

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Petition No. (IB)- 827/(PB)/2018

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016
Read with Rule 4 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

Coram:

CHIEF JUSTICE (Rtd.) SHRI M.M. KUMAR

HON'BLE PRESIDENT

&

DR. DEEPTI MUKESH

MEMBER (JUDICIAL)

IN THE MATTER OF:

AMOUR INFRASTRUCTURE PVT. LTD.

... Applicant/Financial Creditor

VERSUS

UNNATI FORTUNE HOLDINGS LTD.

... Respondent/Corporate Debtor



For the Applicant : Mr. Karan Luthra & Ms. Aarushi Tiku, Advs.
For the Respondent: Mr. Neeraj Malhotra, Sr. Adv. with
Ms. Srishty Kaul, Mr. Burjis Shabir, Advs.

MEMO OF PARTIES:

AMOUR INFRASTRUCTURE PRIVATE LIMITED

Having its registered office at:

House No. 336, Ground Floor,
Jagriti Enclave,
New Delhi- 110092

... APPLICANT/ FINANCIAL CREDITOR

AND

UNNATI FORTUNE HOLDINGS LIMITED

Having its registered office at:

Tower No. 07- LL-02,
Commonwealth Games Village,
New Delhi- 110092

.... RESPONDENT/ CORPORATE DEBTOR

 **Order Pronounced on: 22 .01.2019**

ORDER

1. The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Amour Infrastructure Private Limited through its director Mr. Satish Jain who is authorised vide Board resolution dated 22.06.2018, praying for initiation of Corporate Insolvency Resolution Process in respect of M/s Unnati Fortune Holdings Ltd. the Respondent/Corporate Debtor on grounds of its inability to liquidate the financial debt.
2. The applicant company namely Amour Infrastructure Pvt. Ltd. is the company incorporated on 06.02.2012 under the provisions of Companies Act, 1956 with CIN No. U45204DL2012PTC231063.
3. The registered office of applicant is at House No. 336, Ground Floor, Jagriti Enclave, New Delhi- 110092.



4. The Corporate Debtor (for brevity 'The Respondent Company') namely Unnati Fortune Holdings Ltd. is the company incorporated on 20.06.2011 under the provisions of Companies Act, 1956 with CIN No. U74900DL2011PLC221126.

5. The Respondent company is having its registered office at Tower No. 07-LL-02, Commonwealth Games Village, New Delhi- 110092.

6. The Authorized Share Capital of the company is Rs. 10,00,00,000/- and Paid Up Share Capital of the company is Rs. 3,95,90,900/- as per Master Data of the company.

7. As per averments made in the petition, the applicant has entered into an agreement with respondent titled 'Agreement to Sell' dated 11.02.2013 wherein the respondent had offered to sell unto the applicant the four flats of area of 1800 sq.ft. each as per the details given below:



S.NO.	Tower No.	Flat No.	Area (sq.ft)	Floor
1	T-5	1804	1800	18

2	T-5	2104	1800	21
3	T-5	2304	1800	23
4	T-5	2604	1800	26

As per the said agreement, the respondent agreed to sell the each flat at the total sale price of Rs. 37,50,000/- each and the entire sale price was paid in advance. Accordingly, the applicant has paid total sale consideration of the aforesaid four flats amounting to Rs. 1,50,00,000/- to the respondent and the same was paid by way of cheques, details given as under:

S. No	Cheque No.	Date	Amount	Bank
1	818516	04.02.2013	25,00,000/-	Corporation Bank, Preet Vihar, Delhi-92
2	818517	06.02.2013	50,00,000/-	Corporation Bank, Preet Vihar, Delhi-92
3	343890	06.02.2013	75,00,000/-	ICICI bank, Anand Vihar, Delhi-92

Further as per agreement, it was agreed between the applicant and the respondent that the possession of aforesaid

four flats had to be handed over to the applicant within a period of three years from the date of this agreement.

