

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1555(PB)/2018

IN THE MATTER OF:

**Mrs. Kaushalya Ahluwalia.....Financial Creditor/Petitioner
v.
Vardhman Estates and Developers Private Limited
.....Corporate Debtor/Respondent**

**SECTION: Under Section 7 of The Insolvency and Bankruptcy
Code, 2016**

Judgment delivered on 19.03.2019

Coram:

**CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT**

**SHRI PRADEEP R. SETHI
HON'BLE MEMBER (T)**

PRESENT:

For the Petitioner: Mr. Shobhit Nanda, Advocate
For the Respondent: Mr. Parvez, Mr. Munesh Kumar and Mr.
Mukesh Kumar, Advocates

M.M. KUMAR, PRESIDENT

JUDGMENT

Mrs. Kaushalya Ahluwalia claiming to be 'Financial Creditor'
has filed the instant application under Section 7 of the Insolvency
and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to
trigger the Corporate Insolvency Resolution Process in the matter of
Vardhman Estates and Developers Private Limited, who is claimed



to be the Corporate Debtor. It is pertinent to mention that it is a second round of litigation between the parties on previous occasion petition under 7 of the Code being C.P. (IB) No. 337/2018 filed by the petitioner was disposed of as withdrawn vide order dated 17.07.2018 (at pg. 51) in terms of settlement arrived at between the parties.

2. The Corporate Debtor-Vardhman Estates and Developers Private Limited was incorporated on 24.09.1996 with authorized share capital of Rs. 5,00,00,000/- and paid up share capital of Rs. 2,12,00,000/- which is based on the details given in master data obtained from the official website of Registrar of Companies (Annexure-I). The identification number of the Corporate Debtor is U70101DL1996PTC082197 and its registered office is situated at 211, C-58, Shahpuri Tirath Singh Tower, Community Center, Janak Puri, New Delhi-110058.

3. The petitioner has proposed the name of Resolution Professional, Shri Satinder Kapur, Suite No. 10, 3rd Floor, 1 Link Road, Jangpura Extension, Delhi - 110014, email id – satinderkapur @gmail.com. He has registration No. IBBI/IPA-002/IP-N00302/2017-18/10860. A written communication dated 20.09.2018 made by Mr. Kapur in terms of Rule 9(1) of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record (Annexure-II). There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or ICSI Insolvency Professional Agency. In addition, further necessary disclosures have been made by Mr. Kapur, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

4. The pleaded case of the petitioner is that a sum of Rs. 47,00,000/- via cash and Rs. 30,00,000/- via demand draft No. 042448 dated 18.08.2014 drawn on HDFC Bank, Delhi, total amount of Rs. 77,00,000/- was lent by the petitioner to the Corporate Debtor for a period of one year vide agreement dated 18.08.2014 (at pgs. 28-32) executed between the petitioner and the Corporate Debtor.

5. As per the terms agreed between the parties the loan was to be repaid by 18.08.2015 with interest @ 28% per annum payable on quarterly basis (see clause No. 3). To secure the aforesaid loan/facility on behalf of the Corporate Debtor, it created collateral security in respect of the property being unit No. 557 & 558 in



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Tower-IT Square, Fifth Floor, 2800 Square feet in the project named "Vardhman i-valley" which were being developed by and promoted by 'the Corporate Debtor'. Further to secure the aforesaid loan/facility on behalf of the Corporate Debtor, post dated cheques which were six in numbers against interest as well as principal amount were also given by the Corporate Debtor to the petitioner (see clause No. 3).

6. The Corporate Debtor paid the interest for the first three quarters to the petitioner. However, thereafter it failed to make the payment of the fourth interest instalment. Subsequently requests were made by the Corporate Debtor on two occasions to extend the period for refunding the loan amount and in this regard two agreements dated 18.08.2015 & 23.01.2016 (at pgs. 33-35) were executed. Additionally, the Corporate Debtor handed over four post dated cheques to the petitioner. After execution of the second agreement dated 23.01.2016 only payment of Rs. 1/- lakh was made by the Corporate Debtor to the petitioner.

7. Inspite of various requests made and reminders sent to the Corporate Debtor by the petitioner to repay the total loan amount along with interest accrued thereon or to transfer the aforesaid



collateral property in her favour, the Corporate Debtor has neither paid nor transferred the property in her name.

8. Thereafter the petitioner presented aforesaid three post dated cheques bearing No.026262 dated 31.08.2014, No. 476945 dated 31.08.2016 and No. 476944 dated 31.08.2016 (at pgs. 56-58) for encashment which were returned unpaid. Feeling aggrieved, the petitioner initiated proceeding under Section 138 of Negotiable Instrument Act (at pgs. 67-75) against the Corporate Debtor and the same are pending before the Competent Court.

9. Eventually, the petitioner approached this Tribunal by filing a petition under Section 7 of the Code being C.P. (IB) No. 337/2018. Vide order dated 17.07.2018 passed by this Tribunal comprising of Dr. Deepti Mukesh, Member (J) & Mr. S.K. Mohapatra, Member (T) the said petition was disposed of as withdrawn in terms of settlement (at pgs. 46-50) arrived at between the parties and was placed before us.

10. However, again the position remained same as the Corporate Debtor failed to return the loan amount agreed under the settlement agreement.



11. As per clause 5 of the settlement agreement, in the event that the respondent failed to make payments, all concessions granted to the respondent was to be lapsed and the respondent was to be liable to make payment of the entire sum due under the loan agreement including interest due thereon.

