

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB) 470(ND)/2017

In the matter of

Shri Amit Kumar Malik

..... Petitioner

V/s

M/s Kindle Developers Pvt. Ltd.

..... Respondent

SECTION: 7 of IBC, 2016

Order delivered on 9.3.2018

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)

For the Petitioner: Mr. Ajay Patyal, Advocate

For the Respondent: None

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The present petition has been filed for initiation of the Corporate Insolvency Resolution Process of the Respondent Corporate Debtor. The petitioner herein claims to be a Financial Creditor.

2. The facts of the case, as averred in this petition are that the Financial Creditor had booked a two-bedroom apartment in a project to be

developed by the Corporate Debtor under the name and style of Subh Kamna Lords in Sector 79-Noida. The petitioner claims to have given a total sum of Rs. 20,77,531/- receipt of which was duly acknowledged by the Corporate Debtor. An allotment letter was issued in respect of flat no. T-6/A 402 containing by ad measurement an area of 1165 sq. ft. A builder buyer agreement was also executed. However, as no construction commenced on the site, the Noida Authority cancelled the project. The petitioner therefore claimed refund of the amount given. It is submitted by the Ld. Counsel for the petitioner that in acknowledgement of the outstanding liability, the petitioner issued 4 cheques being cheque nos. 010178 to 010181 towards return of the payment received. The said cheques were never deposited as the respondent company undertook to liquidate the liability through RTGS directly to the account of the petitioner. Since the amounts under the cheques remained unpaid and as respondent corporate debtor has admitted his liability of Rs. 20,77,531/-, vide payments of the 4 cheques, the petitioner who seeks recovery of his amounts has claimed to be the Financial Creditor and seeks initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor.

3. The respondents were duly served in this case vide different modes including through the process of the Bench. As none appeared on their behalf, they were proceeded ex-parte.

4. Learned Counsel for the Financial Creditor submits that the right to seek payment is construed as a claim in terms of Section 3(6) of the Insolvency & Bankruptcy Code, 2016, which includes

“(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.”

5. The petition has proposed the name of the interim resolution professional namely, Mr. Yogesh Kumar Tyagi having Registration No.: IBBI/IPA-002/IPN-00297/2017-2018/10856, Mobile No.:9873009530, Email ID: yogeshktyagi@rediffmail.com. He has consented to being appointed as the IRP and has filed his certificate of eligibility.

6. In the facts and circumstances of the case, this Bench is satisfied that the petitioner being a Financial Creditor has a claim against the Corporate Debtor which has remained unpaid. Accordingly, the petition merits consideration and is Admitted.

7. In view of the aforesaid, a Moratorium in terms of Section 14 of the Code comes into effect forthwith, staying:-

“(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,

(2) 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.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) 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

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effect from the date of such approval or liquidation order, as the case may be.”

7. The proposed IRP, Mr. Yogesh Kumar Tyagi is being confirmed as the IRP. He is directed to take all steps as are statutorily required of him under the Code, specifically u/s 15, 17, 18, 20 & 21 and shall file his report before the Adjudicating Authority at the end of his tenure as an IRP.
8. Copy of the order be given/emailed to the Operational Creditor, Corporate Debtor and the IRP.
8. To come up for the report of the IRP on 9th April, 2018.

Sd/-

(Deepa Krishan)
Member (T)

Sd/-

(Ina Malhotra)
Member (J)