

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-01
IB-525/PB/2022

IN THE MATTER OF:

Chirag Jain & Ors.

....Applicant

Vs.

Imperia Structures Ltd.

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 31.08.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-525/PB/2022 stands **admitted.**

**Sd/-
(RAHUL BHATNAGAR)
MEMBER (T)**

**Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 525 of 2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

Chirag Jain & Ors.

...Financial Creditor

Versus

Imperia Structures Limited

...Corporate Debtor

Order pronounced on: 31.08.2023

Coram:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

1. Chirag Jain
S/o Mr. Ajay Kumar Jain,
R/o 3A, Palam Marg, Vasant Vihar
New Delhi-110057

2. Ajay Kumar Jain
S/o Late Mr. L.C. Jain,
R/o 3A, Palam Marg, Vasant Vihar,
New Delhi- 110057

3. Jayshree Jain
W/o Mr. Ajay Kumar Jain
R/o, 3A, Palam Marg, Vasant Vihar,
New Delhi- 110057

4. JMPS Realtech
Through its partner, Mr. J.S. Gujral,
S/o Late Mr. B.S. Gujral,
R/o K-165, South City 1, Gurgaon- 122001
5. Hardeep Singh
S/o Mr. Brig Ajit Singh
R/o 608A, Aralias, DLF Golf Links,
Gurgaon, Haryana- 122009
6. Anjali Singh
W/o Mr. Hardeep Singh
R/o 608A, Aralias, DLF Golf Links,
Gurgaon, Haryana- 122009
7. Gurbinder Singh Gujral
S/o Mr. Harnam Singh Gujral,
R/o A-69, Defence Colony, New Delhi- 110024
8. Harminder Kaur Gujral
W/o Dr. Gurbinder Singh Gujral,
R/o A-69, Defence Colony, New Delhi- 110024
9. Sanjiv Narayan
S/o Mr. Surendra Narayan
R/o F- 255 A, Lane W5B,
Sainik Farm, New Delhi- 110062
10. Krishna Kumar Pant
S/o Mr. Goverdhan Pant
R/o J2/36, DLF Phase-2,
Gurgaon, Haryana- 122002
11. Ajay Jaiswal
S/o Mr. Purushottam Dass Jaiswal,
R/o A-1/11770, Jaiswal Bhawan,
Sarovar Marg, Panchsheel Garden,
Naveen Shahdara, New Delhi- 110032
12. Bharat Sheth
S/o Mr. A.G Sheth
R/o A-43, Hauz Khas, New Delhi- 110016
13. Manju Lata Saini
S/o Late Mr. Brij Mohan Saini
R/o C- 103, Lal Bagh, Loni
Ghaziabad, Uttar Pradesh- 201102

14. Jyoti Rakyan
W/o Mr. Sudhir Kumar Rakyan
R/o B-33, South Extension- 2
New Delhi, NDSE- 110049
15. Sudhir Kumar Rakyan HUS
S/o Laxmi Chand Ji Rakyan
R/o B-33, South Extension-2
New Delhi, NDSE- 110049
16. Dharmendra Singh
S/o Mr. K.S. Singh
R/o Indra Bhawan, P.O. Baniakhera,
Tehsil Chandausi, Distt. Moradabad,
Uttar Pradesh- 244112
17. Sujata Mukkavilli
W/o Mr. Gautham Mukkavili
R/o Flat F, Springleaf Apartments,
Brunton Road, 1st Cross, Bangalore- 560025
18. Gautham Mukkavili
S/o Mr. M.S Prasad
R/o Flat F, Springleaf Apartments
Brunton Road, 1st Cross, Bangalore- 550025
19. Abhimanyu Nair
S/o Mr. Gopal Krishnan Nair
R/o 401, Abhas Apartments, GH- 16
Sector- 56, Gurgaon, Haryana- 122011
20. Niranjana Singh Nayyar
S/o Mr. Nanak Singh
R/o D148, 2nd Floor,
New Rajendra Nagar, New Delhi.

.... Financial Creditors

Versus

Imperia Structures Limited
Registered Office at: A-25, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi- 110044

.... Corporate Debtor

Appearances (through video conferencing):

For the Applicant : Mr. Akshay Srivastava, Mr. Vivek Kumat

For the Respondent: Mr. Sandeep Bajaj, Mr. Vipul Jai, Mr. Mayank, Ms. Zoya Junaid, Advs.

