in lieu of the aforesaid cheques bearing Cheque No. 902587 and 902588 amounting to Rs. 25 Lakh and 30 lakh.
- vi. Petitioner stated that both the Cheques bearing cheque no 902587 and 902588 amounting to Rs.25 Lakh and 30 Lakh were returned unpaid by the banker with the reason "Insufficient Funds". *(Copy of Cheques issued by the respondent in favour of petitioner are annexed as Annexure No.7,8,9 to the petition).*
- vii. Hence as on date petitioner is liable to be paid Rs. 82,57,004( Rs.55,44,000/- Principal Amount + Rs.27,13,004/- Interest) by the Respondent.

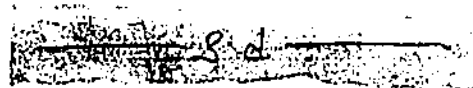


3. Financial Creditor served the notice to the Corporate Debtor on his Registered Address and thereafter on alternate address as well as by e-mail and service was considered complete. However, Corporate Debtor did not present himself nor filed the reply.
4. Heard learned counsel for the petitioner and perused the documents. In terms of the amended definition of Financial Debt



Petitioner(s)/ Home Buyers can initiate Corporate Insolvency Resolution Process against the builder or developer and are included in the definition of Financial Debt as per explanation of the Section 5 (8) (f) of I&B Code inserted with effect from 6.6.2018.

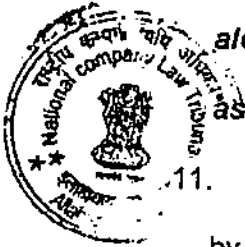
5. In terms of part IV of the application total amount in default for applicant is Rs.82,57,004/- (Rupee Eighty-Two Lakh Fifty-Seven Thousand Four Only). Principal amount of debt of applicant is Rs.55,44,000/- + Rs.27,13,004/). The Computation of amount claimed and days of default is annexed as annexure-3.
6. The Corporate Debtor failed to deliver possession of the said Residential Plot. the date of default is August. 2016 and 14.9.2016. Further the cheques of respondent to the petitioner(s) for Assured Returned bounced and were returned by the banks.
7. Further it is noted that Date of Buy-back Agreement cum Guarantee Deed is 16.12.2014 and date of Re- Purchase Assured is 15.06.2016 and Respondent has also credited Amount of Rs.5,00,000/- in the account of the petitioner through NEFT on 30.10.2017, Hence financial debt is within the Limitation.
8. The application has been filed on prescribed format under Rule 4(2) of the Insolvency and Bankruptcy (Application to



Adjudicating Authority) Rules 2016 read with section 7 of IBC 2016 is complete and we are satisfied that default has occurred.

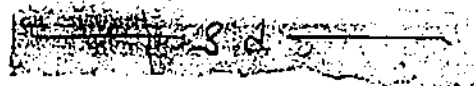
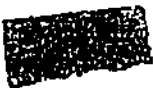
9. The applicants fall under the category of Financial Creditor in view of the judgment of NCLAT in Nikhil Mehta & Sons and others Vs. AMR Infrastructure Limited Company Appeal (AT) (Insolvency) No. 07 of 2017 as also the Insolvency and Bankruptcy Code (Amendment) ordinance, 2018 by which now as per Section 5 (8) (f) (ii) explanation any amount raised for an allottee under a real estate project shall be deemed to be an amount having the commercial effect of borrowing.

10. Further the name of the IRP has been proposed and there are no disciplinary proceedings are pending against the proposed Interim Resolution Professional (*A copy of Form-2 along with Copy of the Registration Certificate is annexed as Annexure No. 2 to the petition*)



11. Hence, this application under Section 7 of IBC, 2016 filed by the Home Buyer/ Financial Creditor is admitted and Mr. Devinder Arora having Registration Number IBB/IPA-002/IP-N00200/2017-18/10586 with the address, 1301, Vijaya Building, 17, Barakhamba Road, Connaught Place, New Delhi-11000, Mob- 8826268770 E-mail Address: [devinder.mantrah@gmail.com](mailto:devinder.mantrah@gmail.com) is appointed as Interim Resolution Professional.

12. A moratorium under the provision of section 14 of the Code is declared prohibiting the following:

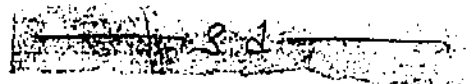
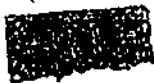


- (i) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (ii) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (iii) *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 Asserts and Enforcement of Security Interest Act, 2002(54 of 2002);*
- (iv) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*



13. It is further directed that:

- (i) *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*
- (ii) *The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central*



*Government in consultation with any financial sector regulator.*

14. The IRP shall comply with the Provision of Section 13(2), 15,17 &18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under provision of section 20 of the Code.



15. The Registry is further directed to communicate this order to Financial Creditor and Corporate Debtor and IRP through speed post and E-mail.

16. List on DT.07.01.2019 for the filing of the progress report.

*Sd*  
(Ms. Saroj Rajwade)  
Member (Technical)

*Sd*  
Bikki Raveendra Babu  
Member (Judicial)

Dated- 13.12.2018

FREE OF COST COPY

*14/12/18*

*Compared by Me  
Mahesh Sahai  
14/12/18*

P. P. PANDEY  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD