

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**C.P. (IB) No. 4682/NCLT/MB/2018**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Mr. Jitendra Kantilal Shah**

...Financial Creditor / Applicant

V/s

**Sutlej Housing Private Limited**

...Corporate Debtor / Respondent

**Order Dated: 25<sup>th</sup> September 2019**

**Coram:** Hon'ble Member (Judicial): Mr V. P. Singh  
Hon'ble Member (Technical): Mr Rajesh Sharma

**For the Applicant:** Adv. Yasmin E. Tavaría and Adv. Abhishek Yadav.

**For the Respondent:** Adv. Varun N. Mamniya and Adv. Akash Pamnari

*Per: Rajesh Sharma, Member (Technical)*

**ORDER**

1. This is an Application being CP 4682(IB)/MB/2018 filed by **Mr. Jitendra Kantilal Shah**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **M/s. Sutlej Housing Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed claiming a total default of ₹5,43,64,267/- (Rupees Five Crore Forty Three Lakh Sixty Four Thousand Two Hundred and Sixty Seven Only) including interest as on 15.12.2018.
3. The Applicant advanced to the Corporate Debtor a sum of ₹4,25,00,000/- (Rupees Four Crore and Twenty Five Lakh Only) as loan in the form of advance consideration towards booking of Eight Flats in the Corporate Debtor's Project "Dadar Gardens". As per the Term Sheet dated 04.05.2017 executed between the Applicant and Corporate Debtor the amount advanced by the Applicant was repayable upon happening of two events viz. 1) IF the Corporate Debtor failed to obtain IOD for its project within 90 days of execution of Term Sheet i.e. on or before 22.07.2017, then the Corporate Debtor to refund back the entire advance

consideration to the Applicant along with interest at 24% p.a.; OR 2) IF the Corporate Debtor obtains IOD for its project within 90 days of execution of Term Sheet i.e. on or before 22.07.2017, then the Applicant at its option to take back the entire advance consideration along with interest at 24% p.a. The Copy of the Term Sheet is annexed to the Application.

4. The Corporate Debtor pursuant to Board Resolution dated 20.04.2017 entered into an Agreement for Pledge dated 04.05.2019 with the Applicant and pledged 1,500 shares of one of its Promoter in favour of the Applicant to secure the due repayment of the loan. The copy of the Board Resolution and Agreement of Pledge is annexed to the Application.
5. The Corporate Debtor issued eight Allotment Letters dated 28.04.2017 to the Applicant for eight flats provisionally booked and acquired by the Applicant in the Project "Dadar Gardens". The Corporate Debtor also issued a Post Dated Cheque (PDC) in favour of Applicant to ensure timely repayment of advance consideration along with interest at 24% p.a.
6. The Applicant submits that under clause 4 of the Term Sheet, the Corporate Debtor has admitted and confirmed that it will obtain the IOD for its Project within 90 days of execution of Term Sheet i.e. on or before 22.07.2017. Therefore, the Event of Default has occurred on expiry of 90 days from executing the Term Sheet and thus the Applicant is well within his right to exercise his option of seeking immediate repayment of his loan along with interest. The Applicant further submits that time being of essence to the Agreement for Pledge, the Corporate Debtor obtaining the IOD on 07.02.2018 cannot be used as a tool for asking the Applicant to return the Pledged Shares on the ground that IOD had been obtained by the Corporate Debtor.
7. The Applicant submits that in exercise of his rights, the Applicant presented the PDC issued by the Corporate Debtor for encashment which returned unpaid for reason "Payment stopped by the Drawer". The copy of the Cheque dated 31.12.2017 and Return Memo dated 29.01.2018 is annexed to the Application.
8. The Applicant submits that the Corporate Debtor has issued a letter dated 12.02.2018 wherein the Corporate Debtor has acknowledged the amount advanced by the Applicant against provisional booking of flats. Further, the Corporate Debtor has also issued another letter dated 01.03.2018 wherein the Corporate Debtor has clearly admitted its liability to repay the advanced amount with interest to the Applicant and the

Corporate Debtor has further reaffirmed its readiness and willingness to perform the obligation to repay the amount subject to Applicant returning the shares held by him under Pledge Agreement. Copy of the letters dated 12.02.2018 and 01.03.2018 are annexed to the Application.