ORDER

PER: SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

1. This is a Company Petition filed 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, by Chirag Jain & Ors. (hereinafter referred to as 'Financial Creditor'), represented by Mr. Kshitij Jain and Mr. Hemant Chadha, authorized through a letter of authorization dated 27.03.2022, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Imperia Structures Limited [CIN: U45400DL2010PLC198791] ("Corporate Debtor").
2. The Corporate Debtor was incorporated on 05.02.2010, having CIN: U45400DL2010PLC198791, under the Companies Act, 1956. Its registered office is at A-25, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi- 110044. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 20.05.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 3,67,93,375/- (Rupees Three Crore Sixty-Seven Lakh Ninety-Three Thousand Three Hundred Seventy-Five only) excluding interest calculated at 18% p.a as on 15.07.2019 (Date of Default).

Submission of learned Counsel appearing for the Financial Creditor

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) In the present application, the Corporate Debtor herein had launched the Project namely "Imperia Byron/Mindspace" situated at Sector- 62, Gurgaon, Haryana under the scheme of 'Investment Return' along with 'Guaranteed Assured Return'

with the representation that in the event the buyers paid upfront sale consideration for the Units booked, the Corporate Debtor would undertake to make payment of the monthly guaranteed assured return till the Units were leased out and thereafter, the Corporate Debtor would pay assured rental to the buyer upon leasing of the Unit to the intended tenant. Based on the elaborate scheme, representations and assurance by the Corporate Debtor, the Financial Creditors herein booked their Units in the Project in the year 2011 and few in the year 2012 and separate Memorandum of Understanding for each Unit was signed with the Corporate Debtor.

- b) The present application under Section 7 of the IBC is filed by 28 real estate unit holders (20 Financial Creditors) for a total outstanding debt of Rs. 3,67,93,375/- (Rupees Three Crore Sixty-Seven Lacs Ninety-Three Thousand Three Hundred and Seventy-Five Only) which is due and payable by the Corporate Debtor towards the assured return in terms of the Memorandum of Understanding (MoU) executed pertaining to each financial creditor herein. It is important to note here that as on the date of filing of the petition and even as on the date of the final arguments the total number of recognized units as per Form A-H of the Haryana Real Estate Regulatory Authority (HRERA) which is an information utility in terms of the IBC and various judgments of the Supreme Court is 246. Thus, the present application is maintainable in terms of the Section 7 of the IBC as the requisites of Section 7 application are met.
- c) The total number of units in the Real Estate Unit is Rs. 246 as mentioned in Form A-H of HRERA and the total number of unit holders in the present petition is 28 which is above 10% threshold limit as prescribed in Section 7. The financial creditors herein are and even today interested in possession and want resolution of the company as the Corporate Debtor has grossly failed towards its financial obligations and till date the units vest in the name of the Financial Creditors and the total consideration of the respective units have been duly paid by the Financial Creditors at the time of execution of the MoU and duly acknowledged by the Corporate Debtor.

- d) The Corporate Debtor launched the real estate project 'Imperial Byron/Mindspace' situated in Sector 62, Gurgaon in 2011-2012 and invited real estate allottees to book units. The Financial Creditors made their bookings and the Corporate Debtor guaranteed monthly assured return till the units were not leased out and it is then that after the units were leased out, the Corporate Debtor was to give lease rental. It is important to note that till date the Corporate Debtor has grossly failed to lease out the units of the financial creditors and thus owes assured return to the financial creditors.
- e) The Corporate Debtor thereafter defaulted in terms of the MoUs executed and some important clause of the MoUs (which are similar for all the financial creditors) are as below:
- Clause 2 of the MoUs mentions the details of each unit booked and allotted by the Financial Creditors.
 - Clause 3 of the MoUs records that the total consideration towards the units have been duly paid by the Financial Creditors herein.
 - Clause 4 of the MoUs record the liability of the Corporate Debtor to pay the monthly guaranteed assured return till the time office space is not leased out.
 - Clause 5 of the MoUs record that the possession of the units were to be given within 2 years from the receipt of building plan approval (Building Plan was received on 15.05.2014) and thus the possession was due by 15.05.2016 but till date the possession of the units has not been handed over to the financial creditors. It is also important to note here that the building plans were revised on 14.07.2019 and approved on 22.08.2019.
- f) It is important to note here that the Corporate Debtor has not only defaulted in crediting the amount due and payable to the Financial Creditors herein [the time period for which the amounts have not been paid with respect to all Financial Creditors herein are illustrated in Annexure P-1 of Section 7 Application] but have also received the total amount towards the sale consideration of the units allotted to the Financial Creditors herein and thus have duly acknowledged the allottees herein as its Financial Creditors as there is time value for money and also

