

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 101
IB-237(ND)/2023

IN THE MATTER OF:

M/s. Experts Realty Professionals Pvt Ltd.

.....**FINANCIAL CREDITOR**

Vs.

M/s. Logix Infrastructure Pvt Ltd.

.....**CORPORATE DEBTOR**

SECTION

U/s 7 of IBC, 2016

Order Pronounced on 14.07.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-237(ND)/2023
is **allowed.**

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) – 237(ND)/2023**

Order 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.

IN THE MATTER OF:

M/s. EXPERT REALTY PROFESSIONALS PRIVATE LIMITED

Having Its Registered Office at:

C-31, G/F, NATHU SINGH MARKET,
MASOODPUR, DELHI-110070

..... Applicant/Financial Creditor

VERSUS

M/s. LOGIX INFRASTRUCTURE PRIVATE LIMITED

Having Its Registered Office at:

LEVEL 3, VASANT SQUARE MALL,
POCKET-V, SECTOR-B, VASANT KUNJ,
NEW DELHI-110070

..... Respondent/ Corporate Debtor

Order Pronounced On: 14.07.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. SS Mishra, Mr. Ketan Madan, Advs.

For the Respondent : Mr. Dhanjaya Sud, Adv.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

M/s Expert Realty Professionals Pvt. Ltd. vs. M/s Logix Infrastructure Pvt. Ltd.

(IB) – 237(ND)/2023

Date of Order: 14.07.2023

1. This Application has been filed by M/s. Expert Realty Professionals Private Limited, the Financial Creditor (FC)/Applicant on 06.04.2023, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “the Code”) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against the Corporate Debtor (CD)/Respondent viz., M/s. Logix Infrastructure Private Limited, on the ground that the Corporate Debtor has defaulted to make a Payment of a sum of Rs. 15,29,55,385/- (Rupees Fifteen Crore Twenty Nine Lakh Fifty Five Thousand Three Hundred Eighty Five Only) [Principal amount along with 18% interest] as on 15.01.2022

2. **Submissions of the Financial Creditor:**

- i. The Financial Creditor is engaged in the business of Real Estate Consultancy, Development and Construction and had entered into a business transaction with M/s. Logix Infrastructure Pvt. Ltd. regarding the purchase of 1,37,918 sq. ft. of area in the project namely Logix Blossom County at Section 137, Noida, U.P.. Accordingly, the M/s. Expert Realty Professional Pvt. Ltd. entered into MoU (Binding Understanding) dated 20th October, 2020 with M/s. Logix Infrastructure Pvt. Ltd..
- ii. The Applicant had agreed to invest in the said project at Rs. 2,200/- per sq. ft. and the Respondent had consented to transfer the sale proceeds over and above the said price of Rs. 2,200/- for the aforesaid area by way of return on investments made by the applicant in the project. As per the agreed terms in the MoU, advances were made by the Applicant from 22.10.2020 to 09.02.2021 to the Corporate Debtor and amounting to a total advance of Rs. 15,00,00,000/-.

- iii.** As per the MoU, after the units have been sold by the Applicant to the allottee/buyer, the Applicant will make the full payment of the flat to the Corporate Debtor and the amount over and above Rs. 2,200 per Sq. ft. will be paid by M/s. Logix Infrastructure Pvt. Ltd. to M/s. Expert Realty Professionals Pvt. Ltd. as per the terms agreed between the parties.
- iv.** As per minutes of the meeting dated 15.12.2021, the Corporate Debtor confirmed that units allocated to M/s. Experts Realty Professional Pvt. Ltd. amounting to 13,7918 Sq. ft. has been sold to customers for the sale value of Rs. 46,94,58,306/-. However, after the reconciliation of accounts reduced their liabilities and obligations in Minutes of Meetings dated 15.12.2021 whereby the Respondent had acknowledged their liability towards the Applicant to the tune of Rs. 12,88,04,535/- (Rupees Twelve Crore Eighty Eight Lakh Four Thousand Five Hundred and Thirty Five Only) payable without interest within a period of 1 month and thereafter @ at 18% per month.
- v.** When the aforementioned amount was not paid by the Corporate Debtor, a demand notice dated 04.03.2023 was sent by the applicant which was duly served on the Corporate Debtor. However, the Corporate Debtor has failed to pay any amount to the Financial Creditor or reply to the said notice and did not offer any explanation for non-payment.
Copy of the demand notice dated 04.03.2023 is filed along with the application.
- vi.** The Corporate Debtor till date neither paid any amount nor given any explanation towards non-payment of Rs. 12,88,04,535/- along with 18% interest p.a. which have been due and are payable as per the Minutes of Meetings held on 15.12.2021.
- vii.** There is no justification for the Corporate Debtor not to pay the amount due and acknowledged manifestly shows that the

Corporate Debtor is not in a position to honor its financial obligation and thus the present petition is required to be admitted against the Corporate Debtor.

