

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)**

Company Petition No. IB 901/ND/2020

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

MR. SURAJ KUMAR KAUSHAL & ORS.

...APPLICANTS/FINANCIAL CREDITORS

VERSUS

M/S SARVOTTAM REALCON PVT. LTD.

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 09.07.2021

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)**

**MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (Technical)**

MEMO OF PARTIES

- 1) Mr. Suraj Kumar Kaushal S/O Mr. Yogesh Kaushal & Ms. Smita Patil W/O Suraj Kumar Kaushal Both Resident of Plot No. 680 Flat No. 101 Shakti Khand III, Indirapuram Ghaziabad UP 201014.
- 2) Mr. Rajveer Vashishtha S/O Mr. Raj Kumar Sharma & Ms. Pinky Devi W/O Mr. Rajveer Vashishtha Both Resident Of D-503, The Metropolitan, Near Girls School, PCMC Link Road, Chinchwad Gaon, Pune.
- 3) Mr. Devendra Kumar Gupta S/O Mr. Narendra Kumar Gupta, Resident of Oc-10/503, Orange County, GH-4 Ahinsa Khand-1, Indirapuram, Ghaziabad, Uttar Pradesh Pin-201014.
- 4) Mr. Rajender Kumar Jain S/O Mr. S.C. Jain & Ms. Sarita Jain W/O Mr. Rajender K Jain, Both Resident Of 295/6, Shivalik Enclave, Race Course, Dehradun.
- 5) Mr. Laxmi Narayan S/O Shri Gauri Shankar & Ms. Kavita Varshney W/O Mr. Laxmi Narayan Both Resident Of 312, Super-Tech Avant Grade, Sector-5, Vaishali, Ghaziabad.
- 6) Ms. Archana Nehru W/o Mr. Vivek V Mishra & Vivek V Mishra S/o Mr. Y. K. Mishra Both Resident Of C-2, 604 Olive County Sector 5 Vasundhara Ghaziabad.
- 7) Mr. Tanuj Nayyar S/o Mr. Suman Kumar Nayyar & Ms. Priyanka Gaur Nayyar W/O Mr. Tanuj Nayyar Both Resident of 1/5466-A, Balbir Nagar Extension, Street No. 16, Shahadra, New Delhi.
- 8) Mr. Adesh Kumar S/o Bala Prasad Gupta & Mr. Sachin Kumar Gupta S/o Adesh Kumar Both Resident of 661 GF, Niti Khand 1, Indirapuram, Ghaziabad, Uttar Pradesh Pin-201014.
- 9) Mr. Abhishek Ranjan S/O Akhilesh Prasad Singh & Ms. Smita Sharma W/o Mr. Abhishek Ranjan Both Resident of Flat No 456, Duplex Society, Sector 12, Vasundhara Ghaziabad 201014.

- 10) Mr. Dhiraj Sharma S/o Mr. Siddhan Sharma & Ms. Kumari Radha Rani W/o Mr. Dhiraj Sharma Both Residents of Apex Acacia Valley, A 1302, Vaishali, Sec 3, Ghaziabad, Uttar Pradesh-201010.
- 11) Mr. Manmeet Singh S/o Mr. Dilip Singh & Ms. Tumpa Kaur Bari D/O Mr. Malabedi Bari Both Resident of G 1808 Pbel City Behind Shadan Medical College Bandlaguda Hyderabad - 50009.
- 12) Mr. Deepak Gole S/o Mr. Ramesh Chandra Gole & Ms. Hema Gole W/O Mr. Deepak Gole Both Resident Of 388, GF, Shakti Khand-I, Indirapuram, Ghaziabad, Uttar Pradesh Pin-201014.
- 13) Ms. Neeraj Kumari W/o Mr. Arun Kumar Yadav & Mr. Arun Kumar Yadav S/o Mr. Rajveer Singh Both Resident of Flat No. Tf-1, 4Th Floor, Plot No. 899, Sector-5, Vaishali, Ghaziabad, Uttar Pradesh, Pin-201010.
- 14) Mr. Mukesh Dandriyal S/o Mr. Ghananand Resident of li-B/161 Second Floor, Vaishali, Ghaziabad, Uttar Pradesh-200014.
- 15) Mr. Sachin Rastogi S/O Mr. Gyan Chand Rastogi & Ms. Navita Rohatgi W/O Mr. Sachin Rastogi Both Resident of Flat No 22, GH-8, MDC Sector 5, Panchkula Haryana.
- 16) Mr. Pankaj Arora S/O Mr. Mohan Arora & Ms. Asha Arora W/O Mr. Pankaj Arora Both Resident of B-163, Ramprastha Colony, Ghaziabad, Uttar Pradesh.
- 17) Mr. Anmol Garg S/O Krishan Gopal Garg & Ms. Garima Gupta D/O Sushil Kumar Gupta Both Resident of 55 East Rajputana, Roorkee, 247667.
- 18) Ms. Sunita Gupta W/O Mr. Om Shanker Gupta & Mr. Om Shanker Gupta S/o Mr. Badri Prasad Gupta Both Resident Of 163, Gadivan, Karhal Road, Mainpuri, Uttar Pradesh-205001.
- 19) Mr. Rakesh Raj S/o Madan Kishore Bakshi & Ms. Smita Raj W/O Mr. Rakesh Raj Both Resident of 306, 3rd Floor, Sunshine Shalimar Apt, Chitrakoot, Vaishali Nagar, Jaipur-302021.