8. It is further the case of the applicant that the applicant has entered again into another agreement with respondent titled 'Agreement to Sell' dated 24.04.2015 wherein the respondent had offered to sell unto the applicant the three flats of area of 1575 sq. ft. and 1280 sq. ft. respectively as per the details given below:

S.NO.	Tower No.	Flat No.	Area (sq.ft)	Total Consideration
1	B	1903	1575	Rs. 40,00,000/-
2	C	2201	1280	Rs. 30,00,000/-
3	C	2205	1280	Rs. 30,00,000/-

As per the said agreement, the respondent agreed to sell the two flats at sale price of Rs. 30,00,000/- each of 1280 sq. ft. and one flat is 1575 sq. ft. at Rs. 40,00,000/-, where the total sale price amounted to Rs. 1,00,00,000/- and the entire sale price was paid in advance. Accordingly, the applicant has paid total sale consideration of the aforesaid three flats

amounting to Rs. 1,00,00,000/- to the respondent and the same was paid by way of cheques, details given as under:

S. No	Cheque No.	Date	Amount	Bank
1	818526	21.04.2015	50,00,000/-	Corporation Bank, Preet Vihar, Delhi-92
2	818527	21.04.2015	50,00,000/-	Corporation Bank, Preet Vihar, Delhi-92

Further as per agreement, it was agreed between the applicant and the respondent that the possession of aforesaid three flats had to be handed over to the applicant within a period of one year from the date of this agreement.

9. By way of security the Corporate Debtor had also issued an allotment letter dated 24.04.2015 for allotment of 3 apartments in the group housing project "The Aranya" situated at Plot number GH-02, Sector 119, Noida.



10. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt and the transactions on account of which the debt fell due.

PARTICULARS OF FINANCIAL DEBT	
1. TOTAL AMOUNT OF DEBT (Annexure D)	The total amount of financial debt as regards to the financial creditors is Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs only) along with 18% interest per annum totalling to a sum of Rs. 4,53,25,000/- (Rupees Four Crore Fifty-Three Lakhs Twenty-Five Thousand only) upto 01.07.2018.
2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE	The total amount to be due Rs. 4,53,25,000/- (Rupees Four Crore Fifty-Three Lakhs

12/11

DEFAULT OCCURED	Twenty-Five Thousand only) upto 01.07.2018. It is submitted that under the two Agreement to Sell dated 11.2.2013 and 24.4.2015, the possession of the flats had to be handed over on or before 10.2.2016 and 23.4.2016 respectively. Therefore, the date of default is: i. 10.2.2016 in respect of the Agreement to Sell dated 11.2.2013; ii. 23.5.2016 in respect of the Agreement to Sell dated 24.4.2015.
-----------------------------------	---

12/11

11. The defence adopted by the Respondent – Corporate Debtor is that the amount allegedly claimed in the present application i.e. Rs.4,53,25,000/- which is purportedly inclusive of Rs. 2,50,00,000/- being the principal amount due and interest calculated at the rate of 18% per annum, is nothing but an arbitrary figure claimed by the Applicant company and its officials, in order to satiate its never-ending greed. It is further submitted by the respondent that no amount as alleged by the Applicant is due to the Applicant company, as all the amounts paid by the Applicant company, in pursuance of the Agreement to Sell dated 11.02.2013 and 24.04.2015 have been paid to the Applicant Company and therefore, the present application warrants dismissal at the threshold.

It is further argued by the respondent that the ledger account of applicant with respect to respondent is annexed with the present application depicts two entries dated 28.01.2014 and 30.01.2014 which recorded the receipt of an amount of Rs.

 97,50,000/- and Rs. 2,50,000/- totalling to Rs. 1,00,00,000/- by the Applicant company. Furthermore, the

Applicant has received amount totalling to Rs. 1,50,00,000/- on 08.03.2014, 10.03.2014 and 11.03.2014 respectively. Moreover, the said ledger itself shows the receipt of interest amount of Rs. 16,20,000/- which is the interest calculated @12% on Rs. 1,50,00,000/- of 365 days being Rs. 18,00,000/- less 10% TDS amount on 11.03.2014. It is submitted that the TDS amount had been duly deposited in the Income Tax Authorities by the Respondent Company. It is further submitted by the Respondent in its reply that according to the Applicant's own version the Applicant again paid a total amount of Rs. 1,00,00,000/- as balance sale consideration for three flats being developed at the aforesaid project vide cheque nos. 818526 and 818527 both dated 21.04.2015 drawn on Corporation Bank, Preet Vihar for an amount of Rs. 50,00,000/- each. It is again absolutely necessary to mention here that according to the ledger annexed with the application, the Applicant has received 4 payments on 13.01.2016 worth Rs. 40,00,000/-, 22.02.2016 worth Rs. 60,00,000/-, on 18.02.2016 Rs. 20,00,000/- and on 22.02.2016 Rs. 20,00,000/- which totally amounts to Rs.



