

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-1788 (PB)/2018

**Under Section 7 of the Insolvency and Bankruptcy
Code, 2016**

In the matter of:

Mrs. Sarika Somvanshi
Mrs. Rekha Chauhan
Mr. Dhani Ram

.... Applicants/ Financial Creditors

Vs.

M/s R. S. Stones Private Limited

.....Respondents/ Corporate Debtor

Judgment delivered on: 02.09.2019

CORAM:

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

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicants:
For Respondents:

Mr. Kushal Bansal, Advocate
None

Company Petition No. (IB)-1788(PB)/2018



ORDER

S. K. Mohapatra, Member

1. Mrs. Sarika Somvanshi, Mrs. Rekha Chauhan and Mr. Dhani Ram applicant financial creditors jointly have filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, M/s R. S. Stones Private Limited, claimed to be the corporate debtor.

2. The Respondent company M/s R. S. Stones Private Limited (CIN U45209DL2002PTC116595) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 19.08.2002 under the provisions of the Companies Act, 1956. The registered office of the respondent corporate debtor is situated at 619/19 Chattarpur Main Road, New Delhi-110074. Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal having territorial jurisdiction over the place is the Adjudicating Authority in relation to the prayer



for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is the case of the Petitioners that they approached the respondent Corporate Debtor for the purposes of purchasing flats under the project named 'Fort View Residency'. Accordingly, each of the applicant Financial Creditors separately entered into identical Agreement to Sell with the Corporate Debtor and agreed to purchase Units in Fort View Residency as mentioned below:

Date of Agreement to Sell	Name of the Applicant	Apartment Number Allotted	Super Area
07.07.2015	Dhani Ram	Unit bearing No. 901, Tower C-1, Near Kesroli Fort, Kesroli Road, Alwar - 301030.	690 sq. ft.
08.07.2015	Rekha Chauhan	Unit bearing No. 501, Tower C-1, Near Kesroli Fort, Kesroli Road, Alwar - 301030.	690 sq. ft.
08.07.2015	Sarika Somvanishi	Unit bearing No. 502, Tower C-1, Near Kesroli Fort, Kesroli Road, Alwar - 301030.	690 sq. ft.

4. Letter of Allotment and Agreement to Sell dated 08.07.2018 executed with Mrs. Sarika Somvanishi, Letter of Allotment and Agreement to Sell dated 08.07.2018 executed with Mrs. Rekha Chauhan and Letter of Allotment and



Agreement to Sell dated 07.07.2018 executed with Mr. Dhani Ram respectively have been placed on record.

5. It is submitted that the financial creditors from time to time have been paying the instalments in terms of the respective Agreement to Sell executed with the Corporate Debtor. The total amount towards consideration has been paid by each of the financial creditors part from their own savings and rest by availing loan facilities from the financial institutions. As per the petition, the total amount disbursed by the applicant financial creditors are as follows:

S. No	Name of the Applicant	Payment Made from own bank accounts (in Rs.)	Loan Disbursement (in Rs.)	Total Amount Paid (In Rs.)
1.	Sarika Somvanshi	2,29,000	10,48,886	12,77,886
2.	Rekha Chauhan	2,01,528	11,17,221	13,18,749
3.	Dhani Ram	1,51,500	11,05,000	12,56,500

6. Petitioners have placed on record respective copy of the Bank Statements and Loan Agreements along with relevant Statement of Accounts of all the three petitioners in support of the disbursement of the amounts to the respondent operational debtor as claimed in the petition.



7. It is the case of the petitioners that in terms of the agreed provisions of the Agreement to Sell, the construction of the flats in the aforementioned property should have been completed within a period of 24 months from the date of execution of the respective Agreement to Sell with the respective Financial Creditors with a maximum grace period of 6 months i.e. on or before 21.02.2018. However, it is alleged that the Corporate Debtor has failed to provide the possession of the flats to the applicant financial creditors.
8. Applicants have further contended that as per Clause 5.8 of the Agreement to Sell, the corporate debtor had agreed and consented that in case of failure of providing possession of the flats to the financial creditors, the corporate debtor will be liable to pay-back to the financial creditors at a simple interest 8% p.a. of such payments till the date of repayment by the Corporate Debtor.
9. Clause 5.8 of the Agreement to Sell relied upon by the petitioners is reproduced below:

"Save as provided herein, if the Developer is not able to give the possession of the said Flat to the Allottee(s) on the account of any reasonable cause



the Allottee(s) shall not be entitled to any damages whatsoever, but he/she shall be entitled to receive back the entire money paid by him to the Developer towards consideration of the said Flat together with simple interest thereon calculated @ 8% per annum from the date of such payment or payments till the date of repayment by the Developer.”