- 20) Mr. Shivam Kumar Mishra S/o Mr. V.K. Mishra Resident of 107/222 Nehru Nagar, Kanpur, Uttar Pradesh.
- 21) Mr. Vinod Kumar S/o Ramveer Singh & Ms. Soni W/o Mr. Vinod Kumar Both Resident of House No. 1/193, Sector 1, Vasundhara, Ghaziabad 201012.
- 22) Ms. Anita Gupta W/O Mukesh Gupta Resident of House No-24, Rajiv Nagar, Ghiror, Mainpuri, Uttar Pradesh-205121.
- 23) Mr. Pramod Saxena S/O Kishan Prashad Sexena & Ms. Geetika Srivastava W/O Mr. Pramod Saxena Both Resident Of J-218, Patel Nagar Ist, Near G.D.A., Ghaziabad, Uttar Pradesh.
- 24) Mr. Sachin Mahajan S/o Kishore Kumar Mahajan & Ms. Rajni Dawar W/o Mr. Sachin Mahajan Both Resident of Flat No 1004, Gaur Ganga 2, Sec 4, Vaishali, Ghaziabad, Uttar Pradesh.
- 25) Mr. Satya Narayan Mishra S/O Late Shri Chandrika Mishra & Ms. Nidhi Mishra W/o Mr. Amar Nath Mishra Resident of C-69, Bel Officer's Colony, Chander Nagar, Ghaziabad (UP) 201011.
- 26) Mr. Sanjiv Kumar Sabharwal (First Allottee) S/O Mr. Kewal Sabharwal Resident of Flat No - A6, Raju Park, Khanpur, New Delhi 110019 and Mr. Anil Kumar Gupta s/o Ram Swaroop Gupta r/o H. No. 307, Block No. 13, Trilok Puri, Delhi-110091.
- 27) Mr. Bansh Narayan Gupta S/O Mr. Ram Swaroop Gupta & Mr. Nitin Gupta S/O Mr. Bansh Narayan Gupta Both Resident of Plot No S1-02, DPS Road, Indirapuram Ghaziabad, Uttar Pradesh Pin-201014.
- 28) Mr. Sanjeev Gupta S/O Mr. Shri Chand Gupta & Ms. Manju Gupta W/O Mr. Sanjeev Gupta, Both Resident of Dalganj, Ghiror, Mainpuri, Uttar Pradesh-205121.
- 29) Mr. Rishi Sharma S/O Mr. JK Sharma, Resident of E-2406 Apex Golf Avenue Golf City One Sec. 1. Noida Ext. (Greater Noida West), Uttar Pradesh 201009.