9. The Applicant served Demand Notice dated 13.11.2018 calling upon the Corporate Debtor to pay ₹4,25,00,000/- (Rupees Four Crore and Twenty Five Lakh Only) principal amount with interest accrued thereon at 24% p.a. The Corporate Debtor neither replied to the said Notice nor paid the outstanding amount.
10. The Corporate Debtor in its Affidavit in Reply contends that the Corporate Debtor had clearly intimated to the Applicant about all the documents pertaining to its project including the NOCs and informed the Applicant that the Corporate Debtor was in process of obtaining IOD and there was no delay on part of Corporate Debtor as there were certain procedural changes in MCGM for issuance of IOD. The Corporate Debtor also contends that the condition specified in the Term Sheet and Agreement of Pledge dated 04.05.2017 regarding cancel, revoke and termination of Pledge Agreement was not linked with the timelines set for obtaining the IOD and were to be complied independently upon receipt of IOD. The Corporate Debtor further contends that there are several disputed questions of fact in the present matter which would be relevant for determination before appropriate Civil Court or Forum. Finally, the Corporate Debtor contends that Agreement for Pledge provides for arbitration mechanism to adjudicate upon disputes arisen between the parties therefore the Corporate Debtor is agreeable to participate in such arbitration proceedings.
11. We have heard the parties and perused the records.
12. On perusal of the documents submitted by the Parties, it is evident that debt of ₹4,25,00,000/- (Rupees Four Crore and Twenty Five Lakh Only) repayable with interest was granted and disbursed to the Corporate Debtor. The Corporate Debtor has nowhere raised a contention that it did not receive any amount as stated in the Application. The Corporate Debtor has admitted the debt by way of its letters dated 12.02.2018 and 01.03.2018 and in the email dated 29.08.2017, annexed by the Corporate Debtor in its Affidavit in Reply, wherein the Corporate Debtor has admitted that it had received an advance from the Applicant and has stated its readiness and willingness to refund the said principal amount along with interest at 24% p.a.

13. On perusal of the Term Sheet dated 04.05.2017 it is clear that, Clause No. 5 specifically provides for refund of the entire advance consideration to the Applicant along with interest at 24% p.a. in case of failure of the Corporate Debtor to obtain IOD for its project within 90 days of execution of Term Sheet i.e. on or before 22.07.2017. Admittedly and undisputedly the Corporate Debtor has obtained IOD for its project on 07.02.2018. It is also noted that, as per Clause No. 6, the Applicant can opt for repayment of his loan amount from the Corporate Debtor even in case where the Corporate Debtor obtains IOD. Therefore, subsequent acquisition of IOD by the Corporate Debtor cannot be a ground for not repaying the Applicant. On perusal of Agreement of Pledge dated 04.05.2017 Event of Default has been triggered upon failure of the Corporate Debtor to repay the principal amount of loan along with interest. Thus, the Corporate Debtor is liable to refund the entire amount of loan with interest to the Applicant as the Corporate Debtor failed to obtain IOD within stipulated time. Therefore, the contention raised by the Corporate Debtor that condition specified in the Term Sheet and Agreement of Pledge that cancellation, revocation and termination of Pledge Agreement was not linked with the timelines set for obtaining the IOD and were to be complied independently upon receipt of IOD are not tenable and hence rejected.
14. The Corporate Debtor has also contended in its Reply that the present matter would be relevant for determination of disputed questions before appropriate Civil Court or Forum. This contention is untenable as the Application is filed under section 7 of the I&B Code, 2016 and existence of dispute is not an impediment for admission of Application under section 7 of the I&B Code, 2016. Further, the Corporate Debtor has contended that the Applicant was bound to refer the dispute to Arbitration, as per the Agreement of Pledge, however, it is well established that arbitration clause in the Agreement of Pledge is no bar to initiate insolvency proceedings under the I&B Code. Therefore, this contention of the Corporate Debtor is not tenable and hence rejected.
15. The advance consideration of ₹4,25,00,000/- (Rupees Four Crore and Twenty Five Lakh Only) is loan granted by the Applicant to the Corporate Debtor as the same is given for the time value of money, the said financial facility thus amounts to financial debt within the meaning of section 5(8) of the I&B, Code 2016. Copies of Allotment Letters dated 28.04.2017, Term Sheet and Agreement of Pledge dated 04.05.2017 and the Ledger Account of Corporate Debtor maintained by the Applicant for the period

01.04.2017 to 31.03.2018 are annexed to the Application. It is pertinent to mention that all the documents mentioned above establish the financial debt. Therefore, an amount of more than ₹1,00,000/- is due, payable and in default by the Corporate Debtor to the Applicant.

16. The debt and default of the Corporate Debtor has been established and the Application deserves to be admitted.
17. The Applicant has proposed the name of Mr. Pradeep V. Samant, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA - 002/IP - N00164/2017-18 / 10433] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that there are no disciplinary proceedings pending against him.
18. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

### **ORDER**

This Application filed under Section 7 of I&B Code, 2016, filed by **Mr. Jintendra Kantilal Shah**, Financial Creditor / Applicant, against **Sutlej Housing Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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

- Securitization 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints **Mr. Pradeep V. Samant**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA - 002/IP - N00164/2017-18 / 10433]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
19. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today**

**Sd/-**  
**RAJESH SHARMA**  
Member (Technical)

**Sd/-**  
**V. P. SINGH**  
Member (Judicial)

25<sup>th</sup> September 2019