

**BEFORE THE NATIONAL COMPANY TRIBUNAL, MUMBAI BENCH,  
MUMBAI**

**T.C.P. NO.316/I&BP/NCLT/MB/MAH/2017**

CORAM:

**SHRI M. K. SHRAWAT**  
MEMBER (JUDICIAL)

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE  
INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND  
BANKRUPTCY CODE, 2016.

Mrs. Jyoti Sri Punjabi,  
Aged about 69 years old, Indian Citizen,  
Through Constituted Attorney – Mr. Gobindram  
Dingrani, presently residing at – C-23, Ganga  
Jammana, 17<sup>th</sup> Road, Opposite – Rajesh Khanna  
Garden, Santacruz (West), Mumbai-400 054. ... **PETITIONER/CREDITOR**

**VERSUS**

M/s. Vaidehi Akash Housing Pvt. Ltd.,  
a Company incorporated and under the Companies  
Act, 1956, having its Registered Office at 101-102,  
Pratik Apartment, Opp. Dhake Colony, J.P. Road,  
Andheri (West), Mumbai-400 053, INDIA  
and its CIN – U45200MH1997PTC112493. ... **RESPONDENT/DEBTOR.**

**PRESENT ON BEHALF OF THE PARTIES:**

**FOR THE PETITIONER**

Mr. Shehzad Naqvi Advocate for the Operational Creditor present.

**FOR THE RESPONDENT**

None for Respondent.

**ORDER**

**Heard on : 29.06.2017**  
**Pronounced on: 29.06.2017**

1. This Petition was transferred from the Hon'ble High Court. Earlier the Petition was filed by the Creditor by invoking the provisions of Section

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433, 434 and 439 of the Companies Act, 1956. Consequence upon the transfer the Petitioner has furnished Form No. 5 before NCLT as per the I&BP Code, 2016 on 26<sup>th</sup> April, 2017 in the capacity of "Operational Creditor". The amount of debt as disclosed in the requisite form amounts to ₹ 1,21,68,750/-. The Operational Corporate Debtor is M/s. Vaidehi Akash Housing Private Limited on whom the service of the requisite notice and form has been confirmed vide Affidavit of Service placed on record.

2. In brief facts in respect of the outstanding debt stated to be that vide a Letter by the Debtor Company dated 1<sup>st</sup> June 2007 offered a flat bearing No. 403 in the building constructed on a Plot of Land bearing Survey No. 195, Link Road, Andheri (West), Mumbai. The Petitioner had invested a sum of ₹ 75,00,000/- by way of Purchase Price of the said flat. The allegation is that up till 2008 the Company neither entered into a Sale Agreement nor handed over the possession of the flat in question although several reminders were made by the Petitioner/Creditor. On 02.09.2008 the Company vide a Letter expressed the difficulty for arranging the funds for honouring the cheques 2 in number dated 1<sup>st</sup> June, 2008 handed over to the Creditor of the said amount of ₹ 75,00,000/-. Thereafter, on failure of payment the Company had offered alternatively two flats on 13<sup>th</sup> August, 2009 in Building No. 4, D.N. Nagar, Andheri (West), Mumbai. In confirmation of the said alternate arrangement the Debtor Company had entered into Two Registered Agreements on 3<sup>rd</sup> of August, 2009 and therein as well accepted the fact that ₹ 75,00,000/- was the advance already received previously. The Petitioner has further stated that there was an Agreement to make payment of the balance consideration in respect of the said Two Flats at the time of handing over of possession of the said Two Flats. Although the Petitioner had performed her part of the contract but the Company (Debtor) had failed to perform their part of Contract by handing over the

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possession of the said Two Flats. When all attempts have failed the Petitioner (Creditor) filed the Petition before the Hon'ble High Court annexed therein the requisite evidences to establish the debt amount and the defaults committed by the Debtor Company.

