BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-440/ND/2021

U/S. 7 of the IBC, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Mr. Anil Kaushal & Ors. ...Financial Creditors/Applicants

Versus

M/s Logix City Developers Private Limited

Regd. Office:

301-A, World Trade Tower,

Barakhamba Lane, Cannaught

Place, New Delhi-110001

...Corporate Debtor/Respondent

Delivered on :17.08.2022

Coram:

Shri Bachu Venkat Balaram Das Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha Hon'ble Member (Technical)

Appearances:

Financial Creditor : Adv. Sahil Sethi, Adv. Samridhi Bindal, Adv. Ramya Aggarwal

Corporate Debtor: : Adv. Vijay Kaundal, Adv. Nitish K.Sharma

Order

Per: Bachu Venkat BALARAM DAS, Member (J)

1. The present Application has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by 220 Homebuyers/Financial Creditor/allottees of 162 units, in the project of 'Blossom Zest' seeking initiation of Corporate Insolvency Resolution Process against M/s. Logix City Developers Private Limited, the Corporate Debtor.
2. The brief facts that led to the filing of present application is as follows:
   a. The Applicants herein are Financial Creditors who are homebuyers/allottees of their respective residential units/apartments, having purchased the same in the real-estate project 'BLOSSOM ZEST' (hereinafter referred as "the project), being developed by the Corporate Debtor namely M/s LOGIX CITY DEVELOPERS PRIVATE LTD. The registered address of the Corporate Debtor is 301-A, World Trade Tower, Barakhamba Lane, Connaught Place, New Delhi — 110001.
   b. It is submitted that the Corporate Debtor invited applications inter-alia for allotment of residential units in the project. The Applicants herein are

allottees in the real-estate project 'BLOSSOM ZEST', being developed by the Corporate Debtor and as per the explanation attached to clause (t) of Section 5(8) of the Code and in the light of observations of the Hon'ble Supreme Court in the case of Pioneer Urban Land & Infrastructure Ltd. (Supra) and amount collected from them by the Corporate Debtor is a 'Financial Debt' and the Applicants are Financial Creditors. Further, the instant application meets the criteria under the proviso of the amended Section 7(1) of the Code, pertaining to the minimum threshold requirements of at least 100 allottees to support the application or 10 per cent of the total allottees whichever is less, belonging to the same real-estate project.

c. It is further submitted that the Financial Creditors being desirous of having their respective homes were lured by the misrepresentation made by the Corporate Debtor and applied for allotment of their respective flats after depositing earnest money to the tune of Rs. 1,50,000/- for studio apartments & Rs. 2,50,000/- for 2BHK flats by the Corporate Debtor. Respective Allotment Letters and Flat Buyer Agreement (hereinafter referred to as "the agreement"), containing totally arbitrary, one-sided terms and identical terms, were executed on various dates between the Corporate Debtor and respective allottees for their flats. That as per the clauses of the

Agreement, the possession of the booked flats was to be delivered within 18 months from the signing of the Agreement along with a grace period of 4 months to 6 months for some towers/units in the project.

d. It is submitted that the Allottees while making timely payments as per the demands of the Corporate Debtor, hoped that the possession of their respective flats would be delivered within the promised timelines. However, the Corporate Debtor instead of honoring the terms of the executed Agreements sought to revise the delivery timelines unilaterally and deliberately. That till date, the possession of the flats allotted to the applicants have not been delivered nor has the construction of the towers completed by the corporate debtor.

e. It is averred that the applicants approached different forums and filed complaints before the RERA, however, corporate debtor has failed to handover possession of units as promised despite various meetings with the corporate debtor. It is stated that the amount in default is admitted in as much as the corporate debtor has issued ledger and/or payment receipts to the financial creditors admitting the amounts paid by them. It is further stated that despite repeated enquiries and reminders, the responses received from the Corporate Debtor reflect that they are unable to complete the construction of the project as per the promised timeline mentioned in

the Agreement. In light of the repeated indifference of the Corporate Debtor, the present application is preferred in the interest of securing the hard-earned money of the Applicants as well as other similar placed allottees with the bonafide intent of resolving the insolvency of the Corporate Debtor. Lastly, it is stated that the proceeding before this authority under IBC is to reorganize the corporate debtor in order to maximize the value of the assets of the corporate debtor, therefore, the proceedings pending before any forum do not bar the Hon'ble adjudicating Authority to admit the present application. Hence, the present application u/s 7 of IBC, 2016 has been filed.

