



## IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT -III

IB- 238(ND)2024

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

**IN THE MATTER OF:****KRRISH FLORENCE ESTATE BUYER'S WELFARE ASSOCIATION (KFEBWA)****.... Applicant/ Financial Creditor****Versus****M/s. ANGLE INFRASTRUCTURE PRIVATE LIMITED****.... Respondent/ Corporate Debtor****Order Pronounced On: 19.12.2024****CORAM:****SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)****SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)****APPEARANCES:**

For Applicant : Mr. Sameer Rastogi, Mr. Samyak Jain, Mr. Aryan Partap, Advs.  
 For Respondent :

**ORDER****PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)****1. THE PRESENT APPLICATION**

- i.) The present Application under Section 7 of the Insolvency and Bankruptcy Code, 2016' (hereinafter termed as "the Code") has been filed by the Applicant seeking to initiate Corporate Insolvency Resolution Process (hereinafter termed as "CIRP") of the Corporate Debtor/ Respondent for a

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default of Rs.82,54,87,968.15 (Rupees Eighty-two Crore Fifty-Four Lakh Eighty-Seven Thousand Nine Hundred Sixty-Eight and Fifteen Paise Only) arising out of the Apartment Buyer Agreements (hereinafter termed as "ABA") executed between the Allottees/Home-Buyers and the Corporate Debtor/ Respondent.

ii.) The Applicant in the present Application under Section 7 of the Code is praying for the following reliefs: -

1. *To admit the application and pass an order for initiating the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.*
2. *To cause a public announcement of the initiation of Corporate Insolvency Resolution Process and Calling for submissions of claim under Section 15 of the Code; and*
3. *To declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016.*
4. *To appoint the Interim Resolution Professional proposed in the present application or any other person deemed fit by this Hon'ble Tribunal."*

## **2. BACKGROUND OF THE PARTIES:**

- i.) The present application is filed jointly on behalf of multiple Allottees/Home Buyers/ Financial Creditors located in different geographical locations. It is stated that in order to pursue the present application, and for the sake of convenience, the Home Buyer's Welfare Association ("KFEBAWA") is filing and pursuing the present application. The Applicant representing the Allottees/Home-Buyers/ Financial Creditors is registered under the Haryana Registration and Societies Act, 2012 on 05.05.2015.
- ii.) The Applicant has appointed its common representatives, Mr. Sunil Bhatia and Mr. Ajoy Chaudhary, as the Authorized Representatives for filing and pursuing the present application, vide Board Resolution dated 02.01.2024 passed by the Applicant to represent the Applicant and sue by or on behalf of the Home-Buyers / Allottees / Financial Creditors.





iii.) The Respondent/ Corporate Debtor, Angle Infrastructure Private Limited is a Company limited by shares registered under the Companies Act, 1956, having its registered office at 201, Elegance Tower, Plot No. 08, District Centre, Jasola, New Delhi, South Delhi- 110025. The Respondent/ Corporate Debtor is a company engaged in the development of Real - Estate Projects in Delhi/ NCR region.

### **3. SUBMISSIONS OF THE APPLICANT/FINANCIAL CREDITOR:**

- i. It is submitted by the Applicant that the Corporate Debtor has cumulatively defaulted the financial debt paid by the Allottees / Home Buyers towards the purchase of their respective units under the Project which were assured to be delivered and handed over the possession on an average between the years 2018 and 2021 as per the Apartment Buyer Agreement executed between the respective Allottees/ Home-Buyers and the Corporate Debtor. It is further humbly submitted that the same has not been handed over to the respective Allottees /Home-Buyers/Financial Creditor till date.
- ii. The applicant further submitted that the Corporate Debtor in the year 2012-2013 launched a project situated at Sector 70, Gurgaon (Gurugram) on a land admeasuring 14.468 acres. The Project was dedicated exclusively and solely for Central Government Employees.
- iii. The Allotees / Home-Buyers / Financial Creditors in good faith and relying on assurances of the Corporate Debtor booked Apartments/Units in the project between August 2012 to December 2013.
- iv. In the month of April 2013, after accepting almost 20% of BSP, the Corporate Debtor started allotting the units to the Allotees / Home-Buyers and the Allotees / Home-Buyers through issuance of allotment letters, which were also a standard document without any terms and conditions.
- v. As per the communication and the demands raised by the Corporate Debtor, the commencement of excavation of the project started between 01.06.2013 and 03.06.2013. The same becomes relevant for the purpose of determining the date of possession in each of the cases.