- 10.** Accordingly, it is claimed in the application that the respondent Corporate Debtor is liable to pay to the applicant Financial Creditors the following amounts:

S. No	Name of the Applicant	Total Consideration paid till date (in Rs.)	Date of Last Payment	Interest Payable as on 01.12.18 (in Rs.)	Total Amount Payable (In Rs.)
1.	Sarika Somvanshi	1277886	27.03.2018	70021	13,47907
2.	Rekha Chauhan	1318749	27.03.2018	73416	13,92165
3.	Dhani Ram	1256500	07.05.2015	359393	1615893
Total					43,55,965

- 11.** It has been alleged that the Corporate Debtor failed to give the possession of the flats to the applicant Financial Creditors as per the covenants of the Agreements to sell executed between the Financial Creditors and Corporate Debtor despite the fact that the respective Financial Creditors



have paid the instalments as per the payment schedule. It is also claimed that the Corporate Debtor has failed to repay the total considerations amounting to Rs, 4355965 (Rupees Forty-Three Lakhs Fifty-Five Lakhs Nine Hundred Sixty-Five Only) including interest to the Financial Creditors on the consideration amounts paid to the Corporate Debtor.

12. It is seen from the case records that respondent corporate debtor appeared in the matter on 31.01.2019 when ten days' time was afforded for filing reply by the respondent corporate debtor. However, thereafter neither any reply was filed nor any one appeared on behalf of the respondent corporate debtor to defend the matter. Consequently, right to file reply by the respondent was closed and after hearing the petitioners the matter was reserved for orders.

13. The scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,

- a) Financial creditor
- b) Operational creditor, and
- c) Corporate debtor itself.



14. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors. Section 7 of the Code thus mandates that only the applicant “Financial Creditor” has to prove the default. In other words, even if there is a clear default, the application under Section 7 of the Code is not maintainable in case the applicant is not a financial creditor. Therefore, in order to maintain the present application filed under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor, the present applicants have to satisfy that they come within the definition of “*Financial Creditors*”.

15. The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code respectively, which are reproduced below.



“5. In this part, unless the context otherwise requires, -

.....

(7) "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;

(8) "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 dematerialised 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 non-recourse basis;*
- f) *any amount raised under any other transaction, including any forward sale or purchase agreement, having the effect of a 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)

- 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;*
- 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) and (h) of this clause.” (emphasis given)*

16. Clause (8) of Section 5 of the Code has been amended by the Insolvency and Bankruptcy (Second Amendment) Act, 2018 with effect from 6th June, 2018. In view of the



explanation inserted in the revised definition, it has been abundantly made clear that 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 thus will come within the definition of 'Financial Debt' under the Code. Definition of 'Financial Debt' has been amended to remove any cloud and to specifically include dues of the home buyers. Amendment Act leaves no doubt that home buyers are "Financial Creditors". Accordingly, allottees/home buyers being "Financial Creditors" in terms of Explanation to Section 5 (8) (c) of the Code, can initiate Corporate Insolvency Resolution Process against the defaulting builder or developer.

17. Hon'ble Supreme Court in the case of *Pioneer Urban Land and Infrastructure Limited & anr. Vs. Union of India & Ors.* reported in 2019 SCC Online SC 1005 decided on 09.08.2019 has held as follows:

"We, therefore, hold that allottees/home buyers were included in the main provision, i.e. Section 5(8)(f) with effect from the inception of the Code, the explanation



being added in 2018 merely to clarify doubts that had arisen.

Conclusion

i. *The Amendment Act to the Code does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.*

ii. *The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.*

iii. *Section 5(8)(f) as it originally appeared in the Code being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only clarificatory of this position in law.” (Emphasis given)*



18. In view of the proposition of law settled by the Hon'ble Supreme Court allottees/home buyers are to be regarded as financial creditors in terms of Section 5(8)(f) of the Code. Hon'ble Supreme Court further made it clear that the allottees/home buyers can avail the remedies available under the provisions of the Code.

19. In the present case all the three Petitioners had booked respective flats on payment of instalments as the per the agreement to sale to the respondent corporate debtor. The various dates of disbursement of the said principal amount including the details of flats have been furnished in the application. Letter of Allotment and Agreement to Sell dated 08.07.2018 executed with Mrs. Sarika Somvanishi, Letter of Allotment and Agreement to Sell dated 08.07.2018 executed with Mrs. Rekha Chauhan and Letter of Allotment and Agreement to Sell dated 07.07.2018 executed with Mr. Dhani Ram respectively have been placed on record. Petitioners have also placed on record respective copy of the Bank Statements and Loan Agreements along with relevant Statement of Accounts of all the three petitioners in support



of the disbursement of the amounts to the respondent corporate debtor.

