

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V**

CP (IB) 1529 (ND)/2019

IN THE MATTER OF:

COL. C.D. SHARMA (RETD.) & ORS.

...APPLICANT/FINANCIAL CREDITOR

VERSUS

**M/S ORIOR DEVELOPERS AND INFRASTRUCTURE PVT. LTD.
Having Its Registered Office at:
Flat No. 969, Radhika Apartment,
Sector-14, Pocket-1, Dwarka,
New Delhi-110078**

...RESPONDENT/CORPORATE DEBTOR

**UNDER SECTION 7 of INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W SUB
RULE 1 OF RULE 4 OF INSOLVENCY AND BANKRUPTCY (APPLICATION TO
ADJUDICATING AUTHORITY) RULES, 2016**

Order Reserved on: 02.12.2021

Order delivered on: 28.01.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

PRESENT:

For the Financial Creditor : Mr. Siddharth Rajkonwar, Advocate

**For the Corporate Debtor : Mr. Nitin Kumar, Advocate, Mr. O.P Saxena,
Advocate**

Rs

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ORDER

Per Mr. Avinash K. Srivatava, Member(Technical)

1. The present Application is being initiated by the Financial Creditors jointly through **Col. C D Sharma** (as authorized by other financial creditors) (hereinafter referred to as “Financial Creditor”) against Corporate Debtor **M/s Orior Developers and Infrastructure Private Limited** (hereinafter referred to as “Corporate Debtor”) under Section 7 of the Insolvency & Bankruptcy Code, 2016, read with Sub Rule 1 of Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution process (CIRP) in respect of Corporate Debtor.
2. The Corporate Debtor (Orior Developers and Infrastructure Private Limited) duly incorporated dated 27.06.2006 under the provisions of Companies Act, 1956 having its Registered Office at Flat no 969, Radhika Apartment, Sector 14, Pocket 1, Dwarka, New Delhi-110078. The Authorized Share Capital is Rs. 1,00,00,000. The Paid-Up Share Capital is Rs. 79,30,000. The Master Data from the website of the Ministry of Corporate Affairs in relation to the Corporate Debtor has been already placed on record.
3. Brief facts of the Application filed by Financial Creditor in short are as follows:
 - i. That, in the year 2006, the Corporate Debtor had launched a Residential Township Project named “Bhaskar Enclave –II” for sale of residential plots located on Tonk Road, NH-12 Jaipur, Rajasthan.
 - ii. That, Financial Creditors (101 Applicants) have made payments from time to time to the Corporate Debtor towards the total



amount for purchase of residential plots in Bhaskar Enclave-II. Amounts that have been disbursed towards the payments and Receipts for the said Payment for the 101 Applicants have been placed on record.

- iii. It is submitted by the Financial Creditor that 'Deposit Registration Form' (**Annexure A-3**) has been issued by the Respondent which provides for provisional allotment of a Residential plot. For proving the said allotment, Financial creditors have made the full payment (**Receipts annexed**) and have placed various documents like Intimation Letters (**Additional Documents**), Possession Letters etc. to substantiate/prove the agreement between the Financial Creditor and Corporate Debtor.
- iv. It is further submitted by Financial Creditor that existence of Builder Buyer Agreement is not a Sine Qua Non for a debt to qualify as a Financial Debt defined u/s 5(8)(f) r/w explanation appended to IBC, 2016. It is also submitted by the Financial Creditor that prior to the enactment of RERA, it was not a legal obligation that first the parties ought to enter into a builder buyer agreement and then only the money consideration can be received by the builder. It is averred by the Financial Creditor that in absence of any written agreement between the builder and buyer, the amount received by the builder does not cease to be a "Financial Debt" under IBC.
- v. The Financial Creditor has relied upon various Whatsapp Conversations to prove the admission of liability on part of Corporate debtor. For this Financial Creditor has placed its reliance upon **United India Insurance Co. Ltd. and Anr. Vs. Samir Chandra Chaudhary [Civil Appeal No. 3663/2005.**
- vi. It is further submitted by the Financial Creditor that the present application has been filed within the Period of

Limitation as due to active concealment and fraudulent behaviour of Corporate Debtor, there has been an inordinate delay in completion of the project. On one pretext or the other, the Corporate Debtor kept on saying that due to non issuance of 'Patta' which is a legal document issued by the statutory authority which grants the right and interests in the plots were not given on time. Financial Creditors submitted that there was no contractually stipulated date of Completion of development of plots or handing over the possession. For Proving the same, Financial Creditor has placed documents titled "Regularization of Your Plot", "Intimation Letter" etc. Few Email Conversations with respect to one of the Applicant has also been placed on record which evidences that Applicant tried their best efforts to get the possession of the plot but they have not received any satisfactory reply from Corporate Debtor, rather General manager Gaurav Dhody of Corporate debtor informed one of the Financial Creditor that there is an ongoing dispute between the directors of the Company. That is why, there is a delay in giving possession and completeing the project.

