

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB)-266(ND)2019

IN THE MATTER OF:

Mr. R. Tarkeshwar Narayan
44-B Gayathri Apartments
Sector-9, Plot-21
Rohini, Delhi-110085

...Financial Creditors

VERSUS

Horizon Buildcon Pvt. Ltd.
C-36, Gulmohar Park
New Delhi-110049

...Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on: 08.11.2019

CORUM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Ms. Mrinali Prasad, Adv.

For the Respondent : Ms. Nattasha Garg and Ms. Aashima Singhal, Adv



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ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. R. Tarkeshwar and Mrs. Divya Jayram, with a prayer to initiate the Corporate Insolvency Resolution process against M/s Horizon Buildcon Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, Horizon Buildcon Pvt. Ltd. is a Company incorporated on 03.05.2006 under the provisions of Companies Act, 1956 with CIN No. U70101DL2006PTC148372, having its registered Office at C-36, Gulmohur Park, New Delhi-110049.

3. The Authorised Share Capital of the Respondent Company is Rs.15,00,000 and Paid-up Share Capital of the Company is Rs.3,80,000 as per the Master Data of the Company annexed.

4. It is submitted by the Financial Creditor that :

"Mr. R. Tarkeshwar Narayan and Mrs. Divya Jayaram have jointly paid an amount of Rs.32,34,108/- (Rupees thirty - two lakhs thirty- four-thousand and one hundred eight only)"



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as consideration of allotment of unit no.104 admeasuring 1150 Sq. Ft at first floor of Orange Tower in the Residential Group Housing Project called 'IRIDIA' situated at Sector- 86, Noida, Uttar Pradesh and one covered car parking. The said amount of Rs.32,34,108/- (Rupees thirty-two Lakhs thirty four thousand one hundred eight only) is claimed as financial debt as defined under Section 5(8)(f)(i) of IBC.

5. That the Financial Creditor has placed on record an Agreement executed between the Corporate Debtor i.e. Horizon Buildcon Pvt. Ltd. (HBPL) and Horizon Concept Pvt. Ltd. (HCPL) for marketing of the Residential Units/Flats dated 06.07.2013. The relevant terms of the said agreement are reproduced below :

"NOW THIS AGREEMENT WITNESSETH AS FOLLOWS-

- I) The HCPL would act and work in the capacity of marketing arm and front of HBPL.*
- II) HCPL will undertake the Marketing of flats of Project "iridia" and other Projects coming from time to time and will also provide advice related to construction work to HBPL in its ongoing construction project of said flats.*
- III) That M/s Horizon Concept Private Limited is fully authorized and entitled to market/sell/allot the units and issue allotment letters/Builder Buyers Letters/ and also execute Agreement to sell, receive money/monies and issue receipts thereof to the prospective buyers....."*



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6. The Financial Creditor have also placed on record the Apartment Buyer Agreement dated 14.02.2014 between Horizon Concept Pvt. Ltd. (HCPL) and Mr. R. Tarkeshwar Narayan, the Financial Creditor, wherein it is specifically stated that:

"D. That, Horizon Buildcon Pvt. Ltd. empowered its marketing arm and group of company M/s Horizon Concept Pvt. Ltd. to market the Said deviling unit, enter into agreement to sell, collect the payments against the Said Unit, executing and registering the Conveyance Deed and also do such other acts/deeds as may be necessary for confirming upon the Allottee a marketable title to the Said Unit free from all encumbrances. The Conveyance Deed shall be in the form and content as approved by the Developer's legal advisor and shall be favour of the Allottee. Provided that the Conveyance Deed shall be executed only upon receipt of full consideration amount of the Said Unit, Stamp Duty and Registration Charges and receipt of other dues as per these presents."

7. It is further submitted by the Financial Creditor that they have made a payment of Rs.32,34,108 towards the total agreed consideration amount of Rs.49,76,500. The details of payments made by the Financial Creditors are reproduced below :



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Sr. No	Date of Disbursement i.e. date of payment of the amount to HCPL	Amount Disbursed i.e. Amount paid to HCPL (marketing arm of HBPL)
1	03-01-2014	50,000/-
2	22-04-2014	20,89,891/-
3	11-07-2014	4,40,114/-
4	03-09-2014	6,54,103/-
TOTAL		32,34,108/-

8. The Financial Creditors have made the following averments regarding the Date of Default :

"As per the Apartment Buyer Agreement dated 14-02-2014, Horizon Buildcon Private Limited had agreed to make the allotted unit ready for occupation and possession in all respects, on or before expiry of 36 months from the date of execution of the agreement. Therefore, as per the aforementioned clause of the Apartment Buyer Agreement the Developer-HBPL was bound to complete the project and deliver the possession by 14-02-2017. However, the project remains incomplete till date and the possession of the Allotted Unit is not delivered to the Allottee(s)."

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The Allottee(s) have no other option other than to file this application under section 7 of the IBC, 2016."

9. To establish the default committed by the Corporate Debtor, the Financial Creditors have placed on record the documents, namely Apartment Buyer Agreement dated 14.02.2014, copies of receipts dated 25.02.2014, 23.04.2014, 15.07.2014 and 11.09.2014 and copy of Allotment Letter dated 25.02.2014 issued by HCPL to the Financial Creditor.

10. The Corporate Debtor has filed its reply on 06.03.2019. It is admitted in the reply of the Corporate Debtor that :

"FACTUAL SUBMISSIONS :

c. That the Respondent executed an Assignment Agreement dated 05.07.2013 which was entered between the Respondent, HCPL and the Society whereby the Respondent assigned its marketing and selling rights in respect of the units in the Project to the customers and also assigned rights to execute agreements in furtherance thereof. That a Marketing Agreement dated 06.07.2001 was also executed between the Respondent and HCPL whereby the Respondent empowered HCPL to undertake sale of the units in the Project and also enter into Apartment Buyer Agreements with



homebuyers and also accept consideration for such booking and to carry out all necessary acts to confer a marketable title of the respective unit to such homebuyer. Pertinently, the Respondent also empowered HCPL to indemnify prospective homebuyers of the Project if required.”

