

PDL/SEC/ SE/2018-19/

January 12, 2019

National Stock Exchange of India Limited  
"Exchange Plaza"  
Bandra-Kurla Complex, Bandra (E),  
Mumbai – 400 051

BSE Limited  
Phiroze Jeejeebhoy Tower  
Dalal Street,  
Mumbai – 400 001

Dear Sirs,

Scrip Code No. : PARSVNATH – EQ (NSE): 532780 (BSE)

Sub: Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations")

Pursuant to the provisions of Regulation 30 of the Listing Regulations, please find attached a copy of the Order dated 11.01.2019 passed by the Hon'ble National Company Law Tribunal, New Delhi, Principal Bench in the matter titled 'Smt. Alka Agarwal & Ors. V. Parsvnath Landmark Developers Pvt Ltd.', which is self-explanatory.

Parsvnath Landmark Developers Private Limited is a wholly owned subsidiary of the Company.

This is for your information and record.

Thanking you,

Yours faithfully,  
For Parsvnath Developers Limited



(V. Mohan)  
Company Secretary &  
Compliance Officer

Encl. as above

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

C.P. NO. IB-1229(PB)/2018

**IN THE MATTER OF:**

**Smt. Alka Agarwal & Ors.....Financial Creditors/Petitioners**  
**v.**  
**Parsvnath Landmark Developers Pvt. Ltd.**  
**.....Corporate Debtor/Respondent**

**SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016**

**Judgment delivered on 11.01.2019**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**SHRI S.K. MOHAPATRA**  
**Hon'ble Member (T)**


**PRESENTS:**

For the Petitioners: Mr. Siddharth Sharma & Ms. Charu Tyagi, Advocates  
For the Respondent: Mr. Varun Garg, Advocate

**M.M. KUMAR, PRESIDENT**

**JUDGMENT**

Smt. Alka Agarwal including two others claiming to be a 'financial creditors' have filed this application 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') with a

  
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prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, Parsvnath Landmark Developers Private Limited, who is claimed to be the corporate debtor. It is pertinent to mention here that three Directors of the Respondent Company have also been arrayed as a Respondent Nos. 2 to 4.

2. The Respondent company-the Corporate Debtor, Parsvnath Landmark Developers Private Limited (CIN U45201DL2003PTC122489) was incorporated on 06.10.2003 under the provisions of the Companies Act, 1956. The registered office of the respondent corporate debtor is situated at Parsvnath Tower, Near Shahdara Metro Station, Shahdara Delhi, Delhi-110032 and the Corporate Office is at 6<sup>th</sup> Floor, Arunachal Building, 19, Barakhamba Road, New Delhi-110001. Its authorized share capital is Rs. 3,46,01,010/- and the paid up share capital is Rs. 3,28,21,000/- which is based on the details given in master data obtained from the official website of Registrar of Companies (Annexure-B). Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal being Adjudicating Authority has territorial jurisdiction in respect of respondent corporate debtor as per the provisions of sub-section (1) of Section 60 of the Code.

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3. The 'Financial Creditors'-Petitioners have proposed the name of Resolution Professional, Shri Yash Jeet Basrar, A-71, Golf View Apartments, Sapatparni CGHS Ltd., Plot No. 4, Sector 19B, Dwarka, New Delhi-110075, email id - ybasrar@gmail.com. He has registration No. IBBI/IPA-002/IP-N00275/2017-18/10833. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record [Annexure-C (colly)]. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or Indian Institute of Insolvency Professionals of ICSI-IPA. In addition, further necessary disclosures have been made by Mr. Basrar, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

4. It is the case of the petitioners that they had purchased a constructed residential flat bearing No. T-18-VI in Tower No. T-18 at Khyber Pass, Delhi having an area admeasuring 9945 sq.ft. approximately for the total consideration of Rs. 10,93,95,000/- under the project namely "La Tropicana" of the respondent company. The petitioners have paid a total amount of Rs. 10,13,70,052/- of the total consideration on various dates as



mentioned in the cheques issued by the petitioners in favour of the Respondent/Corporate Debtor. A flat buyer agreement (Annexure-E) was executed between the parties on 01.10.2009. According to the terms incorporated in clause 11 of the agreement, the Respondent Company undertook to hand over the possession of the said flat to the petitioners within a period of thirty six (36) months from the date of commencement of construction of the aforesaid tower with grace period of six (6) months but after expiry of more than nine (9) years construction of the said flat has not been commenced so far. Copies of statement of accounts of the Financial Creditors, payment receipt and cheques paid, customer ledgers account with respect to the Financial Creditors maintained by the Corporate Debtor have been placed on record [Annexure-F (Colly), G (colly) & H (colly)].