3. The Corporate Debtor also filed reply to the present application and question the maintainability of the application and further submitted that most of the financial creditors have approached the UPRERA and have sought delay penalty/refund and UPRERA has granted relief @MCLR + 1% P.a. and not 18% p.a. which was concealed by the applicants and in view of the said order, the present application is not maintainable. The applicants' petition is in the nature of recovery, which is not permissible under IBC, 2016. It is further argued that the applicants have failed to disclose the fact that financial creditors have approached this tribunal by filing intervention petition no. 10/2021 in CP No. 883(ND)/2020 and the same was dismissed as

withdrawn vide order dated 08.06.2021. In view of the above, the respondent prayed that the present petition be dismissed.

4. The Applicants also filed their written submission and reiterated all the submissions as discussed in the petition, therefore, not repeated. They further relied on Hon'ble Supreme Court's judgements in the matter of Forech India Ltd. vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018), Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (civil) No. 43 of 2019] and M/s Innoventive Industries Ltd. vs ICICI Bank & Anr. [Civil Appeal 8337 of 2017], wherein, it was held that the proceeding under IB Code is independent from any other forums. The applicant further relied on Hon'ble NCLAT's judgment in Reliance Asset Reconstruction Company Ltd. vs. Narendra Plastics Pvt. Ltd. [Company Appeal (AT) (Ins) No. 779 of 2021) wherein, it was held that section 7 of the code is concerned with only two factors. There must be a "debt" and it must be due and payable in the law and there is a "default".

5. Before discussing the merits of the present petition, it is pertinent to mention that this adjudicating authority vide order dated 22.03.2022 had initiated the CIR Process of the corporate debtor in IB-883/ND/2020, which was set aside by the Hon'ble NCLAT vide order dated 02.08.2022, therefore, the present application can be considered on merits

6. We have heard the submission made by the Ld. Counsel and perused the pleadings. The application is maintainable as per the amended section 7 of the IBC, 2016 as the application is filed by the 220 allottes of 162 units. Furthermore, in compliance of order dated 13.08.2021, the applicants who are allottees of 151 apartments in the project of "Blosson Zest" have furnished duly notarized and stamped special power of Attorneys. Now this adjudicating Authority has to look whether there is default made by the corporate debtor. The total amount in default is Rs.87,39,76,750/- as per part IV of the form 1. As per the Article 6 of the agreement entered between the allottees and corporate debtor starting from the year 2011-2012, the possession of the said apartment was to be handed over within 18 months from the date of signing of the agreement, however, the corporate debtor has failed to honor the agreement, hence, there is default on the part of the corporate debtor. It is also evident from the emails exchanged between the applicants and corporate debtor that the corporate debtor is under duty bound to handover the flats to the concerned allottees as per the commitment, which it failed to honour. Furthermore, it is a settled position of Law that the proceeding under IBC is independent of proceeding before any other forum, therefore, any proceeding before any other authority will not bar this Adjudicating Authority to adjudicate the present petition. The Applicants have

placed all the necessary documents to establish that there exists a debt exceeding the pecuniary threshold as stipulated in section 4 of the IBC, 2016 and there is a default by the Corporate Debtor. Hence, this adjudicating authority is inclined to admit the present petition and initiate the corporate insolvency resolution process of the "Blossom Zest" situated at Plot No. GH-02, Sector 143, Express Way, Noida, Gautam Budh Nagar, Uttar Pradesh in view of the judgment passed by the Hon'ble NCLAT in the matter of Flat Buyers Association Winter Hills-77, Gurgaon v. Umang Realtech Private Limited through IRP & Ors (Company Appeal (AT) (Insolvency) No. 926/2019), wherein it was held that the CIRP may be initiated in a particular project in order to ensure the viability of the real estate company.

7. . The applicants/ financial Creditors have proposed the name of the IRP and there is no disciplinary proceeding pending against the proposed insolvency Resolution Professional as evident from the Form 2 dated 03.07.2021. Accordingly, this Adjudicating Authority appoints Mr. Manohar Lal Vij having Regn. No.-IBBI/IPA-001/IP-P014802324/2018-19/12269 (Email ID mlvij@gmail.com) as IRP from IBBI list. The IRP so appointed must submit a valid Authorisation of Assignment(AoA) within 3 days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management

immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

8. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all the following, namely:

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's 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 (54 of 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.

e. Notwithstanding anything contained in any other law for the time being in force, a licence, permit,

registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period".

9. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

10. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

11. The Financial Creditor is directed to pay a sum of Rs.2,00, 000/- (Two lakh only) as advance CIRP cost which shall be ratified and reimbursed by the CoC on its constitution.

12. The Financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

13. The financial Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.

14. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

15. The order is pronounced by this Adjudicating Authority in virtual Hearing.

-Sd-

(Bachu Venkat Balaram Das)
Member (Judicial)

-Sd-

(Binod Kumar Sinha)
Member (Technical)