- vii. Another relevant fact put forward by Financial creditor that it was in 2018, after seeing the Advertisement dated 11.11.2018 (**Annexure A4**) by third party in **RAJASTHAN PATRIKA SUNDAY EDITION** regarding the sale of residential plots in the same township project which was earlier launched by Corporate Debtor, that the financial creditor got to know about the fraudulent activities and conduct of the Corporate Debtor. It was the address of some third party viz **26, bajrang vihar, behind Durgapur railway station, Jaipur. It was only then, Financial Creditors got to know that Corporate debtor was playing fraud on them and making fool of them.** Subsequent to the Newspaper Advertisements, it came to be known to the



Financial Creditor that the Corporate Debtor had abandoned the Project. Reading the document annexed **Annexure A5** (whatsapp chat with general manager) wherein Manager stating that “the problems with the directors has been resolved, now the restoration process of the opening of the offices has been initiated. The offices will start functioning from 17 or 18 jan 2019. I shall share further information as to when you will be getting your PATTA on 20 jan”. This raises doubts on the credibility of Corporate debtor, also raises serious doubts as to the bonafides of the Corporate Debtor.

4. Submissions made on behalf of the Corporate Debtor in the facts and circumstances of the case are:
- i. That the present Application filed by the Financial Creditor is liable to dismissed as Financial Creditor has not come with clean hands and concealed the relevant fact and also did not impleaded Mr Ashok Aggarwal who is the Owner of the land.
 - ii. That there are two directors of the Corporate Debtor viz. **Mr. Sudhir Chauhan and the answering defendand (Parmesh Kumar)**. Out of which Mr Sudhir Chauhan is misusing the funds and land of the Company and is acting in an oppressive manner against the public interest. It is further submitted by answering director that Company has sufficient funds and land available to meet the liabilities of the Creditors but due to fraudulent conduct of Mr. Sudhir Chauhan, the company is not able to execute the sale deed in faviouir of Financial Creditors.
 - iii. Further, Corporate Debtor offered the plots in Maharashtra instead of Jaipur, Rajasthan as the answering director has the sole authority in one Project named Bhaskar Valley,



Karjat and he is ready to execute necessary document regarding transfer of ownership to Financial Creditors.

- iv.** Corporate debtor further contends that all the receipts and payments were done in accordance to the terms of the payment and Financial Creditors have not placed proper receipts on record. Hence, Financial Creditors have not met the obligations as agreed upon between the parties and placed improper records and also concealed the facts. He further submits that the application is nothing but used as a recovery tool which is not in accordance of law.
- 5.** We have perused the written submissions, arguments advanced and documents placed by both the parties and we are of the considered opinion that , to admit the application Under Sec 7 IBC r/w Rule 4 Sub rule (1) the most important ingredient is the existence of default. Definition of Financial debt given is Sec 5(8)(f) r/w explanation as
- “financial debt means a debt alongwith interst, if any, which is disbursed against the consideration for the time value of money and includes*
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of borrowing.*
- 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);

6. The financial creditor has furnished the receipts proving the payments, as per the the directions given by the Hon'ble Supreme Court, has annexed the list of the 101 applicants and the amount claimed by them, and proof of the payments made by them and received by the Corporate Debtor, has placed various documents substantiating the demand by them. But Financial Creditor have not received any response from Corporate debtor.

7. That there exists a default and evidence of default has already been placed by the financial Creditor. According to Sec 7(5) if the Adjudicating Authority is satisfied that *a default has occurred and the Application is Complete in Accordance to Sec 7(2) and 7(3) Then Adjudicating Authority may admit such Application.*

8. *Thus, We are of the opinion that Application is complete in all respects and there is a denial of the refunds of payment made by financial creditors and application is within the limitation Period.*

9. Accordingly, this petition is ADMITTED. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith prohibiting:-

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.

Further:

(e) the supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

The provisions of (a), (b), (c) & (d) shall not apply to:

i). such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority,

ii). a surety, in a contract of guarantee to a corporate debtor.

10 .The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

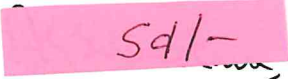
11. The IRP proposed by the Financial Creditor has withdrawn his consent on enquiry. Therefore, we are appointing **Mr. Prabhakar Kumar, having E-mail:prabhakar_acs@rediffmail.com and Registration No.:IBBI/IPA-002/IP-N00774/2018-19/12373,** from



the panel of IRPs of IBBI as the Insolvency Resolution Professional (hereinafter referred to as IRP). The IRP is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

12. The Financial Creditor is directed to deposit a sum of Rs. 2 lakh to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the Committee of Creditors, to the Financial Creditor to be recovered as CIRP costs.

13. Copy of the order be sent to both the parties as well as to the IRP.

 Sd/-
28/1/2022
AVINASH K. SRIVASTAVA
Member (T)

 Sd/-
28.1.2022
ABNI RANJAN KUMAR SINHA
Member (J)