11. The Corporate Debtor in its reply had taken a specific objection that :

“5. Also, under Section 7 of the Code, a financial creditor can file an application before this *Ld. Tribunal* for initiating CIRP only against one corporate debtor, only by whom the default has occurred. Section 3(8) of the IBC defines a corporate debtor as ‘a person’ who owes debt to any person. There is no provision in the IBC which allows the financial creditor initiate CIRP proceedings against two companies simultaneously for the same ‘debt’. Therefore, the corporate debtor cannot initiate CIRP proceedings against two companies simultaneously for the same ‘debt’ by filing a single application under Section 7 of the Code.”

12. It is submitted by the Corporate Debtor that the Financial Creditor has already filed a consumer complaint before the Hon’ble NCDRC, New Delhi. It is further submitted by the Corporate Debtor that the Financial Creditor is having efficacious remedy under the RERA Act.

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13. On seeking clarification, the Financial Creditor has filed its Affidavit on 06.11.2018 stating the following :

"3. a. That the petitioner had filed two petitions against the Respondent/ Corporate Debtors namely, M/s Horizon Buildcon Private Limited ("Corporate Debtor 1") bearing CP (IB) No. 266/ND/2019 and M/S Horizon Concept Private Limited ("Corporate Debtor 2") bearing C.P. (IB) No. 594/ND/2019 for the same amount of the default, since both the Respondent/ Corporate Debtors are liable to pay the default amount to the Petitioner/ Financial Creditor. It is submitted that M/s Horizon Buildcon Pvt. Ltd. has received payment through M/s Horizon Concept Pvt. Ltd. M/s Horizon Concept Pvt. Ltd. is front face of M/s Horizon Buildcon Pvt. Ltd. Therefore the Petitioner due to his limited knowledge had filed two separates petitions, instead of filing one joint Petition against both the Corporate Debtors.

b. That it is submitted that petitioner's petition against M/s Horizon Concept Pvt. Ltd. use to be listed in NCLT, New Delhi Bench-3 for hearing and petition against M/s Horizon Buildcon Pvt. Ltd. use to be listed in NCLT, New Delhi Bench-2 for hearing.



c. That it is further submitted that the Hon'ble Bench-3 vide its order dated 01/10/2019 has initiated Corporate Insolvency Resolution Process ('CIRP') against M/s Horizon Concept Pvt. Ltd. on a petition filed by M/s Richa Satsangi & Anr. (CP (IB) No.-84/ND/2019) against M/s Horizon Concept Pvt. Ltd. Copy of order dated 01/10/2019 of Bench-3 initiating CIRP against M/s Horizon Concept Pvt. Ltd. is annexed as Annexure A-2.

d. That it is humbly submitted that the petitioner has filed an application bearing Diary No. 0710102144782019 for withdrawing the insolvency petition bearing no. CP(IB) 594/ND/2019 filed against the Corporate Debtor 2."

"4. That it is pertinent to submit here that the Petitioner has not submitted his claim with the IRP of the Corporate Debtor 2 (M/s Horizon Concept Private Limited) till date and petitioner further undertake that he shall not file his claim against the same amount of default with the IRP of Corporate Debtor 2."

14. It is an admitted fact that the M/s Horizon Concept Pvt. Ltd. (HCPL) is a marketing arm of the M/s Horizon Buildcon Pvt. Ltd. (HBPL). As per the terms and conditions mentioned at Clause- D of the Apartment Buyer Agreement dated 14.02.2014 executed between M/s Horizon Concept Pvt. Ltd. (HCPL) and Mr. R. Tarkeshwar Narayan, Financial Creditor the the M/s Horizon Buildcon Pvt. Ltd. (HBPL) had

empowered its marketing arm i.e. HCPL to market, sell and receive consideration amount on their behalf. Further, proceedings initiated before NCDRC and the remedy available under RERA Act are not an impediment in invoking the proceedings under Section 7 of IBC 2016.

15. From the submissions made during the final hearing and the clarifications submitted by the Financial Creditor, it is evident that CIR process against the Horizon Concept Pvt. Ltd (HCPL) initiated by this Tribunal is in the matter of Richa Satsangi & Anr. Versus M/s Horizon Concept Pvt. Ltd. (IB-84/ND/2019). Clearly, the Financial Creditors in that Petition are different namely, Richa Satsangi & Anr. than the Financial Creditor in the current Petition. Further, the Financial Creditor in the current petition has given an undertaking that he has not submitted his claim with the IRP appointed in the case of M/s Horizon Concept Pvt. Ltd. Additionally, the Financial Creditor has submitted that he has filed an application bearing Diary No. 0710102144782019 for withdrawing the Insolvency Petition bearing No. CP(IB) 594/ND/2019 filed against M/s Horizon Concept Pvt. Ltd.

16. In the facts and circumstances narrated above, the Financial Creditor has established the default on the part of the Corporate Debtor in payment of the Financial Debt. The present Petition being complete and the amount of default being above Rs.1,00,000, the Petition is admitted in terms of Section 7(5) of the IBC and accordingly,

moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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.”

17. As proposed by the Financial Creditor, this Bench appoints Mr. Sanjay Gupta as an IRP having Registration No. IBBI/IPA-001/IP-P00117/2017-18/10252 (Email : sanjaygupta@aaacapitalservices.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made him within a period of one week from this



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Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

18. The Financial Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

19. In terms of the above, the Application stands admitted in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)