1,40,00,000/- . It is thus, submitted that even the payment made by the Applicant vide the second agreement dated 21.04.2015 has also been refunded to the Applicant company.

It is further submitted by the Respondent in its reply that the Applicant Company as well as its Director Mr. Satish Jain are in the habit of approaching the Judicial Authorities with motivated petitions in an effort to blackmail and harass the Respondent Company and its other sister concerns. The director of the Applicant Company had filed an application before the Real Estate Regulatory Authority (RERA) with regard to similar transactions with the sister concern of the company. Upon perusal of the records, the RERA, vide its order dated 22.06.2018, was of the view that the complainant himself had not approached the authority with clean hands. The Ld. Authority was thus, pleased to direct the Economic Offence Wing (EOW), Uttar Pradesh to initiate an investigation against Mr. Satish Jain and his family with regard to accumulation of unaccounted black money and money laundering etc.

Thus, respondent has alleged to have paid the amount due but in support have not annexed any evidence for the same. Neither the respondent has produced any receipt from applicant nor the bank details of payment made of the entire amount of Rs. 2,50,00,000/- which was received by them from the applicant against two Agreements for sale dated 11.02.2013 and 24.04.2015.

12. In this regard the Petitioners have submitted in their Rejoinder filed on 10.10.2018 that at the time the sum of Rs. 1,00,00,000/- and Rs. 1,50,00,000/- were paid by the Corporate Debtor in the month of January 2014 and March 2014 respectively, there was an outstanding amount of Rs. 2 Crores towards loans granted by Mr. Satish Jain to the Corporate Debtor in his personal capacity. The amounts were incorrectly transferred to the Financial Creditor's account and were therefore immediately refunded on the same day or within a few days thereof and the refund was accepted by the Corporate Debtor without demur.

13. The Petitioner in its rejoinder has further submitted that there is a fundamental fallacy in the argument raised by the Corporate Debtor. In the event the aforesaid amounts paid by the Corporate Debtor were a refund of the sum of Rs. 1,50,00,000/- paid by the Financial Creditor towards the Agreement to Sell, it is inconceivable that an amount of Rs. 2,50,00,000/- would be repaid, when the Financial Creditor has only paid a sum of Rs. 1,50,00,000/- at that point in time. The payment of the remaining amount of Rs. 1 crore was only paid in April 2015 for the second Agreement to Sell. Accordingly, the contention that the said entries represent a refund of the amounts paid by the Financial Creditor towards the amount paid towards the Agreement to Sell dated 11.02.2013 is completely wrong. Further, the Corporate Debtor while relying on the said entries completely ignores the entries whereby the sum of Rs. 1,00,00,000/- has been refunded on the same date by the Financial Creditor and Rs. 1,50,00,000/- has been refunded within two days by the Financial Creditor since the said amounts had been wrongly credited by the Corporate Debtor. The ledger account clearly

shows an outstanding of Rs. 1,50,00,000/- at the end of financial year on 31.03.2014. The Corporate Debtor has failed to explain as to why the amounts which have been paid by him were refunded to the Corporate Debtor within a matter of few days, if the same was alleged repayment towards the monies paid by the Financial Creditor towards the Agreement to Sell dated 11.02.2013.

The interest of Rs. 18,00,000/- after deduction of TDS has been paid by the Corporate Debtor towards compensation for having taken the entire amount upfront even though the flats were to be delivered after a period of 3 years.

The Corporate Debtor has failed to explain as to why he would refund a sum of Rs. 1,40,00,000/- towards repayment of a sum of Rs. 1,00,00,000/- which clearly shows the fallacy in the story concocted by the Corporate debtor. The Ledger Account clearly shows that a sum of Rs. 2,50,00,000/- is still outstanding as on date, which has not been denied by the Corporate Debtor. The Corporate Debtor has failed to produce any document to show that the obligations of the Corporate



debtor under the Agreements to Sell dated 11.02.2013 and 24.04.2015 stand discharged or extinguished in any manner.

