



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

CP No. (IB)- 58/7/JPR/2022

(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:

GATEWAY WELFARE SOCIETY

...Financial Creditor/Applicant

Versus

M/s SAND DUNE CONSTRUCTIONS PVT. LTD.

...Corporate Debtor/Respondent

MEMO OF PARTIES

CP No. (IB)- 58/7/JPR/2022

GATEWAY WELFARE SOCIETY

SDC Gateway, Kalidas Marg, Bani
Park, Jaipur-302016.

... Applicant

VERSUS

M/s SAND DUNE CONSTRUCTIONS PVT. LTD.

D-29 Ashiana Apartment, Shanti
Path, Tilak Nagar, Jaipur-302005.

... Respondent

For the Applicant : Aditya Vijay, Adv.

For the Respondent : Harish Agrawal, Adv.

Sdr

Sdr

Order Pronounced On: 16.07.2024

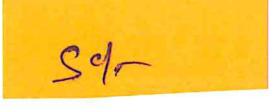
ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application has been filed by *Gateway Welfare Society*, ('Applicant' / 'Financial Creditor') through its Secretary *Mr. N. B. Rajoria* to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Sand Dune Constructions Private Limited* ('Respondent' / 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant is a Residents Welfare Association acting on behalf of the residents of the housing complex known as 'SDC Gateway', a project of the Corporate Debtor. The Applicant, *M/s Gateway Welfare Society*, is registered as a Society under the Rajasthan Societies Registration Act, 1958 in the year 2016, having the Identification No. 258/Jaipur/2016-17.
3. The Corporate Debtor, *M/s Sand Dune Constructions Private Limited*, is registered as a private limited company incorporated on 18.03.1997, having CIN U45201RJ1997PTC013429, and has its registered office at D-29, Ashiana Apartment, Shanti Path, Tilak Nagar, Jaipur-302006. The Corporate Debtor has an Authorised Share Capital of Rs. 3,00,00,000/- (Rupees Three Crore Only) and Paid-Up Share Capital of Rs. 1,87,12,410/- (Rupees One Crore Eighty-Seven Lakh Twelve Thousand and Four Hundred and Ten

 Only). The same has been verified from the online database maintained by the Ministry of Corporate Affairs.

4. The Applicant has alleged a default by the Corporate Debtor concerning non-payment of Maintenance Security Deposit amounting to Rs. 3,10,52,200/- (Rupees Three Crore Ten Lakh Fifty-Two Thousand Two Hundred only).
5. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:
 - 5.1 The apartment owners of *SDC Gateway* ('SDC') entered into Flat Buyer's Agreements with the Corporate Debtor from 2015 onwards for the purchase of flats in a housing complex namely, *SDC Gateway*. Further, there are total 64 flats in SDC and many apartment owners in SDC are members of *Gateway Welfare Society* i.e., the Applicant.
 - 5.2 The Corporate Debtor developed the *SDC* project and sold the flats/units to the individuals through Flat Buyer's Agreement. According to Clause 6 of the Flat Buyer's Agreements, the Corporate Debtor was authorized to collect a Maintenance Security Deposit at the rate of Rs. 200 per square ft. of the super area of each flat.
 - 5.3 In pursuance of the Flat Buyer's Agreement, the Corporate Debtor has collected a total amount of Rs. 3,10,52,200/- (Rupees Three Crore Ten Lakh Fifty-Two Thousand Two Hundred only) from the

Applicant as Maintenance Security Deposit for flats. The same has also been acknowledged by the Corporate Debtor *vide* its letter dated 29.04.2017 and a copy of the said letter is annexed as Annexure-6 of the Application. The maintenance amount carries an interest of 10% on which the Corporate Debtor has deducted the TDS Amount, the same is reflected in the Form 26AS as part of the Annual Tax Statement of the Financial Creditor.