5. There was apparently inordinate delay in delivering the possession of the said flat. As a result, letters dated 06.07.2013, 04.01.2014, 25.02.2014, 13.08.2016 & 10.09.2016 were exchanged between both the parties. Subsequently a letter dated 06.01.2018 (Annexure-I) was sent by the petitioners seeking either physical possession of the flat or refund of the entire amount of the consideration paid by the petitioners but all in vain. Lastly a legal



notice dated 18.01.2018 [Annexure K(colly)] was sent by the petitioners through their counsel seeking either to handover the physical possession of the flat or in the alternative to refund the entire amount of Rs. 10,13,70,052/- towards principal amount along with interest @ 24% per annum from the date of payment and Rs. 18,69,672.11 with interest @ 6% per annum within 15 days from the date of receipt of the notice. The petitioners have also filed a consumer complaint [Annexure-D (colly)] titled as *Alka Agarwal & Ors. v. M/s Parsvnath Landmark Developers Pvt. Ltd.* before the National Consumer Disputes Redressal Commission, New Delhi which is pending adjudication.

6. The 'Financial Creditor' has also attached a list of other documents to the application to prove the financial debt, the total amount due and payable along with the date of default.

7. It is claimed that the Respondents are liable to pay an amount of Rs. 24,73,42,927/- (Rupees Twenty Four Crores Seventy Three Lakhs Forty Two Thousand Nine Hundred and Twenty Seven Only) to the petitioners.

8. On 02.01.2019 when the matter came up for arguments, the proxy counsel for the Corporate Debtor stated that the arguing



counsel is not available. We heard the arguments of the petitioner's counsel, reserved the order and opportunity for filing written submissions within three days was given. Despite giving opportunity to file written submission, the Corporate Debtor did not choose to submit the same.

9. Learned counsel for the Corporate Debtor has opposed the admission of the application and has advanced the following arguments by way of reply as well as additional affidavit of Mr. Madan Dogra, authorized representative of the Corporate Debtor dated 28.12.2018 filed on 31.12.2018:-

- (i) The present application is not maintainable under Section 7 of the Code because there is no default on the part of the respondents in terms of Section 3 (12) of the Code and further there is no debt due and payable within the meaning of Section 3 (11) of the Code.
- (ii) There is a mis-joinder of parties as Directors of the Respondent Company are impleaded as parties which is impermissible under the Code. The proceedings to initiate Corporate Insolvency Resolution Process can be







initiated only against a company and not against the Directors.

(iii) The petitioners are indulging in forum shopping and has already filed consumer complaint before the Hon'ble National Consumer Disputes Redressal Commission which is pending adjudication and thus, present application is not tenable which is filed only to put pressure upon the Respondents with an intention to make illegal enrichment.

(iv) A premature demand is made by way of present application because as per clause 11 of the flat buyer agreement, it was specifically agreed by the parties that the construction of the flat would likely to be completed within a period of thirty six months of commencement of construction of the identified tower, on receipt of sanction of building plans and all other requisite approvals for construction etc. Respondent-Company received the requisite clearances and approvals for carrying out the development work at the site from various authorities from time to time. After great





endeavours of the Respondent-company, revised lay out of the project in question was approved by Lay Out Committee of MCD on 27.10.2014. Despite the approvals from various authorities NDMC has not released the revised Building Plans till date on the pretext that ownership of the project land allotted to the Respondent company belongs to NDMC and not to L&DO (MoUD). In view of this, Respondent-company wrote a letter on 22.12.2016 and further on 20.02.2017 to DMRC requesting to provide the documents as proof to show the ownership of the land. In the meeting of DMRC held on 09.06.2017 it was categorically recorded that due to the dispute between NDMC and L&DO the sanction of revised Building Plans of the project in question are held up. With regard to the aforesaid issue of the ownership of the land, proceeding is pending before the Hon'ble High Court of Delhi in the matter of *La-Tropicana Resident Welfare Association v. Parsvnath Landmark Developers Pvt. Ltd.* In light of direction issued by the Hon'ble High Court vide its order dated 14.08.2018 a meeting was held

