



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM Nos.3 & 4
Item No.3 – **Inv.P/8(MP)2024**
Item No.4 – **IA/371(MP)2024**
IN
CP(IB)/26(MP)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Nirmal Kumar Jain & Ors

.....Applicants

V/s

Pushp Ratna Realty Pvt Ltd

.....Respondent

Order delivered on 11/09/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicants :

For the Respondent :

ORDER

Inv.P/8(MP)2024 & IA/371(MP)2024

Both cases are fixed for pronouncement of the order.

A common order is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra S. Tomar/Stenographer

Sd/-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)



BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
BENCH AT INDORE

Inv.P/8(MP)2024 & IA/371(MP)2024

in

C.P.(IB)/26(MP)2024

[Applications filed in the matter of Section 7 petition under IBC, 2016 in CP(IB)/26(MP)2024]

(i) **Inv.P/8(MP)2024**

Rajeev Agnihotri

S/o Shri Ramashankar Agnihotri
71, Shree Nagar, Extension,
Indore, M.P. 452017

.....Applicant

Vs.

Nirmal Kumar Jain & Ors

Residing at 163, Anoop Nagar,
Indore, M.P. 452016

.... Respondent

(ii) **IA/371(MP)2024**

Rajeev Agnihotri

S/o Shri Ramashankar Agnihotri
71, Shree Nagar, Extension,
Indore, M.P. 452017

.....Applicant

Vs.

Pushp Ratna Realty Private Limited

G-1, Pushpratan Castle
12, Kanchanbag, Tukoganj,
Indore, M.P. 452001

Email-pushparatnarealty@gmail.com

.... Respondent

In the main matter of: C.P.(IB)/26(MP)2024

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

Nirmal Kumar Jain & Ors

Residing at 163, Anoop Nagar,
Indore, M.P. 452016

.....Financial Creditor

Vs.

Pushp Ratna Realty Private Limited

G-1, Pushpratan Castle
12, Kanchanbag, Tukoganj,
Indore, M.P. 452001

Email-pushparatnarealty@gmail.com

.....Corporate Debtor



Coram: Chitra Ram Hankare Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For the Applicants/Homebuyers : Ld. Adv. Mr. Nipun Singhvi (Online) a.w.
Ld. Adv. Mr. Mayur Jugtawat (Online)

For the Intervenor/Mr. Rajeev Agnihotri : Ld. Adv. Mr. Manoj Munshi (Online) a.w.
Ld. Adv. Mr. Chiranjeev Saboo (Online)

For the Respondent/CD : Ld. PCS Mr. Pratik Tripathi (Online)

Order Pronounced On: 11.09.2024

O R D E R

Inv.P/8(MP)2024 & IA/371(MP)2024

1. Inv.P/8(MP)2024 is an intervention petition filed by the applicant/intervener, Mr. Rajeev Agnihotri seeking direction to array him as a respondent in the C.P.(IB)/26(MP)2024 in the matter of Nirmal Kumar Jain & Ors Vs. Pushp Ratna Realty Pvt Ltd and provide an opportunity to defend his interest in the respondent company. The said company petition C.P.(IB)/26(MP)2024 has been filed by some of the homebuyers under Section 7 of the IBC, 2016 seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') in the case of corporate debtor Pushp Ratna Realty Pvt Ltd.

2. IA/371(MP)2024 is filed in the same matter by the applicant/intervener Mr. Rajeev Agnihotri putting therewith objections to the maintainability of the said C.P.(IB)/26(MP)2024 filed by the homebuyers under Section 7 of the IBC, 2016.

3. Both the applications are filed and listed for hearing at the stage when the said company petition C.P.(IB)/26(MP)2024 has already been heard in part. Nevertheless, the learned counsel, Mr. Manoj Munshi was allowed to put forth the issue as raised by the applicant/intervener in these applications. In the context, the learned counsel, Mr. Manoj Munshi submitted that the present applicant/intervener and his family members are the shareholders in the corporate debtor Pushp Ratna Realty Pvt Ltd; and that they were allotted



50% of the shareholding in lieu of the land that the applicant/intervener had transferred in the company for constructing a township thereon. In this regard he further submitted that the applicant/intervener and his family members were the owner of 2,01,858 sqft. precious residential land in Khajrana, Indore and had intended to construct a township thereon; that the applicant intervener had no experience or exposure in the real-estate business and, therefore, he approached one Mr. Ashok Kumar Jain for purpose of construction of the township; that as per the Memorandum of Understanding ('MoU') applicant/intervener and his family members had agreed to incur all construction cost and expense thereon whereas Mr. Ashok Kumar Jain, who is the director in the respondent corporate debtor, was not required to invest any money in the project but was entitled to receive only service charges @ Rs. 189/- per sqft. of the salable area and if the project prolonged beyond five years then service charges was payable @ Rs. 12.60% of the selling price. He also submitted that as per the MoU.