disbursement of amount to the Corporate Debtor. The Application being complete in all respect ought to be admitted in terms of plethora of judgments of the Hon'ble Supreme Court which are filed on record.

- g) The Corporate Debtor is not correct in stating that the applicant herein does not meet the threshold limit in terms of the proviso to Section 7 of the IBC, 2016. The information made available in the HRERA website is an authentic source of information. In this regard, the Hon'ble Supreme Court in its landmark judgments titled **Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors. [(2019) 8 SCC 416]** and **Manish Kumar v. Union of India & Anr. [(2021) 5 SCC 1]** has categorically held that RERA and IBC are to be read in a harmonious manner and RERA will act as an information utility for the allottees for their Section 7 application. It is also pertinent to note here that the Hon'ble Supreme Court in the judgment of Manish Kumar (Supra) has also dealt in detail that the Corporate Debtor/Promoter is bound to upload the data of allotments in terms of Section 11 of RERA Act, 2016 and this is a statutory obligation on part of the Corporate Debtor/Promoter. It is further important to note here that the Corporate Debtor herein has duly uploaded the data on 09.12.2019 as is evident from Form A-H of the HRERA and as per its own admission in the supplementary affidavit filed by the Corporate Debtor, the bookings have been done way back in 2011-12. Therefore, what is important to note here that even when the bookings and MoUs that have been executed date back to 2011-12, the RERA since 2019 and till date have only recognized 246 units as is evident from Form A-H of the HRERA. It is therefore evident that as on date only 246 allotments are legally existing and rest as claimed by the Corporate Debtor are either cancelled or not recognized by the information utility i.e. RERA as they are sham and bogus. Thus, in terms of Manish Kumar v. Union of India & Anr. what is to be seen is the number of allotment that exist on the date of filing of the application under Section 7 of IBC which is only 246 and is evident from Form A-H of HRERA.
- h) Therefore, the Corporate Debtor has committed a default in payment of assured return which has accrued interest at the rate of 18% p.a. and would be applicable on the total principal amount of Rs. Rs. 3,67,93,375/- (Rupees Three Crore Sixty-Seven Lakh Ninety-Three Thousand Three Hundred Seventy-Five only) that

remains due and payable by the Corporate Debtor. Therefore, the present application.

5. The Financial Creditor have placed the following documents on record:
 - a) Copy of the Form A-H submitted by the Corporate Debtor to Haryana Real Estate Regulatory Authority to the Corporate Debtor.
 - b) A copy of the letter dated 15.05.2014 issued by the Office of Senior Town Planner, Gurgaon approving the building plans.
 - c) Copies of the Memorandum of Understanding(s) signed between the Corporate Debtor and the Financial Creditors.
 - d) A copy of the bank statement of the Financial Creditors.
6. The Financial Creditors have proposed the name of Mr. Gaurav Katiyar, having registration number IBBI/IPA-001/IP-P00209/2017-2018/10409, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submission of learned Counsel appearing for the Corporate Debtor

7. The details of the averments made by the Corporate Debtor are as follows:
 - a) The present application has been filed by the Applicants relying upon the information available with HRERA. However, the Respondent/ Corporate Debtor has in its reply as well as the supplementary affidavit, filed in pursuance to the order dated 19.12.2022, clearly indicating that at the time of filing of the present Application, there were total 326 allotments and therefore the Applicants do not meet the threshold of 10% of allottees. The present Application has been filed on strength of total 28 allotments which clearly fall short of 10% of total allottees. The Respondent/ Corporate Debtor has placed on record MoUs (Unit Buyer Agreements), application forms, booking forms, allotment letters, payment receipts, showing 326 allotments along with its supplementary affidavit. Therefore, the present Application is not maintainable and as such liable to be dismissed at threshold.