12. The precise case of the Petitioner is that the total amount in default and due as on 21.09.2018 is Rs. 1,21,95,736/- according to the computation of claim prepared and attached (at pgs. 53-54).

13. Learned counsel for the Corporate Debtor has opposed the admission of the petition by asserting that:-

- (i) The petitioner purchased aforesaid two units and in this regard builder-buyer agreement dated 18.08.2014 (Annexure-1) was executed between the parties. At that relevant time the market value of the properties were Rs. 2/- crores approximately but the same were sold as distressed sale at a throw away price Rs. 77,00,000/-. As the said properties were sold at a very low price, the respondent wanted to keep the option open of buying back the said properties from the petitioner, after paying some premium to the petitioner.

- (ii) Placing reliance on the clause 8 of the aforesaid agreement it has been submitted that it is only the respondent who had the option to buy back the said properties from the petitioner, subject to fulfilment of certain terms, meaning thereby, that the respondent cannot be forced to buy back the said property from the petitioner. Petitioner is trying to enforce the aforesaid agreement by interpreting it as a liability of the respondent to buy back the said property from the petitioner.
- (iii) Even the settlement dated 13.07.2018 was entered into by the respondent with the petitioner with the sole purpose that the respondent was still open to the opportunity of buying back the said property if the petitioner would have agreed to sell it to the respondent at a reasonable price.
- (iv) The cheques dated 21.08.2016 were given by the respondent to the petitioner only for the purpose that the respondent had all the intention to buy back the said property from the petitioner.



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(v) Petitioner has not approached this Tribunal as a buyer, however without prejudice to the rights and contentions of the respondent it has been submitted that the said property purchased by the petitioner is complete and the completion certificate is in queue. Therefore, petitioner is free to approach the respondent for taking the possession of the said property and the respondent undertakes to register the said property in the name of the petitioner as soon as completion certificate is received.

14. We have heard learned counsels for the parties at considerable length. It has come on record that settlement agreement dated 13.07.2018 was executed between the parties and the total amount payable shown is 1,00,00,000/- wherein Rs. 77,00,000/- is the principal sum and Rs. 23,00,000/- is the interest component. The entire agreed amount was to be paid in twelve instalments in accordance with the schedule-I (at pg. 50). At the time of execution of the settlement agreement a part amount in the shape of first instalment of Rs. 15,00,000/- through demand draft has been paid. A cheque bearing No. 192782 drawn on Union Bank of India, Connaught Place, New Delhi for ensuring payment of the second instalment was also handed over to the petitioner. However, the said



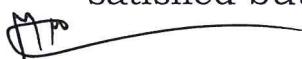
cheque on the presentation of the Bank, stood dishonoured with a remark 'Funds Insufficient'. Thereafter, the Respondent made a payment of Rs. 10,00,000/- towards the second instalment on 29.08.2018 with the assurance that remaining amount of Rs. 5,00,000/- would be transferred.

15. The defence which is sought to be raised in the reply filed to the petition has never been taken in the former proceedings or at subsequent stage. We are not impressed with the defence now taken that the transaction between the parties was not a loan transaction but it was a transaction of different nature where petitioner purchased two properties/units from the respondent through builder-buyer agreement (Annexure-1) and the market value of the said properties were Rs. 2,00,00,000/-, which were sold as distressed sale at a throw away price of Rs. 77,00,000/- wherein the respondent wanted to keep the option open of buying back the said properties from the petitioner, after paying some premium to the petitioner. If aforesaid contention of the respondent is regarded to be true then why such defence has not been taken by it at any point of time even in the settlement agreement dated 13.07.2018. There is no such indication in the settlement agreement. Email dated 05.09.2018 (at Pg. 52) sent by the counsel for and on behalf

of the petitioner to the counsel of the respondent was duly delivered wherein it was highlighted that the cheque handed over by the respondent for payment of second instalment has dishonoured. At that time also no such defence was raised by the respondent. It could also not be disputed that after execution of the settlement agreement partial payment have been made in two tranches firstly at the time of execution of the settlement agreement and secondly on 29.08.2018. Therefore, we feel that the defence is totally afterthought and moonshine and therefore, we are not persuaded to accept such defence.

16. It is patent that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

17. The provisions of Section 7 (2) and Section 7 (5) of IBC stand satisfied but the same may be read as under:-



"Initiation of corporate insolvency resolution process by financial creditor.

7 (1)

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3)

7 (4)

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b)"

18. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to crore of rupees has occurred within the meaning of Section 4 of the Code and the application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional. Thus, the application warrant admission as it is complete in all respects.

19. As a sequel to the above discussion, this petition is admitted and Shri Satinder Kapur, Suite No. 10, 3rd Floor, 1 Link Road, Jangpura Extension, Delhi - 110014, email id – satinderkapur@gmail.com, Registration No. IBBI/IPA-002/IP-N00302/2017-18/10860 is appointed as an Interim Resolution Professional.

20. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to 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.

A handwritten signature in black ink, appearing to read "A.P.", is written over a horizontal line.

21. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(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;
- (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.”



22. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other services or supplies as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.



24. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *inter alia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of its obligation imposed by Section 20 of the Code

and perform all his functions strictly in accordance with the provisions of the Code.

25. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Sd/-

(M.M.KUMAR)
PRESIDENT

Sd/-

(PRADEEP R. SETHI)
MEMBER (T)

19.03.2019
(VINEET)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member (T), Shri Pradeep R. Sethi is not holding Court today.

Sd/-

(NIRMALA VINCENT)
COURT OFFICER