- vi. The Corporate Debtor entered into Apartment Buyer Agreement (ABA) with the respective Allotees / Home-Buyers / Financial Creditors. Most of the ABAs were executed by the Corporate Debtor with the Allotees / Home-Buyers / Financial Creditors on various dates between the years 2012 and 2015 which were supposed to be handed over around the year 2017. Some ABAs were also executed during 2017 and 2020 whose date of handing over the possession of the units expired around in 2021.
- vii. It was further submitted by the Respondent that the Corporate Debtor in accordance with the said Apartment Buyer Agreement executed with Allotees /Home Buyers, gave different dates of possession to each of the Allotees /Home Buyers for the said Project.
- viii. According to the Applicant, the total amount claimed to be in default by the 78 Allotees / Home-Buyers is Rs. 82,54,87,968.15 /- comprising of total amount paid is Rs. 73,31,08,068.15/- and the delay penalty amounting to Rs. 9,23,79,900.00 /- (according to Clause 13 of the application for booking).
- ix. It was submitted that the date of default is from 29<sup>th</sup> May 2017, and it still continues till date on account of the Corporate Debtor which is prejudicing the interests of the Allotees/Home Buyers/Financial Creditors.
- x. Hence, the present application.

#### **4. SUBMISSIONS OF THE RESPONDENT/CORPORATE DEBTOR:**

- i. The Respondent filed a reply affidavit denying the allegations made by the Applicant and submitted that the members of the Applicant, after conducting their own independent due diligence and being fully satisfied with the particulars of the said Project, applied for the allotment of the Units. The Respondent provisionally allotted Units to the Applicants/ Allotees in the year 2013- 2015. Thereafter the Apartment Buyers Agreement was executed between the Applicants and the Respondent in the year 2013- 2015.
- ii. The Respondent further submitted that as per Clause 3.1 of the Apartment Buyer Agreement, until and unless there has been default under any provision of the Agreement or any circumstances occur which are beyond the





control of seller, the seller proposed to offer the possession within a period of 4 (four) years with a grace period of 9 (nine) months from the date of commencement of construction of the Project or execution of the Apartment Buyer's Agreement, whichever is later.

- iii. The Respondent duly abided by the timelines, and it was only due to force majeure events that the Respondent was unable to abide with the timelines as per the Agreements. Further, the Possession Clause in the Agreement allowed the exception for possession period in circumstances which are beyond seller's control.
- iv. The Respondent also submitted that in view of the order of the Hon'ble High Court of Punjab and Haryana dated 16.08.2013, the Respondent was forced to put on hold all the construction work at the project site. The Respondent was unable to do any kind of construction work at the project site for about fifteen (15) months. Further, in an Appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the Respondent before the Hon'ble High Court of Punjab and Haryana, the Hon'ble High Court vide order dated 10.09.2015 restrained the Respondent herein from creating any third-party interest in respect of unsold flats in the said Project. The Hon'ble High Court vide its order dated 08.05.2019 modified the earlier order dated 10 .09.2015 and excluded 60 unsold flats from the ambit of the stay order. The relevant extract of the order dated 08.05.2019 is reproduced herein below:

*"As per the consensus arrived at between the parties, they seek modification of the order dated 10.9.2015 to the extent that 60 un-sold flats out of total un-sold flats be excluded so that the Developer may receive booking amount in order to clear over due payments to the bank and also obtain NOC in respect of 43 flats to be handed over to the petitioner free of charges. Learned counsel for the petitioner has no objection to the aforesaid course.*

*In view of understanding between the parties, I deem it appropriate to modify the order dated 10.9.2015 passed by this Court to exclude 60 un-sold flats from the ambit of the stay order.*





