

**Insolvency and Bankruptcy Board of India**  
**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

23<sup>rd</sup> August, 2022

***Subject: Order<sup>1</sup> dated 2<sup>nd</sup> August, 2022, in the matter of Yadubir Singh Sajwan & Ors. Vs. M/s. Som Resorts Private Limited [Company Petition No. (IB)-67(ND)/2022].***

The Adjudicating Authority (AA) *vide* its order dated 2<sup>nd</sup> August 2022, held that the corporate debtor cannot be allowed to defraud the homebuyers in the disguise of separate legal entity by concealing the real nature of the transaction. The AA lifted the corporate veil of the corporate debtor to look into the real nature of transactions and initiated corporate insolvency resolution process (CIRP) against the corporate debtor.

**I. Brief Background:**

In December 2012 M/s. Som Resorts Private Limited (CD) launched a project titled Casa Italia and appointed M/s. Cosmic Structures Limited as its marketing agency. The petitioners (homebuyers) had booked space in said the project and had made payments to the CD. The CD failed in handing over the possession and in refunding the money to the homebuyers.

Delhi HC, *vide* its order dated 11.01.2017, appointed an Official Liquidator (OL) for the Cosmic Structures Limited, consequent to which, the OL sealed the project Casa Italia considering that the property belongs to it.

Subsequently, Cosmic Structure Limited, the CD and the homebuyers executed a Memorandum of Settlement (MoS) whereby the CD undertook to complete the construction of the project within 18 months from the de-sealing of the project site by the High Court of Delhi and promised to hand over possession to the homebuyers failing which the CD will refund the amount along with interest @18% p.a. On CD's failure to honor the MoS, homebuyers filed CIRP under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) against the CD.

**II. Observations of AA:**

**i. Agency agreement**

- The agreement between Cosmic Structures Limited and the CD is purely an agency

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agreement, wherein Cosmic Structures Limited was acting as an agent of the CD.

- The rule as to agency is expressed in maxim "*qui facit per alium, facit per se*" i.e., he who acts through another does the act himself. The marketing agreement between the CD and Cosmic Structures Limited is a matter of internal affairs of the CD and the homebuyers being outsiders are not privy to the internal affairs of the CD and the doctrine of indoor management applies herein. Therefore, it is not open to the CD to take advantage of Cosmic Structures Limited to shield its position at the cost of the homebuyers.

## **ii. Application of Doctrine of corporate veil in CIRP**

- The principle of lifting the corporate veil is an exception to the distinct corporate personality of a company or its members and is well recognized not only to unravel tax evasion but also where protection of public interest is of paramount importance and the corporate entity makes an attempt to evade legal obligations, then, lifting of veil is necessary to prevent the corporate entities to misuse the principle of distinct corporate personality.
- It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.

## **III. Conclusion:**

It would not be fair to the homebuyers, if the CD is indirectly defrauding homebuyers in the disguise of separate legal entity by concealing the real nature of the transaction. Cosmic Structures Limited was not only working as an agent of the CD but was directly or indirectly managed by the CD and ultimate beneficiary was the CD. Application admitted.