 on 30.08.2018 between L&Do, DMRC, NDMC,

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Respondent company and the representatives of La-Tropicana RWA whereas the said issue was settled. Lastly, it was highlighted that in view of the abovesaid facts the delay in completion of the project is totally beyond the control of the Respondent company. Copies of the letters issued by the authorities, Minutes of the Meeting dated 09.06.2017 of DMRC and Minutes of Meeting dated 30.08.2018 have been placed on record [Annexure R-2 (colly), R-3 & R-4].

- (v) Comprehensive disputes exist in the present case which warrants an elaborate trial and the same cannot be decided by this Tribunal with the limited jurisdiction of Section 7 of the Code.
- (vi) The IBC proceedings are not in the nature of recovery proceedings. The Financial Creditor in the garb of proceedings under IBC is seeking recovery of its alleged dues which is legally impermissible.

10. A rejoinder to the reply has been filed by the Financial Creditors reiterating the submissions made in the application and controverting the assertions in the reply.



11. Now we deal with the submissions made on behalf of the Petitioners.

12. Learned Counsel for the petitioners has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditors stand fulfilled. In that regard, he has submitted that the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. He has further submitted that the details of default along with its dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

13. Having heard the learned counsel for the parties it would first be necessary to examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

**“Initiation of corporate insolvency resolution process by financial creditor.**

7 (1) .....



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7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3) .....

7 (4) .....

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) ....."

14. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred. As per requirement of






Section 4 of the Code if default amount is one lac or more then the CIR Process would be issued. The application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional.

15. It is pertinent to mention here that clause (8) of Section 5 of the Code has been amended by the Insolvency and Bankruptcy (amendment) Ordinance, 2018 with effect from 6<sup>th</sup> June, 2018. In view of the revised definition, any amount raised from an allottee under a real estate project is deemed to be an amount having the commercial effect of a borrowing and thus is covered by the definition of 'Financial Debt' under the Code. Definition of 'Financial Debt' has been amended to specifically include dues of home buyers i.e. Real Estate (Residential). The amendment also recognizes home buyers as "Financial Creditor". Accordingly, the home buyers can initiate Corporate Insolvency Resolution Process against defaulting builder or developer, as "Financial Creditor" in terms of Explanation to Section 5 (8) (f) of the Code with effect from 06.06.2018. Therefore, the submission made to the contrary by respondent would not require any serious consideration.

16. It is pertinent to mention that on 01.10.2009 a flat buyer agreement was executed between the Petitioners & Corporate

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Debtor whereby the petitioners were allotted by ear marking flat no. T-18-VI in Tower No. T-18 at Khyber Pass, Delhi having an area admeasuring 9945 sq.ft. under the aforesaid project of the Corporate Debtor. In the light of the said agreement, the petitioners have paid the total amount of Rs. 10,13,70,052/- to the Corporate Debtor which is almost the total sale consideration. According to the terms of the agreement, the Corporate Debtor was to handover physical possession of the aforesaid unit to the petitioners within a period of thirty six (36) months from the date of commencement of construction of the particular tower in which flat is located with grace period of six months. The petitioners are thus covered by the expression 'Financial Creditors' as has been used in the amended definition of Section 5 (8) (f) of the Code and the explanation appended thereto. In that regard we draw support from the observations made by Hon'ble the Appellate Tribunal in the case of **Rajendra Kumar Saxena V. Earth Gracia Buildcon Pvt. Ltd.** passed in Appeal (AT) (Insolvency) No. 187/2018 wherein it has been held as under:

*"By the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 No. 6 of 2018 dated 6th June, 2018 followed by the Act, in clause (8), in Sub-clause (f), of Section*

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5 an explanation has been inserted as per which any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing. **Thereby, after amendment of the Act, the allottees of real estate project have been treated as 'Financial Creditors'.**" (Emphasis supplied).