- b) That even if the Applicants relied upon the information available with HRERA, they were put to sufficient knowledge about the number of allottees by the Respondent/Corporate Debtor through its reply and supplementary affidavit. Therefore, the Applicants cannot feign ignorance about the number of allottees. The Applicants having failed to take steps to amend their Application to bring it within the threshold stipulated under Section 7 of the Code and deserve no further indulgence from this Adjudicating Authority. It is submitted that the on the conclusion of the construction of the said real estate project, the Corporate Debtor immediately applied for the Occupation Certificate, which was duly granted to the Corporate Debtor on 02.06.2020.
- c) The Corporate Debtor has on 15.07.2019 issued letters to the allottees, including the Applicants herein, offering them fit-out possession and requesting them to clear outstanding dues. Further, the Corporate Debtor has vide the said letter informed the Applicants that the pending assured return shall be adjusted against the outstanding dues. The Financial Creditors no.1-4, 7-10 and 20 acted upon the said letter, the assured return due was adjusted against the outstanding amount and the balance amount has been willingly paid by the Financial Creditors subsequent to which no dues certificate has also been issued to them. Before proceeding any further it must be stated that the fact about the payment of balance amount and the issuance of the no dues certificate has been clearly stated in the Application qua Applicant No.1-4 and no dues certificates have also been annexed with the petition. The Applicants No. 7-10 and 20 have also been issued no-dues certificate after payment of the balance amount; however, the said facts have been concealed by the Applicants. Thus, Applicant No.1-4, 7-10 and 20 are precluded from claiming assured returns and consequently, they have to be excluded while calculating the total number of applicants for the purpose of determining whether the threshold requirement provided under Section 7 of the code has been met, which evidently has not been satisfied and accordingly, the present Petition merits dismissal.
- d) That the Applicants herein, who have purchased the unit/virtual space for commercial gain, being mere speculative investors doesn't qualify to be Financial Creditors. It is submitted that the Applicants herein doesn't in any manner

whatsoever have any engagement, let alone direct engagement, in the functioning of the Corporate Debtor, and are not interested in taking possession of their respective unit, hence, they cannot be regarded as Financial Creditors. Furthermore, the present petition has not been filed due to delay in delivering possession, but admittedly to recover the 'assured returns'. It shall be pertinent to state that the amount in the form of 'assured returns' received by majority of the Applicants is more than 100% of the amount initially invested by them. Therefore, it is abundantly clear that the Applicants are speculative investors and thus cannot be regarded as 'Financial Creditors'. The Corporate Debtor is a solvent company and as such is a fully functional running concern.

- e) That the Corporate Debtor is a profit-making entity. It is further submitted that the Corporate Debtor has either already delivered or has ongoing projects spread across Delhi NCR. The various projects involve more than approximately 60,000 customers, 10000 employees and nearly 50-70 contractors. Therefore, in the view of the above facts and circumstances it is abundantly clear that the threshold requirement provided under Section 7 of the Code for filing the Application has not been met, moreover, the Applicants, being merely speculative investors, doesn't qualify to be Financial Creditors, accordingly the present Application is liable to be dismissed.

Analysis and Findings

8. We have heard the Learned Counsel for the Financial Creditor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, therefore, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
9. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a debt owed to the Financial Creditor and whether there is a default with respect to such debt. Additionally, we also need to see whether the Financial Creditors being the allottees under a real estate project in the present case, fulfill the

threshold limit provided under Section 7 of the IB Code, for maintaining this application.

10. Proviso to Section 7 which lays down the minimum threshold limit for the Financial Creditors who are allottees under a real estate project states that:

“Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less.”.