- 5.4 In the meantime, the Corporate Debtor began defaulting on the interest payments prompting the Applicant to request immediate payment of the security deposit amounting to Rs. 2,09,46,200/- (Rupees Two Crore Nine Lakh Forty-Six Thousand Two Hundred Only) to ensure Society's maintenance.
- 5.5 The relevant details as reflected in Part IV of the Application are reproduced hereunder:

Part IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt Granted	<u>Amount of Debt Granted:</u> <u>Principal Amount</u> Rs 3,10,52,200 (Rupees Three Crore Ten Lakh Fifty-Two Thousand Two Hundred Only)
	Date(s) of Disbursement	Interest Free Security Deposit was paid by the residents of SDC Gateway to the Corporate Debtor as per the clause 6 of their respective sale deeds on the date of




		execution of sale deed. Thus, the date of disbursement is the date of execution of various sale deeds and for that separate tabular chart is prepared. Copy of tabular chart is annexed herewith and marked as Annexure-3.
2.	Amount claimed to be in default and the date on which the default occurred	<p><u>Amount Claimed:</u> Security Deposit Due: Rs. 2,09,46,200/- Interest amounts due: Rs 44,67,394/- till March 2022 Total amount of debt due till March 2022 is Rs. 2,54,13,594/- (Rupees Two Crore Fifty-Four Lakh Thirteen Thousand and Five Hundred and Ninety-Four Only)</p> <p>Copy of the Detailed Working of Amount in Default is annexed and marked as Annexure-4.</p>
	Date from which Debt Fell Due	Default Started from 30/03/2019 and is in continuation till date.

6. The Corporate Debtor filed its Reply *vide* Diary No. 3090/2022 dated 18.10.2022 and contended the following:

6.1 The Corporate Debtor contends that the Application filed by the Financial Creditor is not maintainable as it has been filed in contravention of the second Proviso of Section 7 of the Code which provides for filing of an application by at least 100 allottees or 10 per cent of the allottees. As per the Proviso, only the allottees of a Real




Estate Project can initiate the CIRP. It was submitted that the Gateway Welfare Society is not an allottee in terms of definition of allottee given in Section 5(8)(f)(ii) of the Code and Section 2(d) of the RERA Act, 2016. The Corporate Debtor relied upon the Judgment of the Hon'ble Supreme Court of India in the matter of *Manish Kumar v/s Union of India and Anr (2021) 5 SCC 1* in support of its contention.

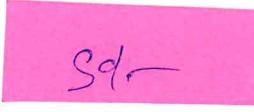
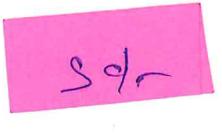
- 6.2 Further, the Corporate Debtor contended that the Applicant Society is not a Financial Creditor as per Section 5(7) of the Code as it does not hold the position of a bank or financial institution. Moreover, the Applicant society has not lent any money to the Corporate Debtor with or without interest. Hence, the alleged amount of debt as principal amount to the tune of Rs. 3,10,52,000/- (Rupees Three Crore Ten Lakh Fifty-Two Thousand Two Hundred only) by the Applicant is misconceived.
- 6.3 This Application was filed in the year 2022 by *Mr. N. B. Rajoria* who alleged to be the authorised person to file the instant Application. However, no resolution authorising him has been filed by the Applicant. It is further contended that the aforementioned person is not the Secretary of the Applicant Society, hence, not competent to file this Application in the capacity of Secretary of the Applicant Society. Further, the Applicant has not furnished the bye-laws and constitution of the society. The Corporate Debtor contended that there

are 64 flats in the SDC but the Applicant has not filed any authenticated document showing details of their members in the society.

- 6.4 The Respondent developed the SDC Gateway apartments and sold the flats/ units to the individuals as per the terms and conditions of Sale Deed executed between the builder and buyer. The Applicant Society came into the picture after the execution of the sale deeds. Thus, the alleged Interest-Free Security Deposit paid by the buyers cannot be termed as a deposit of the Applicant Society. Thus, the Applicant Society never disbursed any amount to the Respondent.
- 6.5 Further, it is submitted that the Allottees cannot claim any interest over the Interest-Free Maintenance Security Deposit ('IFMS') as it is Interest free Maintenance Security. Thus, there is no accrued interest of Rs. 50,95,550/- (Rupees Fifty Lakh Ninety-Five Thousand Five Hundred Fifty Only). Therefore, there is no debt that the Corporate Debtor owes to the Applicant as alleged in the Application i.e., Rs. 3,00,71,750/- (Rupees Three Crore Seventy-One Thousand Seven Hundred Fifty Only) till March 2020. Further, it is submitted that 18 purchaser/buyer have received refund of their respective Interest Free Security Deposit from the Corporate Debtor amounting to Rs. 91,82,000/- (Rupees Ninety-One Lakh Eighty-Two Thousand Only).

