

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT III**

Company Petition No. IB-477(ND)/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Mr. Umesh Chander and Ors

...Applicant/Petitioner

Versus

M/s. GRJ Distributors and Developers Pvt. Ltd. **...Corporate Debtor**

Judgment delivered on: 16.02.2023

Coram:

**SHRI BACHU VENKAT BALARAM DAS
Hon'ble MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

For the Petitioner : Mr. Piyush Singh, Mr. Akshay Srivastava,
Ms. Ridhi Jain, Advocates.

For the Respondent : Mr. Sandeep Bhuraria,
Mr. Monish Surendran, Advocates.

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (J)

1. The present petition i.e., CP (IB)-477(ND)/2021 has been filed under Section 7 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s. GRJ Distributors and Developers Pvt. Ltd.*, declare the Moratorium and appoint the Interim Resolution Professional on the ground of default for an aggregate sum of INR 34,18,80,763/-

along with unpaid accumulated interest @ 11.5% per annum amounting to INR 21,95,41,726/- as on 31.10.2020 on account of its failure and/or breach of the various terms and conditions of the various Apartment Buyer's Agreements entered into by it with the Financial Creditors.

2. It is submitted by the Learned Counsel appearing for the Petitioner that the present petition under Section 7 of IBC, 2016 has been filed by 104 Home Buyers who had booked flats in the Avalon Rosewood project developed by the Corporate Debtor at Khanpur, Alwar Bypass Road, Sector 16, Bhiwadi, Rajasthan. The threshold limit as prescribed under the Second Proviso to Section 7 of the Code has been met and therefore, the present petition is maintainable. It is submitted that the Home Buyers entered into a Builder Buyer Agreement which was executed on 23.07.2014. In terms of Clause 6.1, the builder is required to complete the project within 42 months with a grace period of six months. It is further submitted that the Petitioner/Home Buyers have paid substantial amount of the cost of the building for which the Corporate Debtor/Builder has issued proper acknowledgement/receipts. It is also submitted that from 2016 onwards no construction has taken place and Home Buyers have held several meetings with the Builder in this regard but the construction has not commenced. It is further submitted that 5 Home Buyers out of the 104 Home Buyers have settled the matter with the Corporate Debtor. Learned Counsel for the Petitioner, therefore, submitted that since the Corporate Debtor has failed to abide by the terms and conditions of the Agreement and deliver possession of the flats in question the present petition should be admitted and the CIRP be initiated against the Corporate Debtor.

3. Mr. Sandeep Bhuraria, Learned Counsel appearing for the Corporate Debtor has fairly submitted that the construction could not

be completed despite best efforts made by the Corporate Debtor. Learned Counsel for the Corporate Debtor further submitted that the CIRP should be confined to the present project i.e., Rosewood Project. In support of his contentions, he placed reliance on the judgment of Hon'ble Supreme Court in the case of "*Manish Kumar versus Union of India and Another*", reported in (2021) 5 SCC, wherein it has been held at page 43 in Para 8: -

*"Under the second proviso, a new threshold has been declared for an allottee to move an application under Section 7 for triggering the insolvency should at least 100 allottees to support the application or 10% of the total allottees whichever is less. Moreover, they should belong to the same project. *****"*

He also relied upon the observation of Hon'ble Court made at page 104 in Para 176 in the said judgment, which is reproduced below: -

"We have referred to the definition of the work "allottee" in Section 2(d) of the RERA. In regard to a real estate project, all persons, who are treated as allottees, as per the definition of allottee would be entitled to the treated purpose of the impugned proviso. All that is required is that the allottees must relate to same real estate project. In other words, if a promoter has a different real estate project, be it in relation to apartments, in the case of an application under Section 7, those would not be reckoned in computing one-tenth as well as the total allotments."

4. He further relied upon a judgment of Hon'ble NCLAT in Company Appeal No. 926 of 2019 in the case of "*Flat Buyers Association versus Umang Realtech Private Limited and Others*", wherein it has been held in Para 21 sub-para II: -

"The Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan

*by the Competent Authority and not other projects which are separate at other places for which separate plans approved *****.”*

5. He also relied upon a judgment of Hon’ble NCLAT in Company Appeal No. 406 of 2022 in the case of “*Ram Kishor Arora Suspended Director of M/s. Supertech Limited versus Union Bank of India and Another*”, wherein the Hon’ble NCLAT was pleased to hold that the CIRP is confined to only one project i.e., Eco Village II only.

6. In view of the submissions made by Mr. Piyush Sharma, Learned Counsel appearing for the Petitioner and Mr. Sandeep Bhuraria, Learned Counsel appearing for the Corporate Debtor and in view of law laid down in the judgments cited by the Learned Counsel for the Corporate Debtor, we are of the considered view that the CIRP in the present case should be confined to the project i.e., Rosewood Project only. We therefore hold that since the default has been admitted by the Corporate Debtor and the present petition filed under Section 7 of IBC, 2016 is ought to be admitted and the CIR Process against the Respondent/Corporate Debtor with respect to “Rosewood Project” be initiated.

7. The Financial Creditor has also proposed the name of Resolution Professional viz, **Mr. Piyush Garg, having Registration No: IBBI/IPA-001/IP-P01133/2018-2019/11883 Address: E-62 LGF, Lajpat Nagar – II, New Delhi, 110024 Email: ip.piyushgarg33@gmail.com and Mobile No: 8851158369.** As per the consent letter, no investigation is pending against the Resolution Professional and he agreed to accept the assignment as Interim Resolution Professional in the matter. Therefore, all the legal requirements are fulfilled, the application is **admitted**. The CIRP is initiated against the Corporate Debtor viz., *M/s. GRJ Distributors and Developers Pvt. Ltd.* **Mr. Piyush Garg, is hereby appointed as IRP** in the matter.

8. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

- (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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- (e) The explanation below section - 14 (1) also stipulates “that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota,

concession, clearances or a similar grant or right during the moratorium period”.

9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub- section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

10. We hereby direct the Financial Creditor to pay a sum of Rs. 2, 00,000/- to the IRP, as required under the provisions of the Code to meet out the initial 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 Persons) Regulations, 2016.

11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.

12. The Learned Counsel for the Financial Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD’s assets etc., and make compliance with this Order as per the provisions of IBC, 2016. On receiving the order, the IRP is directed to communicate this Order to the Financial Creditor, the Corporate Debtor, and the concerned RoC.

13. The CP/IB-477(ND)/2021 is **admitted**.

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**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

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