11. In the present case, the Corporate Debtor herein had launched the Project namely “Imperia Byron/Mindspace” situated at Sector- 62, Gurgaon, Haryana under the scheme of ‘Investment Return’ along with ‘Guaranteed Assured Return’ with the representation that in the event the buyers paid upfront sale consideration for the Units booked, the Corporate Debtor would undertake to make payment of the monthly guaranteed assured return till the Units were leased out and thereafter, the Corporate Debtor would pay assured rental to the buyer upon leasing of the Unit to the intended tenant. Based on the elaborate scheme, representations and assurance by the Corporate Debtor, the Financial Creditors herein booked their Units in the Project in the year 2011 and few in the year 2012 and separate Memorandum of Understanding for each Unit was signed with the Corporate Debtor.
12. The present application is filed by 28 real estate unit holders (20 Financial Creditors) for a total outstanding debt of Rs. 3,67,93,3751- (Rupees Three Crore Sixty-Seven Lacs Ninety-Three Thousand Three Hundred and Seventy-Five Only) which is due and payable by the Corporate Debtor towards the assured return in terms of the Memorandum of Understanding (MoU) executed pertaining to each financial creditor herein. In the instant case, it is important to note that at the date of filing of the petition the total number of recognized units as per Form A-H of the Haryana Real Estate Regulatory Authority (HRERA) is 246. The total number of units in the Real Estate Unit is Rs. 246 as mentioned in Form A-H of HRERA and the total number of

unit holders in the present petition is 28 which is above 10% threshold limit as prescribed in Section 7. However, the Corporate Debtor in its reply has clearly stated that there were total 326 allotments and the Applicants do not meet the threshold of 10% of allottees. The Respondent/ Corporate Debtor has placed on record MoUs (Unit Buyer Agreements), application forms, booking forms, allotment letters, payment receipts, showing 326 allotments along with its supplementary affidavit.

13. The main dispute in the instant application is, whether the threshold limit of number of allottees is to be ascertained by the number of allotments, as shown in RERA's website at the date of presentation of application under Section 7. The main dispute pertaining to the threshold of the number of allottees on the date of presentation of the application under Section 7 of IBC fell for consideration before this Hon'ble Tribunal in the case titled '**Devinder Yadav & Ors. v. M/s GRJ Distributors and Developers Private Limited**' in C.P. (IB) No. 1066/ND/2020. This Hon'ble Tribunal vide its final order dated 03.06.2020 held that it is on the date of the filing of application that the threshold has to be seen and as per RERA the buyers need to meet the threshold for filing of the Section 7 Application. The relevant paragraph of the order is extracted below:

"5. The Financial Creditors also filed the written submission and reiterated all the facts as already stated in the petition and further submitted that FCs had filed the Section 7 Application on 08.10.2020. The information annexed as Annexure P-2 with the Section 7 Application reflecting the total number of Units sold in the Project as 336 is the information that was provided by the CD itself with Rajasthan RERA which was available as on the date of filing this application. Also, the date of the said information can be evidenced from the date appearing at the top left of Annexure P-2 at page 106 of the Section 7 Application. Further, the RERA Order dated 01.01.2021 relied on by the CD had only started an online facility for uploading the QPRs and the CD was at all times obligated under the RERA Act, 2016 to submit the QPRs in paper/physical form. Hence, the CD had clearly failed to submit the QPRs from 2017 to 2020 and has only submitted the same belatedly after 4 years in 2021 (after filing of this Application), whereas the FCs had come armed with the information as was provided by the CD with RERA as on the date of filing the Section 7 Application. Be that as it may, it was the CD that had failed to submit the QPRs with RERA as on the date of filing the Section 7 Application and the FCs cannot be made to suffer when evidently it is the CD that is in default. Also, it is pertinent to note that it is the admitted case of the CD that they had filed the QPRs only in March 2021 for all the quarters from July 2017 till March 2021 and now showing the total allotment to be

420. It is pertinent to mention that these QPRs were filed belatedly after this Section 7 Application was filed on 08.10.2020. In the above quoted judgments of the Hon'ble Supreme Court in Pioneer and Manish Kumar, it has been held that the information provided by the developer to RERA for a real estate project shall act as an information utility for the purposes of IBC. It is further argued that there is no default in payment and the amount were paid as the construction linked plan, therefore, the defence of the CD is sham. Hence, the petition is fit for admission.

