

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -3633/I&BP/MB/2018
Under Section 7 of the I&B Code, 2016
In the matter of

Mrs. Seema K. Nair and
Mr. K. Vijaya Mohan Valiathan,
Both r/o Saketham, Kilikolloor, Mangad
Villag, Kollam Taluk, Kollam District,
Kerala – 691004.

.... Petitioners

Vs.

Mather Projects Private Limited
401, B Niranjana Building, 99 Marine
Drive, Maharashtra – 400002.

.... Respondent

Order delivered on: 30.11.2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Anajyot Anand i/b Keystone Partners, Advocate.

For the Respondent: Mr. M. A. Amjith a/w Mr. Mohammed Shaffi, Advocates,
Mr. Mr. M. M. Salim (Director of Mather Projects Pvt. Ltd.)

Per: V. Nallasenapathy, Member (T)

ORDER

1. Mrs. Seema K. Nair and Mr. K. Vijaya Mohan Valiathan (hereinafter called 'Petitioners') have sought the Corporate Insolvency Resolution Process of Mather Projects Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 31.07.2018 to the extent of Rs. 70,98,746/- including interest, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Petitioners are the flat purchasers, who made payments in favour of the Corporate Debtor to the extent of Rs. 46,75,000/- in four tranches from 17.02.2014 to 19.06.2014 for buying a residential unit in a project named "HACIENDA" at Re-Sy Nos. 88,89/2 and 88/2 of Aluva West Village, Ernakulam, Kerala. The Petitioners entered into two

agreements being, a land purchase agreement dated 26.02.2014 and construction agreement dated 26.04.2014. Under the said agreements the Petitioners were promised an apartment being apartment no. 12F, 12th floor, admeasuring 1,793 sq.ft. in the HACIENDA project, the total consideration payable under both the agreements was Rs. 57,52,912/- and in furtherance to the same the Petitioner has made payment of Rs. 46,75,000/-. The Corporate Debtor agreed to hand over the possession of the apartment by December, 2014. The Petitioner submits that they have not given possession of the apartment but have to bear the burden of servicing the loan granted by HDFC Ltd. to them by paying interest on the money borrowed for the purchase of the apartment. The Petitioners along with other allottees of the project, approached HDFC Ltd. to stop the recovery of EMI but in vain. Then the allottees approached the Hon'ble Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram wherein they got an order directing HDFC Ltd. not to collect the EMI from allottees towards the loan. The Petitioners submit that as per the land purchase agreement, construction agreement and the Real Estate Regulatory Authority Act, 2016 (RERA) they are entitled to get a sum of Rs. 70,98,746/- (the refund of principal being Rs. 46,75,000/- and the interest @ 12.25% p.a. which works out to Rs. 24,23,746/-) from the Corporate Debtor.

3. Section 5(8) of the Code provides that

"Financial Debt means a debt along with interest if any which is disbursed against the consideration of the time value of money and includes-

(a)...

(b)...

(c)...

(d)...

(e)...

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowings;

[Explanation- For the purpose of this sub-class-

(i) Any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) The expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016.]

(g)...

(h)...

(i)..."

4. In view of the above provision of the Code the Petitioners are the Financial Creditors of the Corporate Debtor and are eligible to file this Petition. As averred in the Petition, the Corporate Debtor is liable to pay a sum of Rs. 70,98,746/- towards principal and interest. Further the Corporate Debtor had neither handed over the possession of the apartment as agreed nor refunded the amount paid for allotment along with interest. Hence, the debt and default are proved.
5. The Counsel appearing on behalf of the Corporate Debtor on instructions of his client who is present before this Bench candidly admitted the liability and default. In view of the above said facts the Petition deserves to be admitted.
6. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:
 - (I) (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 (SARFAESI Act);
 - (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.

- (II) 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.
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from 30.11.2018 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.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr. Padmakumar K. C., T. C. 15/1997(3) Fair Dreams Women's College North Gte, Thiruvananthapuram, Kerala – 695014; Email:- padmakumarkc@gmail.com, having Registration No. IBBI/IPA-001/IP-P01021/2017-18/11671 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

7. Accordingly, this Petition is admitted.

8. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional within seven days from the date order is made available.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Bhaskara Pantula Mohan
Member (J)