3.1 The Learned Counsel Shri Manoj Munshi further submitted that Mr. Ashok Jain had a newly incorporated company (date of incorporation 17.06.2008 in the name of Pushp Ratna Realities Pvt Ltd) with paid up capital of Rs 5 Lakh distributed among the family members of Mr Ashok Jain; and that as per the understanding between them, he had transferred entire land (201858 sq ft) in the name of company in consideration of allotment of 50000 equity shares with face value of Rs 10/- and premium of Rs 690/-; that the market value of land at that time was around Rs 3.27 crores and as a result both the families [applicant / intervener family and Mr. Ashok Jain & his family] held 50000 equity shares each in the said company. It was stated that the applicant/ intervener agreed to this arrangement without understanding the repercussion thereof.

3.2 The Leaned Counsel Mr. Manoj Munshi further submitted that the applicant/intervener had made an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 in the Hon'ble High Court of M. P. Bench at Indore for appointment of the Arbitrator for adjudication of disputes between the parties in terms of Clause-20 of the MoU; that the Hon'ble High



Court *vide* its order dated 23.08.2021 passed in AC No. 09/2020 appointed Hon'ble Shri Justice K.K. Lahoti formal Acting Chief Justice of M.P. High Court as sole Arbitrator to adjudicate the dispute between the parties; that the sole Arbitrator as appointed by the Hon'ble High Court could not pass the award within the limitation as provided under Section 29-A of the Arbitration and Conciliation Act, therefore, the mandate got terminated *de-jure*, and resultantly, the applicant has filed an application under Section 29-A of the Act before the Hon'ble High Court for extension of time to enable the sole Arbitrator to pass the award which is still pending.

4. In the aforesaid background, the learned counsel, Mr. Manoj Munshi pleaded for directing the petitioners/homebuyers in the said C.P.(IB)/26(MP)2024 to array the intervener as a respondent to provide an opportunity to defend their interest in the respondent company and for that they have placed their objections in IA/371(MP)2024, opposing admission of Section 7 petition filed by the homebuyers, wherein it is stated that petitioners/homebuyers in Section 7 petition have mis-stated the date of default with the ulterior motive to bring their petition within the limitation; that as per the allotment letter issued to the homebuyers, the corporate debtor had agreed to handover the possession of the constructed flat within thirty months which had expired before any acknowledgments were given by the corporate debtor. It is also submitted that the earlier company petition C.P.(IB)/83(MP)2023 filed by the homebuyers against the corporate debtor was withdrawn as they realized that their case was barred by limitation. In that application, the homebuyers had placed an acknowledgment that was issued to them on 09.11.2021 and now that in the present application which has been filed by the homebuyers, (some of them now different from earlier applicants) they have managed few more acknowledgments in connivance with the corporate debtor which is under hand in glove with the applicant/homebuyers. It is also pointed out that the acknowledgments dated 16.06.2017 and 23.10.2019 which are now filed in the present petition was not filed in the earlier petition and thereby it is alleged that these acknowledgments dated 16.06.2017 and 23.10.2019 have been back dated



with connivance between the proxy homebuyers and corporate debtor to cause prejudice to the applicant/intervener who holds 50% share in the company.

5. We have heard learned counsels appearing from both sides and perused the relevant records. During the course of the argument, it was observed that the present petition C.P.(IB)/26(MP)2024 is filed by the homebuyers under Section 7 of the IBC, 2016 for initiating the insolvency proceedings against the said corporate debtor and as such the respondent/corporate debtor is to be represented by the present management having control over the company and individual shareholder would not have any *locus-standi*. The learned counsel for the petitioner/homebuyers and the corporate debtors, who were present on advance service of these applications, also objected to the *locus-standi* of the applicant/intervener. They also submitted that they did not intend to file any reply as the application filed by the applicant/intervener requires to be dismissed forthwith.

6. We also noted that the applicant/intervener are raising the issue for objecting the admission of Section 7 petition primarily on the ground that the said application of homebuyers is barred by limitation. We also note that the issue of limitation in any case is to be examined while taking decision for admission of the Section 7 petition and is being looked into in the proceedings of the company petition CP(IB)/26(MP)2024.

7. As such we are of the view that applicant/intervener is not required to be heard on the issue of limitation as the same will have to be examined even otherwise by this Adjudicating Authority while deciding the said Section 7 petition. Further there appears to be a dispute between the shareholders. Prima facie it appears to be an oppression & mismanagement matter and the submissions of the applicant/ intervener that he has also moved an arbitration as well would have no bearing to section 7 proceedings; and for that reason also the applicant/intervener even being shareholder does not have any *locus-standi* in the matter of Section 7 petition and, therefore, cannot



be allowed to be impleaded as respondent in Section 7 petition and in view thereof both the applications are not maintainable.

8. Accordingly, **Inv.P/8(MP)2024 & IA/371(MP)2024** stand **dismissed**.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra S. Tomar/Stenographer

Sd/-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)