6. The Corporate Debtor also filed written submission and raised all the contentions as already raised in the reply and further submitted that to showcase the actual total no. of units sold by the Corporate Debtor pertaining to the Project as on the date of filing of the Insolvency Application an Interlocutory Application bearing No. 3984 of 2021("Interlocutory Application") was filed on 02.09.2021. Through the said IA, the Quarterly Progress Reports ("QPR(s)") from July-September 2017 till January- March, 2021 in order to demonstrate the documentary evidence on the number of units sold as on the date of filing of the Instant

Application and the same application was taken on record vide order dated 08.10.2021. It is argued that from the contents of IA-3984 / 2021, it is clear that the total units sold by the corporate debtor in the month of October 2020 i.e., in the month of filing of captioned petition is 420 units. Hence, the petition is not maintainable in the light of amended section 7 of IBC, 2016. It is further stated that the burden of proof rests on the allottees to gather true and correct information regarding the number of units sold as on the date of the filing of Insolvency Application. Furthermore, force majeure conditions have also led to delay in projects.

7. This Adjudicating Authority has perused the pleadings and arguments advanced by the counsel on behalf of Financial Creditors and Corporate Debtor. The question before this Authority is whether as on date of filing the present petition the financial creditors fulfil the requirements of amended section 7 of IBC, 2016 or not. From the perusal of the contents of petition, it is clear that the petition has been filed by the Petitioner holding 38 units. Now, it is to be seen whether 38-unit holders constitute 10% of the total units of project as on date of filing of captioned petition. The only platform through which the petitioners can get the details about the project is from RERA website and admittedly, as per the details available on the date of filing of captioned petition on the Rajasthan RERA website was that the total units in the project is 338. Furthermore, it is the duty of the corporate debtor to keep updated list of the total units of the project on RERA website. However, the corporate debtor has failed to produce any evidence to show that it has tried to get the updated list published on the RERA website before the filing of captioned petition or in the alternative filed hardcopy of the updated total units of the project before Rajasthan RERA. Therefore, we conclude that as on the date of filing of captioned petition i.e., 8.10.2020 the total units in the project is 338 and the financial creditors have crossed the threshold of 10%

as mandated by the law, as there being total of 38 homebuyers collectively filing the present petition. As per the agreement, the corporate debtor was supposed to give possession of units on or before July, 2018, which it defaulted, hence, in light of the catena of judgments of Hon'ble Supreme Court and facts of the present case this Adjudicating Authority is inclined to admit this application and initiate the process of CIRP of the 'Avalon Regal Court' (hereinafter referred to as 'Project) located at Alwar By Pass Road, Bhiwadi, Rajasthan of the Corporate Debtor. The financial Creditor has also proposed the name of the Resolution Professional for appointment of IRP"

14. It is important to note here that the details provided by the RERA seems to be the authentic source of information available to the allottees and the Hon'ble Supreme Court in its landmark judgments titled **Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors. [(2019) 8 SCC 416]** and **Manish Kumar v. Union of India & Anr. [(2021) 5 SCC 1]** has categorically held that RERA and IBC are to be read in a harmonious manner and RERA will act as an information utility for the allottees for their Section 7 application. It is also pertinent to note here that the Hon'ble Supreme Court in the judgment of Manish Kumar (Supra) has also dealt in detail that the Corporate Debtor/Promoter is bound to upload the data of allotments in terms of Section 11 of RERA Act, 2016 and this is a statutory obligation on part of the Corporate Debtor/Promoter. It is further important to note here that the Corporate Debtor herein has duly uploaded the data on 09.12.2019 as is evident from Form A-H of the HRERA and as per its own admission in the supplementary affidavit filed by the Corporate Debtor, the bookings have been done way back in 2011-12. Therefore, what is important to note here that even when the bookings and MoUs that have been executed date back to 2011-12, the RERA since 2019 and till date have only recognized 246 units as is evident from Form A-H of the HRERA. It was Corporate Debtor's obligation to provide the exact and correct information with RERA, since its inception in 2019. It is presumed that the information available on the website is the correct information given by the Corporate Debtor.
15. Moreover, it is the Corporate Debtor's duty to keep the updated list of the total units of the project on RERA website and in the instant application, the Corporate Debtor has failed to produce any supporting documents to show that it has tried to get the updated list published on the RERA website before the filing of the present application. Therefore, we conclude that as on the date of filing of captioned petition

i.e. 20.05.2022 the total units in the project is 246 and the financial creditors have crossed the threshold of 10% as mandated by the law, as there being total of 28 homebuyers collectively filing the present petition.