- 30) Mr. Raj Kumar Gupta S/O Mr. Om Prakash Gupta & Ms. Suman Gupta W/o Mr. Raj Kumar Gupta, Both Resident of House No 569, Village - Ghiror, Tehsil Mainpuri, Uttar Pradesh.
- 31) Ms. Hanslata Gupta W/O Mr. D.K. Gupta & Mr. D.K. Gupta S/O Mr. RN Gupta, Both Resident Of, A-703, Supertech Palm Green, Hapur Bypass Delhi Road, Meerut, Uttar Pradesh.Pin-250002.
- 32) Mr. Shekhar Bhadauria S/O Mr. Vijay Pratap Singh Bhaduria & Ms. Arti Bhaduria W/o Mr. Shekhar Bhadauria Both Resident of 12-B, Anukampa Apparent, Abhay Khand-4, Indirapuram, Ghaziabad, Uttar Pradesh, Pin 201014.
- 33) Mr. Anchit Jain S/O Jinender Kumar Jain & Ms. Shruti Jain W/O Mr. Anchit Jain Both Resident of 239/2 Mahesh Nagar, Ambala Cantt, Haryana 133001.
- 34) Mr. Manas Srivastava S/o Mr. Satendra Kumar Resident of House No. 1205, Sector-5 Vasundhara, Ghaziabad, UP-201012.
- 35) Mr. Vipin Kumar S/O Mr. Lator Singh, Resident of C4/304 Yamuna Vihar Delhi-110053.
- 36) Mr. Shyam Gole S/O Ramesh Chandra Gole & Ms. Swati Gole W/O Mr. Shyam Gole Both Resident Of 388, Gf, Shakti Khand -I, Indirapuram, Ghaziabad, Uttar Pradesh Pin-201014.
- 37) Ms. Deepika Gupta D/O D.K. Gupta & Ms. Hanslata Gupta W/O Mr. D.K. Gupta Both Resident Of, A-703, Supertech Palm Green, Hapur Bypass Delhi Road, Meerut, Uttar Pradesh.Pin-250002.
- 38) Mr. Rachit Jain S/O Vijay Kumar Jain & Ms. Anju Jain W/O Mr. Rachit Jain, Both Resident Of E-100 Ashok Vihar, Phase-1, New Delhi 110052.
- 39) Ms. Khyati Goyal W/O Mr. Rachit Jain & Mr. Rachit Jain S/O Vijay Kumar Jain Both Resident of E 100 Ashok Vihar Phase 1 Delhi 110052.
- 40) Ms. Shobha Jain W/O Mr. Gian Chand Jain, Resident of Gp-62, Maurya Enclave, Pitampura North West, New Delhi-110088.

- 41) Mrs. Sonali Seema W/O Mr. Manoj Kumar Singh & Mr. Manoj Kumar Singh S/O Kumar Shrinath Prasad Singh Both Resident Of C-4, 1202, Olice County, Sector-5 Vasundhara, Ghaziabad, Uttar Pradesh Pin 201012.
- 42) Mr. Jain Swarup Jain S/O Shankar Lal Jain & Ms. Usha Jain W/O Mr. Jain Swarup Jain Both Residents of B2/102, Olive County, Sec-05, Vasundhra, Ghaziabad, Uttar Pradesh Pin -201012.
- 43) Mr. Megh Chandra Jain S/ JD Jain & Ms. Sarla Jain W/o Mr. Megh Chandra Jain Both Residents of B2/102, Olive County, Sec-05, Vasundhra, Ghaziabad, Uttar Pradesh Pin-201012.

...APPLICANTS/FINANCIAL CREDITORS

VERSUS

M/s SARVOTTAM REALCON PRIVATE LIMITED

Having registered office at:

A-115, office No.301, Old No.51,
Third Floor, Gali No.1,
Vakil Chamber, Shakarpur,
New Delhi-110092

...RESPONDENT/ CORPORATE DEBTOR

FOR THE APPLICANT : Mr. K.C. Aggarwal,
Mr. V.N. Aggarwal, Advs.
FOR THE RESPONDENT : Mr. Gaurav Singh, Adv.

ORDER
Per-Dr. Deepti Mukesh, Member (Judicial)

1. The present application is filed 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') jointly by 43 home buyers (for brevity 'Applicants') in the project named as "Sarvottam Shree" of corporate debtor, affidavits in support of this application have been filed, by each applicant, with a prayer to trigger Corporate Insolvency Resolution Process against (for brevity 'Corporate Debtor').
2. The Applicants, collectively are home buyers and allottees of 2/3/4 BHK apartments in the project named as "Sarvottam Shree" and are financial creditors within the meaning of explanation to Section 5(8)(f) of the IBC. The applicants state that flats allotted to the applicants herein, constitute 10% of the total allotted units i.e. 408 units, constituting the requisite number to file the present application, complying the Amendment dated 13.03.2020.
3. The corporate Debtor is private company limited by shares incorporated on 30.01.2012, under the provisions of Companies Act, 1956 bearing CIN No. U45200DL2012PTC230708 having registered office at A-115, office no. 301, old no. 51, Third Floor, Gali No.1, Vakil Chamber, Shakarpur New Delhi and East Delhi 110092 and corporate office at A-60C, First Floor, Sector 63, Noida -201301, U.P. and email id: accounshree@sarvottamindia.com. The corporate debtor is a company involved in the business of construction and development of real estate projects.

