

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No. 104/9/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

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

1. Syed Sadiq Hussain
S/o Syed Rasheed aged about 36 years
R/o MCH No. 10-5-15, B-4
Elegance Apartment
Masab Tank, Hyderabad

....Petitioner/ Operational
Creditor

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. 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
Mr. P.V. Rama
Rao, Mr. Jayakar,
Advocates,

For the Respondent/ Corporate Debtors: Mr. P. Raja Sripathi
Rao, Mr. Dileep
Kumar, Mr.
Amarender Reddy,
Advocates

Per: Rajeswara Rao Vittanala, Member (J)



ORDER

1. The present company petition bearing CP No. CP (IB) No. 104/9/HDB/2017 is filed by Syed Sadiq Hussain, Petitioner/ Operational Creditor, 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:

- 1) It is stated that that operational Creditor Purchased a flat No. 1763 sq. ft station -11, on 17th floor of the complex by name Space staton-1 for a total a sale consideration of Rs.50,17,507/- vide agreement of sale dated 29.10.2009, and paid token advance of Rs.7,50,000/- at the time of agreement, and further paid a sum of Rs. 17,50,000/ totaling Rs. 25,00,000/. The flat has to be handed over on or before 30.06.2012 with a grace period of six months, which they have failed to do so. Accordingly, the petitioner

has filed Complaint case No. CC/13/2014 on the file of State Consumer Dispute Redressal Commission of Telangana, Hyderabad. And the same was allowed by an order dated 16.02.2016 by directing the Corporate Debtor/opposite parties to pay an amount of Rs.25,00,000/- + interest @12% simple from date of respective payments till realization, together with costs of Rs.6,000/- and granted 4 weeks 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.44.81.000/- as on 15.3.2016. The appeal filed against was dismissed as withdrawn and thus it became final.



- 2) Accordingly, the petitioner has issued demand notice dated 12.05.17 along with invoice/judgment copy in the form of Form No. 3& 4 as contemplated under code by demanding to pay above amount. However, there was no reply from the corporate debtor.
 - 3) 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.
 - 4) 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 19.07.2017, and it was subsequently adjourned to 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 of settlement, which was received by the Registry on 10th August, 2017 and the same is taken on record.



5. Shri P. Raja Sripathi Rao , learned counsel for Respondent/Operational Debtors has filed the 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. 44.50,904 /- towards full and final settlement of the claim of the Operational Creditor. Accordingly, Corporate Debtors herein had Issued DD(demand Draft No. 003243 dated 7.8.17 and 003255 dated 9.08.17 for rs. 10,00,000/- and 3,00,000/- and post dated Cheques 036955 dated 09-09-2017 an amount of Rs 31,50,904 /- to the Operational creditor 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. 036955 dated 09-09-2017 for an amount of Rs.31,50,904/-.



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.104/9/HDB/2017 is disposed off as withdrawn, by directing the Corporate Debtor to honour Post dated Cheques as mentioned in the memo as extracted above. No order as to costs.

Signature

Rajeswara Rao Vittanala
Member (Judicial)

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OF THE ORIGINAL

प्रमाणित प्रति
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केस संख्या
CASE NUMBER..CP(IB)NO:104/9/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT..22/8/2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON..29/8/2017

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