16. Therefore, in the light of the above observations, it is evident that only 246 allotments are legally existing and the rest allotments as claimed by the Corporate Debtor do not hold ground as it is not recognized on RERA's website, at the date of filing of the present application. Therefore, the details provided on RERA's website regarding total number of allotments, at the date of filing of the present application i.e. 246, and the Financial Creditor's holding 28 units, fulfill the threshold limit of 10%, as provided under Section 7 of the Code.
17. The Corporate Debtor has further contended that the Applicants have purchased the unit/virtual space for commercial gain, being mere speculative investors does not qualify them to be Financial Creditors. Furthermore, the contention by the Corporate Debtor is that present petition has not been filed due to delay in delivering possession, but admittedly to recover the 'assured returns'. It is noteworthy that the Hon'ble NCLAT in the judgment of **Nikhil Mehta and Sons V. AMR Infrastructure Limited [Company Appeal (AT) 07 of 2021]** has held that the assured returns payable to the allottees of the real estate projects come within the ambit of financial debt as defined under Section 5(8)(f) of the IBC. Hence in terms of the above judgment, in the present case, the Applicants are not Speculative Buyers. Moreover, this application has been filed by the Applicants as home buyers in terms of Proviso to Section 7 of IBC, therefore they will be treated as allottees and will come within the definition of Financial Creditors.
18. In the present case, the Financial Creditors and the Corporate Debtor entered into separate Memorandum of Understanding for each unit allotted to them by the Corporate Debtor. Further, the Financial Creditors had made payment of the sale consideration upfront to the Corporate Debtor either prior to the signing of the MoUs or at the time of signing of the MoUs. The details with respect to the payment and liability of the Corporate Debtor to pay the monthly Guaranteed Assured Return is recorded in the clauses of the MoUs. Therefore, first major essential ingredient of

application under Section 7 of the IB Code, 2016 i.e. there is a debt stands substantiated.

19. Further, the Financial Creditors had anticipated that the Project would be completed in a time bound manner as mentioned in the MoUs. However, even after the expiry of more than 10 years since the booking of the Units, the Corporate Debtor has failed to complete the Project in all respects and has even failed to obtain the Occupation Certificate and Completion Certificate till date. Moreover, it is crucial to note that the Corporate Debtor has even failed to lease out the Units till date and accordingly, the Corporate Debtor was liable to continue to pay the assured return, and has not paid the assured returns to the Financial Creditors, and remains in gross default of the same. Further, the fact that the Corporate Debtor has failed to pay the assured returns can be evidenced from the bank statements of the Financial Creditors, which is filed on record. Therefore, the second major essential ingredient of an application under Section 7 of the IB Code, 2016 i.e. there is a default with respect to the debt, stands substantiated.
20. Upon examining of the records, it is clear that there is a debt, and there has been a default by the Corporate Debtor for an amount of Rs. 3,67,93,375/- (Rupees Three Crore Sixty-Seven Lacs Ninety-Three Thousand Three Hundred and Seventy-Five Only). The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is for an amount which is more than the minimum amount of pecuniary threshold stipulated under section 4 (1) of the Code.
21. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/525(PB) 2022** filed by Chirag Jain & Ors. the Financial Creditors, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Imperia Structures Limited, the Corporate Debtor, stands **admitted** and CIRP of Imperia Structures Limited is initiated.
22. The petitioner in part-III of the petition has proposed the name of Mr. Gaurav Katiyar as Interim Resolution Professional. Therefore, Mr. Gaurav Katiyar, having registration

number IBBI/IPA-001/IP-P00209/2017-2018/10409 and email – id cagauravkatiyar@gmail.com is hereby appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that IRP has a valid AFA.

23. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (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 the possession of the corporate debtor.*
- (e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, concessions, clearances or a similar grant or right during the moratorium period.*

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition,

as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

25. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
26. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Gaurav Katiyar to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
27. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
28. It is further made clear that all the personnel connected with the Corporate Debtor, its 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 day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

29. 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 his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
30. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
31. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./525(PB)/2022 stands admitted.**
32. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
RAHUL BHATNAGAR
Member (Technical)

Sd/-
MAHENDRA KHANDELWAL
Member (Judicial)