4. The applicants state that each applicant vide separate allotment letters, booked an apartment in a project located at Plot No. SL2 measuring 15845 Sq. Meters in the Indirapuram Development Scheme situated at Khasra No. 294, 297,308,309,310,311,317,318,323/705,323,324,326 and 327 situated at Mahuddinpur Kanawani Tehsil, District Ghaziabad. The plot has been purchased by A.L.T. Sehkari Awas Samiti Limited (hereinafter referred to as 'ALT society') from Ghaziabad Development Authority. On 15.02.2013 an MOU was signed between ALT society and Sarvottam Realcon Private Limited, being the corporate debtor in the present application, to grant authority for developing the said land by construction on it.

5. The applicants state that from 2013 onwards, they started booking flats in the project of corporate debtor and accordingly allotment letters were issued on payment of initial amount, the applicants opted for construction linked plan. It is further stated that the amount paid by the applicants along with accumulated interest thereon constitutes "Debt" within the meaning of Section 2(11) of IBC. Further as per clause 6, of the allotment letter issued by the corporate debtor, it is stated that the title of the apartment shall be transferred after completion of construction, by way of sale deed. The said clause imply that the payments made and interest thereon till sale deed is executed is a debt on the corporate Debtor.

6. The applicants submit that as per clause 42 of the allotment letter, the corporate debtor undertook to build, handover and sell apartments/flat with car garages within a stipulated period. Further states that the possession of the flat was promised within 42 months i.e. by the year 2017 and payment were being made by the applicants upto the year 2019.

The corporate debtor in violation of the said clause, failed to deliver flat and also refused to refund the money with interest. The applicants further state that they approached the corporate debtor time and again for refund of the deposited amount with interest but the same was not paid off despite promises.

7. The applicants submit that, out of the total 43 applicant, few applicants have also obtained an order and recovery certificate from RERA Authority, the total amount is more than the threshold limits of Rs. 1 Crore. The recovery certificates of RERA Authority are annexed. Thereafter, a legal notice dated 30.04.2020 has also been served upon the corporate debtor and its directors. Two directors of the corporate debtor namely Mr. I.S. Gangola and Mr. Ram Sharan, responded to the said legal notice stating that they are no more the directors of corporate debtor. No reply is filed till date from the corporate debtor and/or remaining directors. The applicants states that the debt and default of the corporate debtor has also been registered with Information Utility namely NESL. The certificates from NESL have been annexed.
8. The applicant filed application under Section 7 of the I&B code, 2016 and as per Form I, Part IV the total amount of debt is Rs. 44,56,23,511/- wherein the principal amount is Rs.19,12,52,673/- and the interest is Rs. Rs.25,43,70,839/- calculated @ 24% p.a. as per the clause 7 of the allotment letter, is due and payable by the corporate debtor.
9. The corporate debtor filed reply to the application under Section 7 of the I&B Code 2016 and raised the following objections:
 - a) That no amount remains due and payable to the applicants, as per the allotment letter and that the applicants are not the creditors of the

corporate debtor. The corporate debtor states that he is financially sound and solvent, hence CIRP should not be allowed.

- b) That the applicants have defaulted in payment of various demand raised by the corporate debtor, but stated that the applicant failed to adhere the demands and defaulted in payments of installments qua the purchase of the said flats.
- c) That the applicants were required to make timely payments, for timely delivery of possession but various homebuyers have time and again defaulted in payment on due dates as per the schedule due to which the delay has been caused. Hence due to shortage of funds the project got delayed and the construction site had been sealed by the Ghaziabad Development Authority on the basis of some illegal demand, for which a writ petition bearing No.29551/2019 is filed and listed for final hearing.
- d) That huge loss has been incurred to the corporate debtor as ALT society, the party with whom the corporate debtor signed MOU for construction has failed to fulfill its obligation. A claim of more than Rs.200 Crore against he said cooperative society has been filed.

10. The applicant filed rejoinder, denying the contentions of the applicant and submitted the following:

- a) That there is no substance in the ground taken by corporate debtor, to the effect that the delayed or non- payment by the homebuyers is the cause of default. Further corporate debtor has failed to provide any substantive evidence in this regard to support its contention.
- b) It is further stated that the corporate debtor has not disputed that the 43 applicants have paid a sum of Rs.19,12,52,673/-, i.e. approximately, more than 45 Lakh per person and which is higher than the actual cost of construction. The applicants state that there is

possibility that the funds of applicants have been used for construction of flats of ALT society. That if there is non-payment of certain installments, as per the timelines has been caused due to the conduct of the corporate debtor.

