

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.45/ALD/2019

(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016)

IN THE MATTER OF:

NITIN JAIN & ANR.

..... Applicants/Petitioners

VERSUS

RATANDEEP INFRASTRUCTURE PRIVATE LIMITED

.....Respondent/Corporate debtor

Order Delivered on 16.04.2019

CORAM :

Hon'ble H.P Chaturvedi, Member (Judicial)
Hon'ble Saroj Rajware, Member (Technical)

APPEARANCE :

For the Petitioner(s): Sh. Rakesh Kumar, Adv.
For the Respondent: Sh. Vipin Kushwaha, Adv.

AS PER: Saroj Rajware ,Member (T)

Order

1. The present petition is filed under Section 7 of Insolvency and Bankruptcy Code,2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the petitioner(s)/home buyers/financial creditors, for initiating Corporate Insolvency Resolution Process against the Respondent/ Corporate debtor **M/s Ratandeep Infrastructure Pvt. Ltd.**
2. Brief facts of the case as stated are as under: -
 - i. The Respondent M/s **Ratandeep Infrastructure Pvt Ltd.**, incorporated on 13/06/2012 (Having its Registered Office at C/o **Ratandeep Jewellers shop No.6, Upper Story, Bhagat Singh Road Muzaffarnagar UttarPradesh, 251001, CIN U45400UP2012PTC050971**). The Nominal share capital of respondent company is Rs. 10,000,000/- and Paid- Up share Capital is Rs.10,000,000/-.



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ii. It is stated that respondent acting through its director Mr. Rachit Singhal had approached the financial creditors no 1 & 2 for booking apartment in their proposed Residential Project "Silver Homes" in the Group Housing Complex, at Plot No. GH-02, Township Jaipuria Sunrise Greens, NH-24, Opp. Columbia Asia Hospital, NH-24, Ghaziabad and accordingly based on the representations given by the corporate Debtor, The Financial Creditors/applicants/homebuyers had booked Residential Apartment in this Project.

iii. The corporate debtor/Respondent had issued allotment letters dated 17.05.2016 to financial creditor No. 1 and on 21.08.2016 to financial creditor No.2. For Financial creditor no.1 booking was made towards Unit No. 506 on 5th floor and total amount paid in intervals was Rs 18,01,017.18 and for Financial Creditor No. 2 booking was made towards Unit No.305 on 3rd Floor and total amount paid in total was Rs 2,388,687 (Annexed as Annexure No. p-7 and p-9)

iv. Clause 25 of the allotment letter dated 17.05.2016, stated that the possession was to be given till December 2018 and but when financial creditor visited the project site, surprisingly he found no one was present there and only basement structure work has been done so far which presented non-performance of project work.

3. Financial Creditor have written letter to the Corporate Debtor on his Registered Address for refund of his amount but no response has been received by them.

4. Heard learned counsel for the petitioner and perused the documents. In terms of the amended definition of Financial Debt Petitioner(s)/ Home Buyers can initiate Corporate Insolvency Resolution Process against the builder or developer and are included in the definition of Financial Debt as per explanation of the Section 5 (8) (f) of I&B Code inserted with effect from 6.6.2018.

5. The financial creditors repeatedly reminded the directors of the corporate debtor for refund of amount paid but they did not repay it. So finally they sent demand notice dated 16.01.2019 and demanded repayment of entire amount along with interest that was due pointing out that corporate debtor has defaulted in possession of the flat and not fulfilled the promise as per the allotment Letter but then also corporate debtors did not reply back to financial creditors/.

6. It is submitted by the respondent that company along with its directors is putting their best efforts for completion of its

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project and to hand over the possession to the customers. They also submitted that they never denied for the completion of project, there was financial distress and directors are trying to generate finance from other sources for completion of project and prayed for some time of one year for completion. The prayer was not allowed.

7. The application has been filed on prescribed format under Rule 4(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 read with section 7 of IBC 2016 is complete and we are satisfied that default has occurred.

8. The applicants fall under the category of Financial Creditor in view of the judgment of NCLAT in **Nikhil Mehta & Sons and others Vs. AMR Infrastructure Limited Company Appeal (AT) (Insolvency) No. 07 of 2017** as also the Insolvency and Bankruptcy Code (Amendment) ordinance, 2018 by which now as per Section 5 (8) (f) (ii) explanation any amount raised for an allottee under a real estate project shall be deemed to be an amount having the commercial effect of borrowing.

9. Further the name of the IRP has been proposed and there are no disciplinary proceedings are pending against the proposed Interim Resolution Professional (*A copy of Form-2 along with Copy of the Registration Certificate is annexed as Annexure No. P-3*)

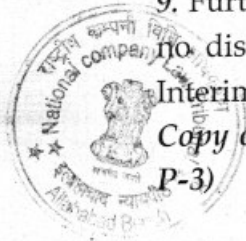
10. Hence, this application under Section 7 of IBC, 2016 filed by the Home Buyer/ Financial Creditor is admitted and **Mr. Alok Kumar Kuchhal** having Registration Number **IBBI/IPA/002/IP-N000114/2017-18/10284** with the address **C-154, Sector-51, Noida-201301**, is appointed as Interim Resolution Professional.

11. A moratorium under the provision of section 14 of the Code is declared prohibiting the following:

(i) *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;*

(ii) *Transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

(iii) *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 (54 of 2002);*



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(iv) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

12. It is further directed that:

(i) 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.

(ii) The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

13. The IRP shall comply with the Provision of Section 13(2), 15,17 &18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under provision of section 20 of the Code.



14. The Registry is further directed to communicate this order to Financial Creditors and Corporate Debtor.

15. List on 21.05.2019 for the filing of the progress report.

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(Ms. Saroj Rajwari)
Member (Technical)

Dated- 16.04.2019

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(H.P. Chaturvedi)
Member(Judicial)

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16/4/19

Compared by Me
Mahesh Sahai
16/4/2019

P. P. PANDEY
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD-U.P.