3. From the side of the Petitioner Learned Representative had pleaded that all attempts have been made but the Debtor had deliberately not made the payment although there are several Reminders and Services of Notices. He has pleaded to initiate the Insolvency Proceedings under the I&BP Code.

4. Before we proceed it is worth to discuss the Law related to Service of Notice. Where a Notice is sent at the Registered Address of the Respondent then the presumption is that the Petitioner had made bonafide attempt of service of notice because the statutory requirement is that the Service had to be effected at the Registered Office. In a situation when the Registered Office is closed or locked or shifted the fault is on the part of the Respondent of not intimating the change of the address to the Public and specially to the concerned Departments of the Government, viz. Registrar of Companies. In a situation when the Notice is returned with the remark "Closed Office" or "Left without Address" the presumption is that if there is non-communication of the new place then the default lies with the Respondent Company. The Respondent Company therefore cannot take the advantage of its own fault. In the present era there are several modes and methods of intimation of legal proceedings such as issuance of notice through Courier or by Email or even by text message through electronic media. When services of Courier is used the Tracking Report of the Courier Agency is a sufficient evidence of Service of document/Notice. Likewise, the intimation through electronic media can also be held a valid as well as acceptable communication intimating the

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date of hearing or existence of legal proceedings. Taking into account the situation in the instant case the position of the Petitioner is on better footing because of the availability of the Tracking Record of the Indian Postal Department affirming the service of the consignment upon the Debtor through Speed Post.

5. Taking into consideration the reasons assigned hereinabove when sufficient opportunity was afforded and the matter was listed for hearing in the past on 1<sup>st</sup> April, 2017, 27<sup>th</sup> April, 2017 and 1<sup>st</sup> May, 2017, however, remained unrepresented from the side of the Debtor Company no option is left but to proceed as prescribed under I&BP Code, 2016.

6. As discussed supra, facts of the case have established that the Corporate Debtor had never raised any "Dispute" against the outstanding debt. Rather the Corporate Debtor had acknowledged on number of occasions the outstanding debt as also the default in repayment of the outstanding debt. Rather the Debtor had given Undertaking to square up the outstanding balance. When failed, later on, suggested an alternate arrangement by offering Two Flats as is evident from the records of the case. Even then the commitment given by the Debtor remained unaccomplished. The Creditor had honoured her part of performance as agreed upon in the Agreement Deeds signed by the rival parties, however, the Debtor Company had miserably failed to honour its part of performance duly agreed upon.

7. As a consequence the "Insolvency Resolution Process" shall commence henceforth. This is a case of "Operational Creditor", therefore, the provisions of Section 8 of I&BP Code, 2016 shall be applied. The occurrence of "default" is established per foregoing paragraphs. As on date the amount in question remained unpaid by the Operational Debtor. The prescribed period of repayment or raising of any objection had also

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lapsed. Satisfactorily, the admitted factual position is that there is no "Dispute" in respect of the unpaid debt.

8. Having considered the totality of the circumstances and the Application/Petition for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed supra it is hereby pronounced that the "Moratorium" as prescribed under section 14 of The Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution Process.

9. The Operational Creditor has proposed the name of Interim Resolution Professional Mr. Amit Gupta having registered No. IBBI/IPA-0001/IP-P00016/2016-17/10040, having address A-1701, Gundesha Symphony, Veera Desai Road, Andheri (West), Mumbai-400 053 is hereby appointed to act as "Insolvency Professional". The Petitioner/IRP shall act upon the provisions of Section 13 of the Code by making a Public Announcement and also to comply the provisions of Section 15 of The Code. The Learned IRP shall perform the duties as assigned under Section 18 of The Code. He is also directed to inform the progress of the Resolution Plan along with the compliance of the directions to this Bench on 11<sup>th</sup> of August, 2017, with the liberty to intimate even at an early date if need be.

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10. The Petition is "Admitted" and hereby pronounced the commencement of the Corporate Insolvency Resolution Process from the date of this Order.

Sd/-

**M.K. Shrawat**  
**Member (Judicial)**

Dated: **29.06.2017**

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