

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No. 95/9/HDB/2017

U/S 9 of IBC 2016

R/w Rule 6 of I&B

(Application to Adjudicating Authority) Rules, 2016

In the matter of

- 1.) Zaheen Mahaey S/O. Dr. Raj Kumar Mahaey,
Aged about 32 years.
- 2) Mrs. Pooja Arora, W/o. Mr. Zaheen Mahaey
Aged About 30 Years, R/o. Flat No. 401,
Tulip Block, Bhanu Town Ship,
Miyapur, Hyderabad-500049

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OF THE ORIGINAL**

.....Petitioners/
Operational Creditors



Versus

1. M/S Aliens Developers (P) Ltd:
Rep. by its Managing Director & Joint Managing Director;
Mr. Hari Challa s/o Mr. CVR Chowdhary &
Mr.C.Venkat Prasanna Challa S/o Mr. CVR Chowdhary:
respectively
O/o. Flat No.910, Teja Block,
My Home Navdeepa Apartments;
Madhapur: Near Hitech City;Hyderabad-500081
2. Mr. Hari Challa S/o Mr. CVR Chowdhary
Managing Director M/S Aliens Developers (P) Ltd
O/o. Flat No.910, Teja Block, My Home Navdeepa
Apartments; Madhapur:
Near Hitech City; Hyderabad-500081.
3. Mr.C.Venkat Prasanna Challa s/o Mr. CVR Chowdhary:
Joint Managing Director M/S Aliens Developers (P) Ltd;
O/o. Flat No.910, Teja Block,
My Home Navdeepa Apartments;
Madhapur: Near Hitech City
Hyderabad-500081

.....Respondents/
Corporate Debtors

Date of order:22.08.2017

CORAM:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties/ Counsels present

For the Petitioner/ Operational Creditors: Mr. V. Appa Rao
P.V. Rama Rao,
Jayakar, Advocates,

For the Respondent/ Corporate Debtors: Mr. P. Raja Sripathi
Rao, Mr. B.Dileep
kumar, Mr M.
Amarrender Reddy ,
Advocates

Per: Rajeswara Rao Vittanala, Member (J)



ORDER

1. The present company petition bearing CP No. CP (IB) No. 95/9/HDB/2017 is filed by Zaheen Mahaey and another , Petitioner/ Operational Creditors, U/s 9 of IBC 2016 R/w Rule 6 of I&B (Application to Adjudicating Authority) Rules, 2016 by seeking to initiate Corporate Insolvency Resolution Process, against M/S Aliens Developers (P) Ltd, under the Provisions of IBC 2016.
2. The brief facts, as mentioned in the Company petition, which are relevant to the issue in question, are as follows:
 - (a) It is stated that that operational Creditors has Purchased a flat bearing No. 1647 for a sale consideration of Rs.56,76,031/- vide agreement of sale dated 12.05.2012 and paid an amount of Rs. 28,17,010/- and the balance shall be payable basing on the progress of construction and completion of flat by 30-09-2014. However, the

corporate debtor failed to commence construction of flat and thus, they have filed CC No.30 of 2015 on the file of Telangana State Consumer Dispute Redressal Commission of Telangana at Hyderabad. The same was allowed by an order dated 03-03-2017 by directing the Corporate Debtor to pay an amount of Rs.28,17,010/- + interest @12% simple from date of last payment made besides compensation of Rs. 1,00,000/- and Costs of Rs.5,000/- and granted 4 week's time to comply with the order. The Corporate Debtor failed to comply with this order though it became final and total amount due is Rs.40, 43,000/- as on 02-04-2017..



- (b) Accordingly, they have issued demand notice dated 28-04-2017 along with invoice/judgment copy in the form of Form No. 3 & 4 as contemplated under code by demanding to pay above amount. The Corporate debtor, instead of repaying debt, gave reply dated 01-05-2017 by stating that they were contemplating to challenge the order dated 03-03-2017 in superior forums.
- (c) It is stated that the corporate debtor, without construction, have sold hundreds of flats to several purchasers, and they are continuing the same even today, thereby causing mischief on public which is nothing but contrary to public interest/policy, and spirit of Companies Act.
- (d) It is stated that they have filed caveat petition in respect of Order dated 03-03-2017 passed in CC No. 30 of 2015 before National Consumer Disputes Redressal Commission, New Delhi. However, they have not received any notice so far about filing appeal before National Commission. So the order of Consumer forum

in question became final and binding on the respondents.

(e) In the above circumstances, the petitioner has filed the present petition by seeking action to initiate under IBC, 2016.

3. I have heard Sri V.Appa Rao, for the petitioner and Sri P. Raja Sripathi Rao, learned counsel for the respondent and have also carefully gone through the pleadings of both the parties.

4. The case was listed for admission on 10.07.2017, and it was subsequently adjourned to 21.07.17, 25.07.17, 28.07.17, 7.08.17 and 08.08.17. The case was adjourned at the request of parties on one reason or the other. The Learned counsel for the respondent also requested time to resolve the issue amicably. Though a counter affidavit dated 5th august 2017 is filed on behalf of Corporate Debtors by opposing petition, subsequently, they have filed a memo which was received by the Registry on 10th August, 2017, which is taken on record.

5. Shri P. Raja Sripathi Rao, learned counsel for Respondent/Operational Debtors has filed a said memo dated: 10/08/2017, which reads as under:

"The Corporate Debtor herein, in response to the instant Petition filed by the Operational Creditor had entered into a settlement with them and accordingly had agreed to pay a Sum of Rs. 41,38,039 /- towards full and final settlement of the claim of the Operational Creditors. Accordingly, Corporate Debtors herein had Issued DD(demand Draft) 10,00,000/- and 3,00,000/- No: 003245 & 003249, dated 07-08-2017 and 09-08-2017 and post dated Cheques 036974 dated 09-09-2017 an amount of Rs 28,38,039/- to the




Operational creditors and the said DD's and cheques are received by the Operational Creditors towards full and final settlement of their claims either for the past, present or in future."

Therefore, he has submitted that the above settlement is for full and final settlement of the claim of the petitioners and thus, it is liable to be dismissed as infructuous.

6. Shri V. Appa Rao, learned counsel for Petitioner/ Operational Creditors, while accepting the settlement as per the said memo dated 10/08/2017 as full and final settlement of the claim of the petitioners, has further submitted that he may be permitted to withdraw the present Company Petition, however, subject to honouring Post dated cheque No. 036974 dated 09-09-2017 for an amount of Rs.28,38,039/-.

7. In view of the above facts and circumstances of the case, I am of the considered view that Petitioner/ Operational Creditors can be permitted to withdraw Company petition. Hence the Company Petition bearing CP (IB) No. 95/9/HDB/2017 is disposed off as withdrawn, by directing the Corporate Debtor to honour Post dated Cheques 036974 dated 09-09-2017 as mentioned in the memo as extracted above. No order as to costs.


Rajeswara Rao Vittanala,
Member (Judicial)

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V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

प्रमाणित प्रति
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केस संख्या
CASE NUMBER... CP(IB) NO. 95/9/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT... 22/8/2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 29/8/2017