- 6.6 Furthermore, the Corporate Debtor states that since the date of completion of building, it has spent crores of rupees in maintaining the building and it has incurred the additional maintenance charges in compliance of Clause 22(b), (c), (d) and (e) of the sale deed. The Corporate Debtor reserve the right to claim the aforementioned charges in excess of interest amount at the rate of 5% per annum received from the bank on the IFMS.
- 6.7 The Respondent contends that the Applicant has not provided details regarding the date and nature of the amount deposited. Additionally, no documents pertaining to the contract or loan agreement have been submitted to substantiate the Applicant's claim. The TDS submitted by the Applicant holds no significance in validating the debt claimed by the Applicant against the Corporate Debtor. Further, the Respondent stated that they have not received any requests or reminders from the Applicant concerning the repayment of the alleged dues.
7. The Applicant filed its Rejoinder *vide* Diary No. 1323/2023 dated 26.05.2023 and submitted the following:

- 7.1. The Applicant submitted that the present Application has not been filed in the contravention of the 2nd Proviso of Section 7 of the Code as the same has been filed on the basis of the financial debt which has also been admitted by the Corporate Debtor. Further the debt as claimed in

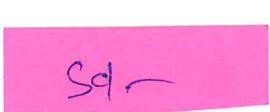



the present Application comes under the purview of Section 5(8)(a) of the Code as the money was borrowed by the Corporate Debtor against the payment of Interest.

7.2. The Applicant has filed present Application on behalf of 43 allottees out of the total flat buyers, thus meeting the threshold as stated in Section 7 of the IBC, 2016. Additionally, the Applicant clarifies that the Residents Welfare Association is not engaged in commercial transactions; rather, it is solely requesting the Corporate Debtor to refund its Security Deposit along with interest. Furthermore, it is noted that security deposits fall under the definition of Financial Debt as held by the Hon'ble NCLAT in the case of *Satish Chand Gupta v/s Servel India Private Limited in CA (AT) (Insolvency) no. 502 of 2020*.

7.3. Further, the Applicant submitted that the Corporate Debtor itself was paying the interest on the deposit and same was admitted by the Corporate Debtor as stated in present Application. Thus, the averment raised by the Corporate Debtor that the said deposit was not lent by the Society is contrary to their own admission *vide* its letter dated 29.04.2017.

7.4. The Applicant contends that at the time of filing this Application, *Mr. N.B. Rajoria* served as the secretary of the Society, and thus was duly authorized to initiate the present Application, in accordance with Clause 36(d) of the Society's Bylaws. This clause stipulates that the secretary






is responsible for instituting, prosecuting, and defending suits and other proceedings involving the society. Further the management of the Applicant was changed on 13.06.2022 after filing of the present Application. Copies of the Byelaws and Authorization are annexed as Annexure-R/1 and R/2, respectively.

7.5. Additionally, the Applicant submitted that when the Applicant Society was constituted in 2016, it was the responsibility of the Corporate Debtor to transfer the security deposit to the Applicant Society's account. However, at that time, the Corporate Debtor informed the Applicant that due to financial constraints it cannot return the security deposit. Instead, the Corporate Debtor proposed to pay interest on the Maintenance Security deposit after deducting the TDS @10%. This arrangement was intended to allow the Applicant to cover maintenance expenses using the interest payments.

7.6. The Applicant further stated that since March 2019, the Corporate Debtor has defaulted on interest payments and has refused to refund the security deposit advanced to it as a loan by the Applicant. Furthermore, the Applicant acknowledges that while the Corporate Debtor has refunded the security deposit to certain flat buyers, it has not refunded the amount of the remaining flat buyers i.e., 43 flat buyers, who are members of the Applicant.

Sd/-

Sd/-

 8. The Applicant has filed its written submissions *vide* diary No. 1138/2024 dated 06.05.2024 wherein it reiterated its earlier submissions and relied on the following case laws:

8.1. *Vipul Green Residents Welfare Association v/s Vipul Limited, 2021 SCC Online NCLT 3145.*

8.2. *Satish Chand Gupta v/s Servel India Pvt. Ltd., (NCLAT, New Delhi Company Appeal (AT) (Insolvency) No. 502 of 2020.*

8.3. *Phoenix ARC Pvt. Ltd. v/s Karni Developers & Construction Co. Pvt. Ltd., (CP (IB) No. 05/7/JPR/2021).*

9. The Corporate Debtor has also filed its written submissions *vide* Diary No. 1248/2024 dated 15.05.2024 wherein it reiterated its earlier submissions. The Corporate Debtor contended that the Applicant has taken some additional pleas in its rejoinder. It is contended that the additional pleadings and the documents introduced by the Applicant in the Rejoinder cannot be considered as part of the original Application. According to the Code, 2016, pleadings can only be amended through permissible processes. Moreover, the Corporate Debtor has relied upon the following Judgments in support of its contentions:

9.1. *Manish Kumar v/s Union of India, (2021) 5 SCC I.*

9.2. *Actioncor Consultants Private Limited v/s Viprah Technologies Limited, 2023 SCC OnLine NCLAT 298.*

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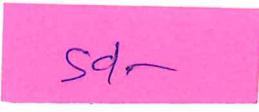
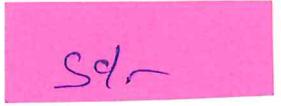
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- 9.3. *M/s. the Verandas Apartment Owners Association v/s M/s. Saluja Construction Company Ltd., (NCLT New Delhi Bench VI IB-1097(PB)/2019.*
- 9.4. *P. Nazeer ETC. v/s Salafi Trust & anr ETC., (2022 Live Law (SC) 334).*
- 9.5. *P Nanikutty & Anr v/s K U Kalpaka Devi & Ors, (Hon'ble Kerala High Court Bench Ernakulam in RFA No. 139/2008.*
- 9.6. *Vibrus Homes Pvt. Ltd. v/s Ashimara Housing Pvt. Ltd. & Anr (NCLAT Principal Bench, New Delhi Company Appeal (AT) (Insolvency) No. 80 of 2022.*
- 9.7. *Innova premises Co-operative Society Limited v/s Marathon Nextgen Realty Limited, (NCLT Mumbai Bench-IV CP(IB) No. 1042/MB-IV/2020.*
10. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Corporate Debtor is situated in the state of Rajasthan; therefore, this Adjudicating Authority has the jurisdiction to entertain this Application. Further, this matter is within the purview of the Laws of Limitation.
11. The present Application has been filed by the *Gateway Welfare Society*, a duly registered society of the residents of the *SDC Gateway* apartment, against the Corporate Debtor. The Corporate Debtor developed the *SDC Gateway* apartments and sold the flats/ units to the individuals as per the terms and conditions of the Sale Deed executed between the builder and the

 buyers. According to the aforementioned sale deed, the Apartment owners paid IFMS @200/- per square ft. of the super area of the flat to the Corporate Debtor under the head of Security Deposit.

12. It was contented by the Financial Creditor that according to clause 22(b) of the sale deed, the interest earned on the Security deposited with any Bank was to be sufficient for the maintenance of society. After the constitution of the Applicant Society, the Corporate Debtor was duty bound to transfer the security deposit into the account of the Applicant. However, the Corporate Debtor requested the Applicant that due to financial constraints the Corporate Debtor was not able to return the Security Deposit and the Corporate Debtor proposed to pay an interest at the rate of 10% on the deposits so that the Applicant could cover maintenance expenses.
13. The Financial Creditor submitted that since March 2019, the Corporate Debtor has defaulted on interest payments and has refused to refund the security deposit advanced to it as a loan by the Applicant. Furthermore, the Applicant acknowledges that while the Corporate Debtor has refunded the security deposit to certain flat buyers, it has not refunded the amount of the remaining flat buyers i.e., 43 flat buyers, who are members of the Applicant.
14. Before we delve into the merits of the case, it is incumbent to consider the preliminary objection of the Corporate Debtor concerning maintainability of the instant Application. The Corporate Debtor has contended that the

 Applicant does not fulfil the threshold as prescribed under 2nd Proviso of Section 7.

15. At this juncture, it is pertinent to refer to the 2nd Proviso of Section 7:-

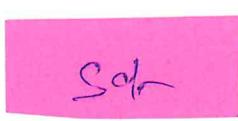
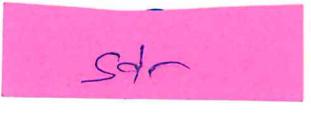
"Section 7: Initiation of corporate insolvency resolution process by financial creditor: –

.....

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less: "

16. In the instant matter, the Corporate Debtor in its Reply has admitted that there are a total of 64 flats in SDC. Further, in the Reply itself, it has been stated that the Applicant society consist of 64 registered members. Since, the Applicant has filed an authorization letter signed by the President and the Secretary of the Society acting on behalf of all the members of the society, we are of the view that the objection raised by the Corporate Debtor lacks merit.