20. Since the amount has been raised from the petitioners/allottees under a real estate project, petitioners being allottees/home buyers are regarded as financial creditors in terms of Section 5(8)(f) of the Code. Petitioners gave advances to the real estate developer and thereby financed the real estate project at hand. Money that is disbursed is no longer with the allottees, but is with the real estate developer who is legally obliged to give money's equivalent back to the allottees. Not only the debt has a commercial effect of borrowings and come within the scope of 'financial debt' but also each of the petitioners clearly comes within the definition of 'financial creditor'.

21. It is also pertinent to note here that as per Section 7(1) of the Code an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.

22. As a sequel to the aforesaid discussions the petitioners being financial creditors can jointly invoke Corporate Insolvency Resolution Process under Section 7 of the code



against the respondent corporate debtor in case of default in repayment of the financial debt.

23. Initiation of Corporate Insolvency Resolution Process by Financial Creditor is regulated by the provision engrafted in Section 7 of I&B Code, which reads as under:

“7. Initiation of corporate insolvency resolution process by financial creditor. —

(1) *A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

Explanation. — For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(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.*

(3) *The financial creditor shall, along with the application furnish—*



(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board. (4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(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) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary -6- Company Appeal (AT) (Insolvency) No. 428 of 2018 proceeding is pending against the proposed resolution professional, it may, by order, reject such application:



Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”

- 24.** Dealing with the ambit and scope of Section 7 of the Code in the case of “Innovative Industries Ltd. Vs. ICICI Bank and Ors.” reported in (2018)1 SCC 407, the Hon’ble Supreme Court has observed as under:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial



creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the



records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. 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. A debt may not be due if it is not payable in law or in fact. 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. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”



25. The present application under Section 7 of the Code for initiation of Corporate Resolution Insolvency Process has been filed by petitioner financial creditors in Form-1 in terms of Rule 4 of Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016 accompanied with required information, documents and records as prescribed under the Rules.

26. The petitioners have proposed the name of Mr. Deepak Kumar Agarwal, for appointment as Interim Resolution Professional having registration number IBBI /IPA-002 /IP-N00584 /2017-18/ 11778, resident of B-27, Sector 47, Noida District – Gautam Budh Nagar – 201301 (U.P) with email-id dkagarwal.ip@gmail.com. Shri Deepak Kumar Agarwal has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 10.11.2018 in FORM 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceeding is pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition,



further necessary disclosures have been made by Mr. Deepak Kumar Agarwal as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

27. It is reiterated that the Form-1 filed in the present case under Section 7 of the Code read with Rule 4 of the Rules, shows that the Form is complete in all respect and there is no infirmity in the same.

28. The next question comes for consideration is whether respondent corporate debtor has committed default in payment of the financial debt.

29. In this regard it is seen that all the three applicants have furnished details of cheque numbers including receipts given by the respondent and also respective loan accounts in support of disbursement of amount to the respondent corporate debtor. Petitioners have also relied upon copy of the Financial Statements of the Corporate Debtor to establish that the amount collected from the homebuyers are reflected in the financial statements of the Corporate Debtor for the year ending 2016.



30. It has been alleged that the Corporate Debtor has failed to provide the possession of the flats to the financial creditors, although the stipulated period of 24 months from the date of execution of the respective Agreement to Sell executed in July, 2015 including the maximum grace period of 6 months have expired.

31. Petitioners have also relied upon Clause 5.8 of the Agreement to Sell which provides that:

"Save as provided herein, if the Developer is not able to give the possession of the said Flat to the Allottee(s) on the account of any reasonable cause the Allottee(s) shall not be entitled to any damages whatsoever, but he/she shall be entitled to receive back the entire money paid by him to the Developer towards consideration of the said Flat together with simple interest thereon calculated @ 8% per annum from the date of such payment or payments till the date of repayment by the Developer." (emphasis given)



- 32.** Accordingly, as per Clause 5.8 of the Agreement to Sell, the corporate debtor was liable to pay back to the financial creditors with agreed interest, in case of failure of providing possession of the flats to the financial creditors.
- 33.** It is also appropriate to mention here that under Section 18 of the Real Estate (Regulation and Development) Act, 2016)(RERA) if the promoter fails to complete or is unable to give possession of the apartment, plot or building in accordance with the terms of the agreement for sale, he must return the amount received by him in respect of such apartment etc. with such interest as may be prescribed and must, in addition, compensate the allottee in case of any loss caused to him.
- 34.** Similarly, under Section 19 of RERA, the allottee shall be entitled to claim possession of the apartment, plot or building, as the case may be, or refund of amount paid along with interest in accordance with the terms of the agreement for sale.
- 35.** However, in the present case neither the possession of the flats has been given to the petitioners nor the Corporate Debtor has returned even the amounts collected from the



petitioners since the year 2015. There is sufficient material on record to conclude that respondent corporate debtor has committed default in repayment of the financial debt.