- c) That there is no tenability in the ground that delay in payment has resulted in cost escalation, as the corporate debtor had initially agreed to provide flats without any escalation. Further if default is occurred on part of the ALT society, the applicants must not be punished for the same.
- d) The applicants state that payments were linked to the stage and progress of construction, hence payments have been made accordingly and even after that a substantial amount has been paid by each applicant.
- e) That the writ petition also filed by the corporate debtor, does not absolve the liability towards the applicants. Further no details of the said petition have been provided to the applicant. Moreover, the proceedings have no bearing on the present application. It is also stated that as per the admission of the corporate debtor, that the problem is beyond its control, makes it a fit case for initiation of CIRP.

11. The applicant has filed written submissions and stated the following:

- a) With regards the amendment dated 13.03.2020 of Insolvency: Proviso Section 7(1), it is stated that the entire project consists of approximately 408 units and as per the sanctioned plan, 182 flats were to be given to ALT Society vide MOU dated 15.12.2013, in return of land rights, which makes the ALT society an operational creditor. Hence 182 members do not qualify as financial creditors. Accordingly,

the applicant constitutes 10% of the allotted units. Further it is stated that the corporate debtor as per the MOU signed, had the right to sell free hold flats excluding the ALT society flats.

b) That the corporate debtor has defaulted in payment of dues, as is evident from the terms of allotment letter, whereby the corporate debtor was required to give possession within a specified time. However the corporate debtor delayed and failed to do so, moreover, also refused to refund the money in spite of repeated demands. Recovery certificate from RERA has also been obtained by some of the applicants and the amount in default, as per the said order is also more than 1 Crore.

c) The case does not come under the ambit of Section 10A of IBC Ordinance dated 05.06.2020, as the default has occurred prior to the notified date and the amount in default is more than 1 Crore.

12. The date of default as per the NESL documents, is in the year 2019. The present application is filed on 19.05.2020. Hence, the application is within in the period and is not barred by limitation.

13. The registered office of the Corporate Debtor is situated at Delhi and therefore this tribunal has jurisdiction to entertain and try this application.

14. It is evident from the record that the application has been filed on the performa prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of IBC. This Tribunal is satisfied that a default has occurred and the application under Section 7 is complete.

15. Considering the documents on records and submissions made, it can be concluded that the corporate debtor has failed to fulfill its contractual obligation as per the allotment letter signed with the applicants and failed to handover the timely possession of flats, leading to default on part of the corporate debtor. Thus, the amount paid by the applicant to the corporate debtor against the allotment of apartment, which falls under the category of financial debt has remained unpaid. The corporate debtor has raised objection stating the hindrances with respect to non-payment by ALT society to the corporate debtor and also changes in the government policies that they had to face for completion of the said project, but the same has no relation with the applicant. It is a settled law that while dealing with the application under Section 7 the reason behind default or the factor leading to default need not be considered and only the financial debt being defaulted should be the criteria to decide while admitting the application filed under Section 7 of the code by a financial creditor. Hence the applicants should not be made to suffer for the default of the corporate debtor. Moreover, the debt is registered with the NESL as per Form C annexed by the applicant. Further relying upon the judgment of Hon'ble Supreme Court in ***Innoventive Industries Ltd. vs. ICICI Bank & Another (AIR 2017 SC 4084)***, wherein it has been held that:

"...on the other hand, as we have seen, in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date."

Thus, in our view, the present applicant has been filed by the homebuyers (Financial creditors) for the default financial debt. This leaves no doubt that the application needs to be admitted. Accordingly the application is admitted.

16. The applicant has proposed the name of Mr. Sandeep Goel to be appointed as IRP, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-003/IP-N00073/2017-18/10583 having address at 410,Pratap Bhawan, Bhadhur Shah Zafar Marg, New Delhi-110002 and email-id cmasandeepgoel@gmail.com The IRP has filed consent in form-2 of the Insolvency & Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016.
17. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the corporate debtor prohibiting the corporate debtor as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
18. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Sandeep Goel to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days for the date of receipt of this order by the applicant. The amount however is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the applicant.
19. In terms of above order, the application stands admitted in terms of Section 7 of IBC, 2016. A copy of the order shall be communicated to the

applicants as well as to the Corporate Debtor above named by the Registry. Applicants are also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of the order shall also be forwarded to IBBI for its records and to ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
MS. SUMITA PURKAYASTHA
MEMBER (T)

Sd/-
DR. DEEPTI MUKESH
MEMBER (J)