17. In the instant case, it is an admitted fact that the Corporate Debtor received interest free maintenance security deposit from the allottees/homebuyers as per Clause 6 of the Flat Buyer's Agreement. Subsequent to the purchase of flats, the allottees/homebuyers formed the Applicant society. On the aforementioned maintenance security, the Corporate Debtor was paying an



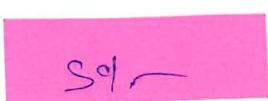
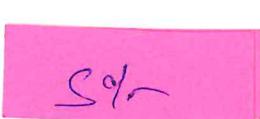
interest of 10% to the Applicant which was utilized by the Applicant for maintenance of the SDC.

18. Before proceeding further with the matter, we refer to Section 7 of the Code which clarifies that the Adjudicating Authority upon being satisfied that default has occurred of the financial debt, may order for initiation of CIRP of the Corporate Debtor. The key ingredients of an Application filed under Section 7 of the Code are: (i) there has to be a financial debt and; (ii) there must be a default in repayment of the financial debt. Hence, the Applicant must establish that there is a financial debt and that a default has been committed in respect of that financial debt by the Corporate Debtor. In order to initiate the proceeding under Section 7 of IBC, 2016, the Adjudicating Authority has to see a) whether there is a ‘financial debt’ b) the ‘default’ has occurred in repayment of that debt or not, c) the application is complete and whether any disciplinary proceedings are pending against the proposed RP or not.

19. At this juncture, we would like to refer to the definition of ‘debt’, financial debt’ and ‘financial creditor’ and the same are quoted below: -

Section 3 (11) of IBC: “*Debt means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.”*

Section 5 (8) of IBC: “*Financial debt means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*





- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

2[Explanation. -For the purposes of this sub-clause,-

- (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 (16 of 2016);]
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

Sd/-

Sd/-



(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

Section 5 (7) of IBC: “Financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

20. On plain reading of the definitions referred Supra, we find that the ‘debt’ means a liability or obligation in respect of a claim, which is due from any person and includes a financial debt and operational debt. And the ‘financial debt’ is a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes the amount paid under either of the clauses from (a) to (i) of Section 5 (8) of the IBC, and the person who paid the money and to whom such debt has been legally assigned or transferred to is known as ‘Financial Creditor’.
21. The moot question of law that arises for our consideration is whether the amount of maintenance security deposited by the Allottees with the Corporate Debtor amounts to a Financial Debt so as to warrant invocation of Section 7 of the Code.
22. To deal with the aforementioned question, we consider the decision of the Hon'ble NCLAT in the matter of *Satish Chand Gupta v. Servel India Private Limited* [2021] 125 taxmann.com 205 (NCL-AT). The relevant portions of the order are quoted below:-

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“33. On a careful consideration of respective contentions and in view of the fact that the Respondent/Corporate Debtor had accepted certain amounts from the Appellant and credited the interest in a consistent manner against such amounts for a continuous period of five years, as pleaded by the Appellant and also that the ‘Corporate Debtor’ had accepted money from the Appellant against the payment of interest and bearing in mind the payment of interest on the amounts borrowed by the Respondent Company is nothing but a consideration for the time value of money and in as much as the ‘interest’ is the compensation paid by the borrower to the lender for using the lender’s money over a period of time, this Tribunal comes to an inevitable and inescapable conclusion that the Appellant’s status is that of a ‘Financial Creditor’ as per Section 5(7) read with Section 5(8) of the Code and that there is a default in payment of the accepted amounts by the Respondent/CD and in short, the Respondent/Corporate Debtor comes within the purview of the definition of ‘Financial Debt’. Viewed in that perspective, the contra view taken by the Adjudicating Authority in coming to the conclusion that the application filed by the Appellant/Financial Creditor is not maintainable for initiation of Section 7 of the Code is clearly unsustainable in the eye of law, as held by this Tribunal, to prevent an aberration of justice. Consequently, the Appeal succeeds.”

23. The aforesaid Judgment was relied upon by the Principal Bench in the case of *Vipul Greens Residents Welfare Association v/s Vipul Limited* 2021 SCC OnLine NCLT 3145 wherein it was held that the amount received by the Corporate Debtor concerning the Maintenance Security Deposit shall amount to financial debt within the meaning of Section 5(8) of the Code.

Sd/-

Sd/-



24. In the instant case, the Applicant has alleged the default on interest and repayment of the Maintenance Security Deposit Amount by the Corporate Debtor. The fact pertaining to the payment of interest can be corroborated from the letter of the Corporate Debtor dated 29.04.2017, the relevant extract of the same is reproduced hereunder: -

"This is to certify that we are paying sum of Rupee 3,50,000/- per month after deducting TDS @10% as interest on society deposit of apartment SDC Gateway to the Gateway welfare society since July 2016."

