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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB) 456(ND)/2018

In the matter of

Pallavi Joshi Bakhru

..... Petitioner

V/s

Universal Buildwell Pvt. Ltd.

..... Respondent

SECTION: 7 of IBC, 2016

Order delivered on 03.07.2018

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

For the Petitioner: RKG Law Associates

For the Respondent: Mr. Arjun Sawhney & Mr. Milan Deep Singh

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. The present petition has been filed for initiation of the Corporate Insolvency Resolution Process of the Respondent Corporate Debtor, on grounds of the petitioner's unpaid financial claims against them.

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2. The facts of the case, as averred in this petition, are that the Financial Creditor had booked two residential apartments in a project to be developed by the Corporate Debtor under the name and style of 'Universal Aura'. The petitioner made a payment of Rs. 90,00,000/- receipt of which was duly acknowledged by the Corporate Debtor. The Corporate Debtor issued allotment letters dated 02.04.2014 in respect of the two flats, viz. Unit No. 301, 3rd floor, in Tower-E and Unit No. 202, 2nd Floor, in Tower-D, each having super area of 1,824.73. Sq. ft. A builder buyer's agreement dated 03.04.2014 was also executed. Since there was delay in construction and development of the towers in which the apartments of the Applicant/Financial Creditor were allotted, the Corporate Debtor agreed to repay Rs. 98,00,000/- towards surrender of the allotment of flats. In acknowledgement of the liability towards the Financial Creditor, two cheques were tendered. However, after issuing the said cheques, the Corporate Debtor asked the applicant to withhold presenting them till June, 2017 due to financial constraints. On deposit, the said cheques returned unpaid on 28.06.2017. Dishonour of the cheques has also given rise to proceeding u/s 138 of the Negotiable Instrument Act, which are pending in the Delhi Courts. The petitioner seeks initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor, for their inability to liquidate their financial liability.



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3. On being served through the process of the Bench, the Corporate Debtor filed their reply. Their main resistance to the Financial Creditors' prayer is that the applicant does not qualify to be a financial creditor within the definition of Section 5(7) & 5(8) of the code and that the claim does not fall within the ambit of a "Financial Debt.". It is the Corporate Debtor's argument that there is no clause in the Builder-Buyer Agreement referring to any sort of a return plan, be it committed return/assured return plan. As per them, in order to sustain an application under Section 7 of IBC, the Financial Creditor has to satisfy this very basic requirement that the transaction is in the form of any alleged return or any sort of fixed monthly amount. It is argued that the present application is a commercial transaction qua the purchase of Residential apartment in the project of the Respondent Company and therefore does not fall within the definition of a financial debt to be paid along with interest being the time value of money.
4. The Corporate Debtor denies any delay in construction and development of the towers in which the apartments of the applicant were allotted. It is further denied that the respondent agreed to repurchase the rights of the applicant and paid Rs. 98,00,000/- towards its refund vide the two cheques. It is submitted that the applicant has failed to show that Rs.90,00,000/- was an investment which was returned with interest, nor can the petitioner be viewed as a consumer, as a speculative buyer cannot be treated as one. There is no



agreement to show that the amount of Rs.8,00,000/- was an interest/return on the investment.

5. Learned Counsel for the Financial Creditor has countered the arguments of the Corporate Debtor. It is submitted that the Corporate Debtor itself had considered the amount of Rs.8,00,000/- as a 'return' in the form of interest on the Principal amount of Rs. 90,00,000/-. Thus, the transaction between the applicant and corporate debtor has the commercial effect of borrowing. The refund for repurchase of the rights was nothing but a return of the admitted debt with interest thereon by the Corporate Debtor.
6. Having heard the Ld. Counsels, this Bench is unable to appreciate the arguments advanced on behalf of the Corporate Debtor. Notwithstanding the fact that flat owners are also financial creditors where construction is delayed, the issuance of cheques was a novation of the agreement and acceptance of a financial debt. The initial amount of Rs. 90 lakhs was agreed to be returned as Rs. 98 lakhs. This is nothing short of returning the principal amount along with interest, being the time value of money for which it was retained. The right to payment crystallised upon issuance of the cheque, dishonour of which gives right to seek payment and falls well within the definition of a claim in terms of Section 3(6) of the Insolvency Bankruptcy Code. There is no cogent explanation given by the Corporate Debtor as to why the cheques were tendered to the Financial Creditor. This per se gives to the irrefutable surmise of acceptance of a financial liability. In view of the



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facts and the Corporate Debtor's inability to pay, the petitioner's prayer for initiating the Corporate Insolvency Resolution Process of the Corporate Debtor merits consideration. The petition is therefore admitted.

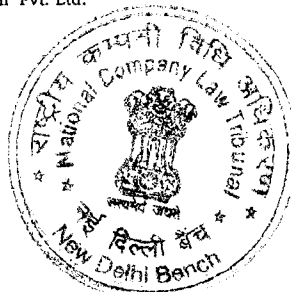
7. A Moratorium in terms of Section 14 of the Code comes into effect forthwith, staying:-

"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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.



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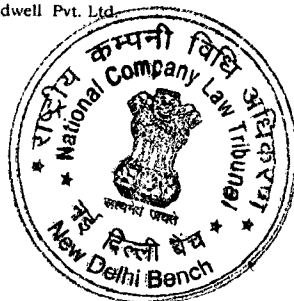
Further,

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

8. The petitioner has proposed the name of an interim resolution professional namely, Mr. Atul Kumar Kansal, having Registration No.: IBBI/IPA-001/IPP00035/2016-17/10088. He has consented to being appointed as the IRP and has filed his certificate of eligibility.



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9. Accordingly, Mr. Atul Kumar Kansal is being confirmed as the IRP. He is directed to take all steps as are statutorily required of him under the Code, specifically u/s 15, 17, 18, 20 & 21 and shall file his report before the Adjudicating Authority at the end of his tenure as an IRP.

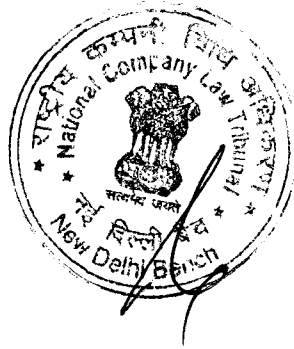
10. Copy of the order be given/emailed to the Operational Creditor, Corporate Debtor and the IRP.

11. To come up for the report of the IRP on 7th August, 2018.

Sd/

(Ina Malhotra)

Member (J)



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04.7.2019
Registrar
National Company Law Tribunal
New Delhi