36. In the present proceeding the Tribunal is not supposed to ascertain the quantum of amount of default or to pass a decree as to how much is actually due to the applicant financial creditor. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. Adjudicating Authority is only to ascertain the existence of a default and not the exact amount due. The application under Section 7 is maintainable once the default is more than one lakh, in view of Section 4 of the Code.

37. Hon'ble Supreme Court in the case of *Shalini Ranbah Vs. Unitech Limited* reported in 2017 SCC online NCDRC 525 decided on 05.10.2017 has observed that when a Builder is not in a position to deliver possession of property for long time, has to refund the amount with interest as the allottee cannot be expected to wait for possession of the apartment for indefinite period.



38. In the present case Financial debt is outstanding since the year 2015. There is no denial of default and the amount of default exceeds much more than Rupees 1 lakh. The threshold limit to trigger the Code is purposely kept low at only one lakh rupees, making it clear that even small individuals may also trigger the Code as financial creditors. In view of Section 4 of the Code, the moment default is Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. Once there is a debt and default and the application is complete the Adjudicating Authority is bound to admit the application preferred under Section 7 of the Code.

39. Under sub-section 5 (a) of Section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

- 1. Default has occurred.*
- 2. Application is complete, and*
- 3. No disciplinary proceeding against the proposed IRP is pending.*



40. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

“Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. The adjudicating authority / Tribunal is not required to look into any other criteria for admission of the application.”

41. As a sequel to the aforesaid discussion it is seen that the applicants being home buyers come within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditors had disbursed the money to the respondent corporate debtor as consideration for purchase of flats. Though considerable period has since lapsed the possession of the flats has not been given to the petitioners. Even the principal amount disbursed has not been repaid by the respondent corporate debtor. It is accordingly reiterated that respondent corporate debtor has



committed default in repayment of the outstanding financial debt which exceeds much above the statutory limit of rupees one Lakh. Besides it is also seen that the application filed in Form – I under Section 7 of the Code read with Rule 4 of the Rules is complete and there is no infirmity in the same. Moreover, the material on record reveals that there is no disciplinary proceeding pending against the proposed IRP. In the facts we are satisfied that the present application is complete and there has been a default in payment of the financial debt and that no disciplinary proceeding is pending against the proposed IRP and therefore, the applicant financial creditors are entitled to initiate Corporate Insolvency Resolution Process against the respondent corporate debtor under Section 7 of the Code

42. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

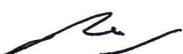
43. The judgment in this matter could not be pronounced earlier as the issue concerning Constitutional validity of explanation to sub section 8 (f) of Section 5 of the Code, 2016 was subject matter of challenge before Hon'ble the Supreme



Court in a bunch of petitions. In the lead case titled as *Pioneer Urban Land and Infrastructure Limited and Another v. Union of India & Ors.* (Supra) the judgment has now been pronounced on 09.08.2019. We have gone through the judgment and find that the directions issued by Hon'ble the Supreme Court do not in any manner advance the case of the Corporate Debtor and the petition deserves to be admitted. That apart admittedly respondent did not contest the present matter and as per available records it is seen that at no stage possession of the flats has been offered to any of the petitioners.

44. Mr. Deepak Kumar Agarwal having registration number IBBI /IPA-002 /IP-N00584 /2017-18/ 11778, resident of B-27, Sector 47, Noida District – Gautam Budh Nagar – 201301 (U.P) with email-id dkagarwal.ip@gmail.com is appointed as an Interim Resolution Professional.

45. We direct the applicant Financial Creditors to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Deepak Kumar Agarwal 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 said amount however be subject to adjustment towards Resolution Process cost as per rules and shall be paid back to the Financial Creditor.

46. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

47. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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;

(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.”

- 48.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and



Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

49. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its 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 day to day 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 would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution



Professional shall be under 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, Rules and Regulations.

- 50.** 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, NCT of Delhi & Haryana at the earliest possible 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-

02.09.2018
(M.M. KUMAR)
PRESIDENT

-Sd-

(S. K. MOHAPATRA)
MEMBER (T)