*Application stands disposed of accordingly."*

- v. It is stated that on account of certain unforeseen circumstances, there was default in repayment of the financial assistance extended by the Bank, hence the Respondent's account, maintained by the Bank was declared Non-Performing Assets on 01.04.2018. 30.
- vi. It was submitted that during the pendency of a Writ Petition (Writ Petition (C) No. 16957 of 2022) before the Hon'ble High Court of Delhi, filed on behalf of the guarantor, the Bank vide letter dated 30.11.2022 sanctioned the OTS for a total amount of Rs. 95,00,00,000.00 (Rupees Ninety-Five Crores only) towards all the dues payable by the Respondent to the Bank.
- vii. In terms of the Loan Agreement dated 07.08.2014, the Respondent has to obtain No Objection Certificate from the Bank to create any third party right on any apartment developed by the Respondent in the aforementioned Project. As such, after the sanction of the OTS by the Bank, the Respondent again on several occasions requested the Bank to issue no objection certificate in respect to certain apartments to create third party interest therein. However, the Bank did not issue No Objection Certificate to Respondent. As such, due to noncooperation of the Bank, the Respondent failed to raise revenue to pay the settlement amount to the Bank. That in view of non-payment of the settlement amount, the Bank vide letter dated 10.01.2023 cancelled the OTS. It was stated that Respondent then reached an understanding with the Bank and the Bank agreed to issue No Objection Certificate to the Respondent. However, even after repeated requests made on the part of the Respondent, the Bank did not allow the Respondent to operate its Bank accounts.
- viii. Further, the construction of the Project was also delayed on account of the CIRP, which was initiated on 27.02.2024 by one of the Operational Creditor, Splendor Landbase Limited by filing an Application bearing no. C.P. (IB)- 624 (ND)/ 2021, titled M/s. Splendor Landbase Limited v. Mis Angle Infrastructure Private Limited. After the admission of the said Application on

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27.02.2024, an Appeal was preferred by one of the suspended directors of the Respondent. The Hon'ble National Company Law Appellate Tribunal, while hearing the Appeal, vide order dated 07.03.2024 directed that no further steps shall be taken in pursuance of the order dated 27.02.2024 passed by the Adjudicating Authority in C.P. (IB)- 624 (ND)/ 2021. In the said Appeal, the Respondent and Splendor Landbase Limited settled the dispute, and the Appeal was consequently disposed of vide order dated 27.08.2024 terminating the CIRP of the Respondent.

- ix. The Respondent submitted that a delay of around 6 months on account of moratorium imposed upon the Respondent as a result of the aforementioned admission order dated 27.02.2024, was also beyond the control of the Respondent. The Applicants have also failed to establish that there is any legally recoverable debt in their favour and against the Respondent.
- x. The Respondent further submitted that the Applicants have also failed to establish that all the 104 homebuyers are similarly placed and are seeking refund or similar prayers.
- xi. If the Respondent is asked to face the rigours of the CIRP, the same would prove to be catastrophic for the Respondent as well as for the other allottees of the residential project being developed by it, which is at the final stage of construction and is near completion.
- xii. Hence, the present application is liable to be dismissed.

## **5. ANALYSIS AND FINDINGS:**

- i.) We have heard the arguments advanced by both Ld. Counsel and have meticulously perused the records placed before us.
- ii.) The Ld. Counsel for the Corporate Debtor raised a preliminary objection concerning the maintainability of the present application, contending that the Applicant lacks the requisite locus standi under the provisions of the Code.
- iii.) It has been argued on behalf of the Corporate Debtor that, as per a notification issued by the Central Government under Section 7(1) of the Code,





only certain specified categories of persons may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor. The Ld. Counsel for the Corporate Debtor has asserted that the Applicant does not fall within any of the enumerated categories under the said notification, rendering the application non-maintainable. It is the case of the Corporate Debtor that the Applicant being an Association, cannot file the application under Section 7 of the Code.