3. Submissions of the Respondent:

- i.** The Respondent is a renowned developer of real estate projects and is carrying on development project namely blossom county in Sector 137, Noida. The project namely Blossom County at Sector 37, Noida Expressway, U.P. in total had 17 towers. At the time of entering the Binding Agreement (MoU) dated 20.10.2020 with the Applicant, 5 towers namely K,L,M,A,C having 667 flats were pending for completion. The Respondent in order to carry out its obligations of completion, entered into Binding Agreement (MoU) dated 20.10.2020 with the petitioner to raise funds to improve liquidity for completion and construction of the incomplete towers.
- ii.** The Applicant company had entered into an arrangement which is reflected in Binding Agreement (MoU) dated 20.10.2020. As per the MoU, the Applicant had agreed to invest in the project being developed by the Respondent as per the terms mentioned therein. In view thereof, the Applicant had also made an advance payment of Rs. 15 crores which has been exclusively used towards the construction and completion of the towers of the project sought to be developed by the Respondent. Thus, the money raised was for the purpose of completion of the remaining towers.
- iii.** Since the obligations as assumed under the Binding Agreement (MoU) dated 20.10.2020 could not be fulfilled by the Respondent, the parties convened a meeting on 15.12.2021. The minutes of the same were reduced in writing.
- iv.** It is submitted that as per the transaction between the parties, the Respondent was obliged to pay Rs. 12,88,04,535/- which was admitted in the minutes of the meeting dated 15.12.2021. The Respondent has made all the attempts to pay the said amount.

However, due to financial difficulties and stringency, the Respondent has not been able to make the payment as promised under the said MoU and the said minutes of the meeting dated 15.12.2021. The Respondent is making attempts to raise funds to pay off the Applicant but till date, the Respondent has not been able to arrange the funds. It may take further some more time to raise funds and fulfill the obligations under the agreement and the minutes.

- v. It is submitted that the transaction was entered at a time when the Respondent company did not have the means to complete the project and in order to facilitate the completion of the project, the Respondent had entered into the said arrangement. The Respondent has also made all the earnest attempts to pay the entire amount to the Applicant, however, due to outgoings in the nature of penalties and compensation directed to be paid to home buyers from various authorities and agencies, the Respondent has not been able to honour the obligation envisaged under the Binding Agreement (MoU) dated 20.10.2020 and as per the minutes of the meeting.
- vi. It is submitted that the Respondent has not been able to pay as per the MoU or the minutes of the meeting dated 15.12.2021, due to the Financial difficulties faced by the Respondent and as such the Respondent is not in a position to honour its Financial obligation.
- vii. It is accordingly prayed that since the Respondent is undergoing Financial difficulty at this stage, the obligation under Binding Agreement (MoU) dated 20.10.2020 could not be honoured. However, the Respondent may be able to pay the debts in case reasonable time is granted.

4. **Analysis and Findings**

- i. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.

ii. The present Application made by the Applicant/FC is complete in all respects as required by law. It is noted that the loan was given in the year 2020 by the Applicant/FC. Default occurred initially in the year 2023, but the Corporate Debtor failed to pay the financial debt.

Further, it is claimed that the application filed u/s 7 of the Code is well within the period of limitation.

iii. The Corporate Debtor has admitted the default and stated that due to financial constraints, the Corporate Debtor had not been able to repay the debt. Further, there is no dispute that the financial debt was disbursed by the Applicant to the Corporate Debtor against consideration of the time value of money and thereafter the same has remained due and payable. Admittedly, the failure to adhere to the terms by the Corporate Debtor for repayment of the interest and the principal amount, establishes the default in repayment of the said financial debt. This being the position, the instant case is a fit case for the commencement of CIRP of the Corporate Debtor in terms of Section 7(5)(a) of the Code.

iv. It is clear from the reading of the above paragraphs and the perusal of records and documents annexed by the Financial Creditor in its application, that the debt of the Respondent/CD is due and payable to the Applicant/FC and there is a default in payment of the debt of the Respondent/CD, within the meaning of provisions of section 7 of the Code and the default is more than the minimum amount stipulated under Section 4(1) of the Code. Hence, we are inclined to **admit** this application.

5. **Order**

In light of the above facts and circumstances, it is, **hereby ordered** as follows: -

i. The Application bearing **(IB)-237(ND)/2023** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of

the Adjudicating Authority Rules for initiating CIRP against the Respondent/(CD), is hereby **admitted**.

- ii.** We also declare a 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.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota,

concession, clearances or a similar grant or right during the moratorium period;]”

- iii.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or 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.
- iv.** The Applicant/(FC) has proposed the name of Mr. Pawan Kumar Goyal as the Interim Resolution Professional (“IRP”) having address: 304D, R Chamber, 12/56, Gupta Road, Karol Bagh, New Delhi-110005. His Email id is ca.pawangoyal@gmail.com. His Contact No. is +91-9313502143. His registration number is IBBI/IPA-001/IP-POO875/2017/11473.
- The Applicant filed a copy of the Consent Issued by Mr. Pawan Kumar Goyal in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.
- Accordingly, Mr. Pawan Kumar Goyal is appointed as IRP.
- v.** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the 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.
- vi.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The

officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

- vii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix.** The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- x.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xi.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

-SD-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)