25. Further, a perusal of the Form 26 AS filed with the Application reflects interest payments made by the Corporate Debtor to the Applicant on the maintenance security deposit amount and the TDS deducted on such amount till F.Y. 2018-19. At this point, it is relevant to refer to the Judgment of the Hon'ble NCLAT in the case of *Jaiprakash Agarwal v/s Alka Prakash Agarwal & Anr. Company Appeal (AT) (Insolvency) No. 292 of 2023*. The relevant paras of the said Judgment are reproduced hereunder:-

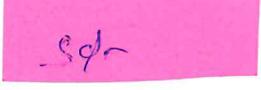
"21. ...Furthermore, once payment of interest had been shown from the Corporate Debtor in Form 26AS and Form No. 26AS entries correspond to the claim of financial debt, the said document becomes another piece of evidence to prove that it was a financial debt."

26. In view of the aforementioned facts and the Judgments, we are of the opinion that the Maintenance Security Deposit in the instant case will fall under the definition of Financial Debt under Section 5(8) of the Code. Further, we

 cannot lose sight of the fact that the Corporate Debtor has paid interest @10% per month on the security deposit to the Applicant since 2016. Thus, it is evident that the security deposit was raised from the allottees and was held against the payment of monthly interest for maintenance of the society. Therefore, we are of the considered view that the amount held by the Corporate Debtor falls under the definition of 'financial debt.'

27. Further a perusal of the documents reveal that the Corporate Debtor has not paid the interest over the Maintenance Security Deposit since the end of F.Y. 2018-19. Moreover, the complete amount of Maintenance Security Deposit has not been refunded to the Applicant Society. Thus, we are of the considered opinion that the Corporate Debtor has defaulted in payment of the interest and the Maintenance Security Deposit.
28. It is germane to refer the Judgement of the Hon'ble Supreme Court in *M/s Innovative Industries Ltd. vs. ICICI Bank*, (2018) 1 SCC 407 wherein it was held that upon the Adjudicating Authority being satisfied that a debt was due and default had occurred, it was bound to commit the Corporate Debtor into CIRP. The relevant excerpts from the judgment are as below:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. The moment the adjudicating authority is satisfied that a default



has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

(emphasis added)

29. It is trite law that under the IBC once a debt which becomes due or payable, in law and in fact, and if there is incidence of non-payment of the said debt in full or even part thereof, CIRP may be triggered by the financial creditor as long as the amount in default is above the threshold limit. Once the Adjudicating Authority is subjectively satisfied that there is a debt and a default has been committed by the Corporate Debtor and the Section 7 application is complete in all respects, the Adjudicating Authority in the exercise of summary jurisdiction has to admit the Section 7 Application.
30. In our considered view, the debt and default were adequately demonstrated by the Applicant in the instant case and the same is supported by the records. Further, the default is above the threshold limit of Rs. 1 crore. This is a case

Sd/-

Sd/-

where all the pre-requisites for filing a Section 7 stood fulfilled thus the Adjudicating Authority is inclined to admit the Corporate Debtor into CIRP for having defaulted in repaying a financial debt which was above the threshold limit.

31. Under such circumstances, the Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed a default. Therefore, the Adjudicating Authority has come to the view that the Corporate Insolvency Resolution Process of the Corporate Debtor should be initiated. We are inclined to admit this Application and accordingly, same is hereby admitted and the Corporate Insolvency Resolution Process against the Corporate Debtor is hereby initiated. Since the Applicant has proposed the name of the IRP, therefore, we appoint *Ms. Garima Diggital* having Registration Number IBBI/IPA/-001/IP-P-02018/2020-2021/13158, duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.

32. Consequences of initiation of CIRP shall be inter-alia as follows:

- i) The Resolution Professional proposed by the Applicant is *Ms. Garima Diggital*, who is an IP registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA/-001/IP-P-02018/2020-

2021/13158. She is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by her under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

- ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray her expenses to be incurred and fees on the account. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant shall deposit a sum of Rs. 1,00,000/- (Rupees One Lakh Only) as the fees in the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation



to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during her tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- iv) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.

33. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.
34. In the circumstances, CP No. (IB) 58/7/JPR/2022 is admitted.

**(DEEP CHANDRA JOSHI)
JUDICIAL MEMBER**

**(RAJEEV MEHROTRA)
TECHNICAL MEMBER**