- iv.) The Ld. Counsel for the Corporate Debtor further submitted that the Applicant does not meet the mandatory threshold requirement prescribed under Section 7(1) of the Code. It was argued that in cases involving financial creditors who are Homebuyers, an application under Section 7 can only be maintained if supported by at least 100 allottees or 10% of the total allottees in the same real estate project, whichever is lower. The Ld. Counsel pointed out that while the Applicant has relied on 104 Homebuyers to satisfy this requirement, the details of 26 Homebuyers are either incomplete or entirely absent. Consequently, the Applicant falls short of the statutory threshold, rendering the application *prima facie* non-maintainable.
- v.) On the other hand, the Applicant contended that the application is maintainable. The present Application is filed on behalf of 104 Allottees/ Home-Buyers of "Florence Estate" representing 20.31% of the total 512 allottees. The cumulative claim amount of 78 Allottees under the application is Rs. 82,54,87,968.15/- comprising of total amount paid Rs. 73,31,08,068.15/- and the delay penalty of Rs. 9,23,79,900.00 /-. According to the Applicant, the claim amount of Home-Buyers listed in Annexure - 1 from serial number 79 to 104 is not included in the above-mentioned claim amount, as their information/details could not be compiled at the time of filing of the application. The said Home-Buyers supporting this application, will file their claim with Interim Resolution Professional ("IRP") as per the provisions of the Code along with other Home-Buyers, as and when the present application for initiation of CIRP is admitted. The Association





comprises only Homebuyers from the Project in question, and no third party has been included as a member. The Applicant argued that the Association serves as a representative body to streamline the process of pursuing collective legal action and that the requisite threshold under Section 7(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), has been duly met.

- vi.) In our considered view, the Applicant has demonstrated that the Association exclusively comprises Homebuyers from the real estate project in question, ensuring that the threshold requirement is met without including any third parties. To establish the same the Applicant has placed the Registration Certificate, the Bye-Laws of the Association as well as the authorization letters of the 78 allottees in favour of the Association for initiation of CIRP against the Corporate Debtor. The consent of the 78 allottees makes more than 10% of the 512 allottees and hence the threshold required as envisaged under Section 7 of the Code is also satisfied. The legislative intent behind the threshold is to prevent frivolous applications while enabling a substantial number of allottees to collectively address their grievances. In the present case, the requisite threshold has been duly satisfied, and the Association's structure facilitates streamlined legal action on behalf of the Homebuyers. We are therefore of the view that the Applicant has established its *bona fides* and that the present Application filed under Section 7 is **maintainable**.
- vii.) The Corporate Debtor has not disputed the fact that there is delay in completion of the project. The Corporate Debtor has taken a stand that the delay has occurred due to *force majeure* circumstances. There is no dispute that the Home Buyers have paid the money for the units. The Corporate Debtor has in fact admitted that a default has occurred on its part. Under Section 7 of the Insolvency and Bankruptcy Code, 2016, the essential prerequisites for initiating the Corporate Insolvency Resolution Process are the existence of a financial debt and the occurrence of default. In the present case, the Applicant has duly established the existence of financial debt and demonstrated default on the part of the Corporate Debtor through the documents placed on record.

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**iii.)** In light of this, we are of the considered view that, in the presence of a clear debt and default, the present Application is a fit case for admission under the provisions of the Code. Accordingly, we find no grounds to reject the application, and as such, are constrained to **admit** the present application.

**ix.)** In light of the above facts and circumstances, it is ordered as follows: -

**a.** The Application bearing **IB-238(ND)/2024** filed by the Applicant under Section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **maintainable** and **admitted**.

**b.** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) and (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.*

*[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority*





constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;”

- c. 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.
- d. The Applicants have proposed the name of Mr. Sarvesh Kashyap as the Interim Resolution Professional (“IRP”) having address: 101, Nipun Plaza, (Near Max Hospital), Sector-1, Vaishali, Ghaziabad, Uttar Pradesh-201010. His Email address is sarvesh\_dam@yahoo.com. His registration number is IBBI/IPA-002/IP-N00127/2017-2018/10296. The Applicant filed a copy of the Consent Issued by Mr. Sarvesh Kashyap in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B. Accordingly, Mr. Sarvesh Kashyap is appointed as IRP.
- e. In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.





- f.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- g.** The IRP is expected to take full charge of the Corporate Debtor's assets and documents, without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i.** The Financial Creditors shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditors. The amount, however, will be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditors.
- j.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditors, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- k.** The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

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1. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- m. A certified copy of this order may be issued, if applied for, upon compliance with all the requisite formalities.

-Sd/-

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

-Sd/-

**BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**



*Prashant  
19/mai/  
20-12-2024*  
**Deputy Registrar**  
National Company Law Tribunal  
CGO Complex, New Delhi-110002

*On file  
20/12/24*