14. It is further submitted by the applicant that applicant had filed a complaint with the Anand Vihar police station who have pursuant to the said complaint registered a FIR bearing no. 476/2017 dated 19.09.2017 for the wrongful and illegal conduct of the Corporate debtor and its representatives.

The representatives of the Corporate Debtor thereafter approached the Financial Creditor stating that they would be unable to deliver the flats as promised under the Agreement dated 11.02.2013 and sought to repay the sum of Rs. 1,50,00,000/- received from the Financial creditor under the said Agreement. The Corporate Debtor also agreed to pay a sum of Rs. 1,00,00,000/- towards interest for withholding the monies from the year 2013.

15. The Corporate Debtor handed over two post-dated cheques bearing no. 564165 dated 21.12.2017 for an amount of Rs. 1,00,00,000/- and cheque bearing No. 564166 dated 27.12.2017 for an amount of Rs. 50,00,000/- in mid-

December,2017 with an assurance that the said cheques shall be honoured upon their presentation. The balance amount of Rs. 1,00,00,000/- will be given in the month of January,2018.

As per the assurance of the Corporate debtor, the financial creditor presented the aforesaid cheques for their encashment to its Bank i.e. ICICI Bank, Anand Vihar, Delhi but the same were returned dishonoured as per Returning Memos dated 29.12.2017 with remarks 'Payment stopped by drawer' (against cheque bearing no. 564165) and 'Funds Insufficient' (against Cheque no. 564166).

The Operational Creditor has filed complaint u/s 138 of the Negotiable Instrument, Act before the Ld. Chief Metropolitan Magistrate, Karkardooma Court, Delhi (Annexure -I) and the same is pending before the Hon'ble court.

16. The financial creditor further submitted that in the Criminal Proceedings pertaining to FIR no. 476/2017, the Counsel appearing for the Director of the Corporate Debtor has on various occasions tried to settle the matter and sought time to

arrange the funds to pay the Financial Creditor, which clearly shows that the debt stands acknowledged. It is further submitted by the Financial Creditor that director of the Corporate debtor, Shri Anil Mithas has also filed an application for Bail being Bail Application No. 2046/18 in relation to FIR No. 476/2017. The said Application was rejected on 24.09.2018 by the Ld. Additional Sessions Judge by a detailed order. The relevant portion of the Order is as under:

"3. As per the IO, the bank accounts reflect transfer of Rs. 6.4 crores from complainant's side to the accused side whereas total sum of Rs. 4.46 crores have been transferred from the accounts of the accused to the complainant side. Out of this amount of Rs. 4.46 crores, 56 lac is stated to be interest towards the money advanced by the complainant. Seen in this light, an amount of Rs. 2.5 crores is still pending of which 1.5 crore is the subject matter of the present FIR and remaining 1 crores relates to another dealing of three flats with respect to which a separate compliant has been filed.

12/

17. Under sub-section 5(a) of section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

- (i) Default has occurred;
- (ii) Application is complete, and
- (iii) No disciplinary proceeding against the proposed IRP is pending.

18. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor 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.



19. Having heard the learned counsels for the Financial Creditor and Corporate Debtor, we may first 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)

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)

20. 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 IBC. We are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.

21. As a sequel to the above discussion, this petition is admitted and Mr. Rajiv Bajaj with the address 4/180, Ground Floor, Backside Subhash Nagar, New Delhi- 110027 and email-id rbajajip@gmail.com and having registration number IBBI/IPA-002/IP-N00276/2017-18/10834 is appointed as the Interim Resolution Professional.



22. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately make public announcement with regard to admission of this application under Section 7 of the Code. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the 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.

(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.”

23. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated,

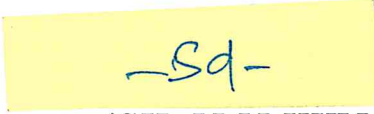
inter alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are

Page 23 of 25

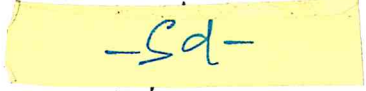
to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other 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 by the ex-management or its ex-directors the Interim 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 shall be under 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.

24. The petitioner/Financial Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and accounted for by the IRP.

25. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today.

 22.01.2018

(SH. M.M.KUMAR)
PRESIDENT



(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)