A bare perusal of the aforesaid paragraph of the judgment would show that even without any element of 'assured return' an allottee in the real estate project has to be regarded as a 'Financial Creditors'. The petitioners eminently fulfill the aforesaid condition.

17. The petitioners have filed copy of the customer ledger (at pgs. 166-171) maintained by the Corporate Debtor in the name of Mr. Alka Agarwal, one of the petitioner. The total amount received by the Corporate Debtor from the petitioner since 30.07.2009 upto 16.11.2012 is Rs. 9,47,96,942/- which is patent from a perusal of the customer ledger. The amount has been raised from the petitioners/allottees under a real estate project. In such a situation not only the debt has a commercial effect of borrowings and come within the scope of 'financial debt' but also the petitioners are covered by the definition of expression 'financial creditor'.

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18. Therefore, petitioners being financial creditors can invoke Corporate Insolvency Resolution Process under Section 7 of the code against the respondent corporate debtor in case of default in repayment of financial debt.

19. It is true that the proceedings under the Code are not in the nature of recovery. In the present application the Financial Creditors are seeking initiation of Corporate Insolvency Resolution Process by making prayer that all the Financial Creditors, Operational Creditors and others may raise their claims and if Corporate Financial Restructuring is possible then within the stipulated period it may be explored failing which the due process of law is to take its course. Therefore, by initiation of Corporate Insolvency Resolution Process the Financial Creditors are only highlighting the default committed by the Corporate Debtor with respect to its inability to pay. The same is required to be remedied. Therefore, it cannot be concluded that the filing of the present petition would amount to recovery of the debts by the Financial Creditor.

20. On 23.10.2018, we have granted time to the Corporate Debtor to come forward and prevail upon the Financial Creditors to accept its offer and fixed the date for hearing on 05.12.2018. However, on


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05.12.2018 there was no whisper of settlement. We further granted time to the Corporate Debtor to do so and fixed the date for hearing on 02.01.2019. However, again on 02.01.2019 there was no whisper of settlement. Even learned counsel for the Corporate Debtor did not appear to argue the matter. Therefore, we heard the arguments and reserved the order. During the previous interregnum period between 23.10.2018 to 02.01.2019 and again after lapse of four days no meaningful results have followed. The object of the 'Code' is to resolve the insolvency issue which cannot be achieved unless the petition is admitted. The resolution as against liquidation would only be possible if the Corporate Insolvency Resolution Process is triggered and efforts in that direction are made. The admission of the petition cannot be successfully resisted on such a flimsy ground. Therefore, we have no hesitation to reject the defence raised on behalf of the Corporate Debtor.

21. As a sequel to the aforesaid discussion and the material placed on record it is confirmed that applicants-financial creditors had disbursed the money to the respondent corporate debtor as consideration for purchase of a residential flat. Though a considerable long period has lapsed even the principal amount disbursed has not been repaid by the respondent corporate debtor

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as per the provision of clause 11 of the Flat Buyer's Agreement. It is accordingly held that respondent corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one Lakh. Thus, the application warrant admission as it is complete in all respects.

22. Accordingly, in terms of Section 7 (5) (a) of the Code, the present application is admitted.

23. Mr. Yash Jeet Basrar, having registration number IBBI/IPA-002/IP-N00275/2017-18/10833, resident of A-71, Golf View Apartments, Sapatparni CGHS Ltd., Plot No. 4, Sector 19B, Dwarka, New Delhi-110075 with email id – ybasrar@gmail.com is appointed as an Interim Resolution Professional.

24. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

25. We also declare moratorium in terms of Section 14 of the Code.

A necessary consequence of the moratorium flows from the

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provisions of Section 14 (1) (a), (b), (c) & (d) and thus 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.”

26. It is made clear that the provisions of moratorium shall not apply to (a) such transactions which might be notified by the Central Government in consultation with any financial regulator; (b) a


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surety in a contract of guarantor to a Corporate Debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction

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by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

28. The office is directed to communicate a copy of the order to the Financial Creditors, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

Sd/-

**(M.M. KUMAR)**  
**PRESIDENT**

11.01.2019

Sd/-

**S.K. MOHAPATRA**  
**MEMBER (TECHNICAL)**



11.01.2019  
Vineet

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