

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.P. NO. IB-650(PB)/2018**

**IN THE MATTER OF:**

Shyam Lal Sachdeva & Ors. .....Applicants  
v.  
International Recreation and Amusement Limited .....Respondent

**SECTION: Under Section 7 of The Insolvency and Bankruptcy  
Code, 2016**

**Judgment delivered on 03.08.2018**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**SHRI S.K. MOHAPATRA**  
**Hon'ble Member (T)**

**PRESENTS:**

For Applicants: Mr. Nesar Ahmed, PCS & Mr. Ahsan Ahmed  
and Mr. Rohit Chaudhary, Advocates

For Respondent: Mr. Sameera Rastogi, Mr. Yatin Sachdeva, Ms.  
Madhurima Ray and Mr. Karan Batura,  
Advocates

**M.M. KUMAR, PRESIDENT**

**JUDGMENT**

All the applicants, claiming to be the financial creditors have filed the instant 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 prayer to trigger Corporate Insolvency Resolution Process in respect of respondent company International Recreation and Amusement Limited, referred to as the corporate debtor.

2. Before embarking upon consideration of legal issue raised in the instant application it would first be necessary to notice few material facts. The Corporate Debtor is a company registered under the Companies Act, 1956 and was incorporated on 10.12.2010. The identification number of the Corporate Debtor is U92412DL2010PLC211303 and its registered office is situated at Metro Walk, Sector-10, Rohini, Near Rithala Metro Station, New Delhi – 110085. Its authorized share capital is Rs. 31,00,00,000/- and the paid up share capital is Rs. 27,27,50,000/- which is based on the details given in master data obtained from the official website of Registrar of Companies.

3. The precise case of the applicants is that they have entered into different agreements/Memorandum of Understanding with respondent-International Recreation and Amusement Limited (for brevity 'the Corporate Debtor) for purchase of different



commercial/retail units in the project, Appu Ghar, Retail Mall, Sector-29, Gurugram, Haryana which were being developed and promoted by 'the Corporate Debtor'. All the units were purchased by the Applicant(s) under the 'Assured Return Plan'. In light of the terms as mentioned in the MOU, the Applicant(s) paid a substantial portion of the total sale consideration (in most of the cases upto 90 to 100% amount) to the Respondent, and the Respondent undertook to pay a particular amount to the buyer/purchaser (The applicant(s) in this case) each month, as Assured Returns after 24 months of execution of the MOU till the time the actual physical possession of the unit was to be handed over to the buyer/purchaser. The Respondent started paying the 'Assured Returns' to the Applicant(s) as per the MOU, but stopped the same after July, 2016, in respect of the unit of the Applicants No.1 & 11, and on different occasions in respect of the units of the remaining Applicants, unilaterally and without assigning any reason. The Applicants contacted the Respondent on various occasions demanding the release of payment for their monthly 'Assured returns' but of no avail.

4. The relevant clause 5.13 with regard to 'Assured Return' of one of the aforesaid Memorandum of Understanding dated 29<sup>th</sup>

July 2013 (at pgs. 105-127) reached between the applicant(s) and the Respondent-Corporate Debtor would thus read as under:-

“The Company expects to grant license of the said Unit for 3 years as mentioned in Clause 5.10, on completion of the Project, which is expected to be within 2 years of execution of this MOU. If the Project is not completed within 2 years of execution of this MOU, then the Company assures to tender an amount @ Rs. 241/- (Rupees Two Hundred Forty One only) per square feet of super area of the said Unit to the Applicant, per month, after 24 months of execution of this MOU (**“Assured Return”**) which shall stand enhanced to Rs. 250/- (Rupees Two Hundred Fifty only) per square feet of super area of the said Unit to the Applicant, per month, from the date the entire consideration stands fully paid up by the applicant at the time of possession, till the time the premises, the possession of which has been handed over to the applicant, has been licensed by the Company, however, the obligation to pay the said Assured Return would not cross beyond 3 years from the date of possession of the said Unit. If the Company is able to put the Unit on License then the amount of

differentia payable by either Party would be calculated as per Part 1 of the Annexure A. The Company would also tender the amount to the Applicant as per the Part 2 of the Annexure A.”

5. The Financial Creditor has proposed the name of Shri Arun Chadha, 727, Brahmpuri, Meerut, Uttar Pradesh-250002, email id – chadharun@yahoo.com. He has registration No. IBBI/IPA-001/IP-P00165/2017-18/10334. A written communication dated 05.04.2018 made by Mr. Arun Chadha in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record [Annexure-II (colly)]. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by Mr. Arun Chadha, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

6. The Corporate Debtor-respondent has not filed any detailed reply. However, it has filed an affidavit vide diary No. 4807 dated

19.07.2018. In his affidavit Mr. Rakesh Babbar, Director of the Respondent-Corporate Debtor has stated that the Corporate Debtor is prepared to undergo Corporate Insolvency Resolution Process. The affidavit is accompanied with a copy of the Board Resolution dated 12.07.2018 whereby after detailed deliberation and discussion, the Board of Directors of the Corporate Debtor it has resolved that as *“the Company, facing financial problems and stress, is neither in the position to settle the dues and claims of such Creditors nor in a position to defend itself against so many Creditors, hence the only option left with it is to undergo CIRP under the provisions of Insolvency and Bankruptcy Code 2016.”*

In view of the aforesaid resolution of the Board of Director and the deposition of Mr. Babbar, Director of the Corporate Debtor, we find that there is no dispute that the respondent company has committed default in repayment of the guaranteed assured return and default stand admitted.

7. Recently an amendment dated 06.06.2018 was incorporated in the Code namely Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 whereby home buyers have been given a status of Financial Creditor. A perusal of the aforesaid ordinance makes

it clear that the applicants are covered by the expression 'financial creditor' and the amount invested by them is covered by the meaning of expression 'financial debt' as defined in Section 5(8) (f) of the Code.

8. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, he has submitted that the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. He has further submitted that the details of default along with its dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

9. Having heard learned counsel for the parties we may first examine the provisions of Section 7 (2) and Section 7 (5) of IIBC which read as under:-

**“Initiation of corporate insolvency resolution process by financial creditor.**

7 (1) .....

7 (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.

7 (3) .....

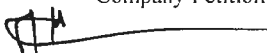
7 (4) .....

7 (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) ....."

10. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the





Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of IBC. We are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional. Thus, the applications warrant admission.

11. As a sequel to the above discussion, this petition is admitted and Mr. Arun Chadha, 727, Brahmpuri, Meerut, Uttar Pradesh-250002, email id – chadharun@yahoo.com, Registration No. IBBI/IPA-001/IP-P00165/2017-18/10334 is appointed as an Interim Resolution Professional.

12. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately make public announcement with regard to admission of this application under Section 7 of the Code. The expression ‘immediately’ means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



13. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

- “(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 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.”

14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of [EBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, 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 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 a 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.

16. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today.

 Sdl —  
**(M.M. KUMAR)**  
**PRESIDENT**

03.08.2018

 Sdl —  
**(S.K. MOHAPATRA)**  
**MEMBER (TECHNICAL)**

**03.08.2018**

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