
(2021) 02 NCLT CK 0061

In the National Company Law Appellate Tribunal

Case No : Company Petition No. (IB)-3025/ND Of 2019

M/S Spencer Realty Pvt. Ltd.

APPELLANT

Vs

Ireo Residences Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 3, 7, 7(1), 21(6A)(a), 21(6A)(b), 60(1)

Citation : (2021) 02 NCLT CK 0061

Hon'ble Judges : P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Advocate : Satvik Verma, Tanveer Oberoi, Saurabh Kalia, Aaryan Sharma, Rahul Ahuja

Final Decision : Dismissed

Judgement

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/S Spencer Realty Pvt. Ltd (Financial Creditor), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Ireo Residences Co. Pvt. Ltd. (Corporate Debtor).

2. The Respondent Company Ireo Residences Co. Pvt. Ltd, was incorporated on 16.06.2010 under the provisions of the Companies Act, 1956 having its registered office at C-4, First Floor, Malviya Nagar, New Delhi. Since the registered office of the Respondent Company is in Delhi, this Tribunal having territorial jurisdiction over the place is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the Respondent/ Corporate Debtor under sub-section (1) of Section 60 of the Code.

3. The matter was first listed for hearing on 03.12.2019 and on that day the issue were issued to the corporate debtor and the petitioner was also directed to serve notice on the other respondents including Secretary MCA within 10 days.

4. Further this Tribunal vide order dated 11.02.2020 has adjourned the matter till the disposal of the Writ Petition (Civil) No. 26/2020 because the Hon' ble Supreme Court has passed the order in Writ Petition (Civil) No. 26/2020 that "Status quo as of today, with respect to the pending applications, shall be maintained in the meanwhile".

5. The Hon'ble Supreme Court has passed an order on 19.01.2021 in Manish Kumar v. U01 & ORS and then this matter is listed on 02.02.2021 for further arguments. On that day the counsel for the Financial Creditor has prayed for 3 days' time to go through the Supreme Court Judgement. Hence, the present matter was listed on 17.02.2021 for arguments and the on the same day this matter is reserved for order.

6. We have heard the arguments advanced by the counsels for both the parties.

7. Before we proceed to determine the question of whether there is a debt and default, we need to apply the Insolvency and Bankruptcy Code (Amendment) Act, 2020 Dated 13th March, 2020 and the same is reproduced below:

The amendment to the same by Section 3 of the impugned amendment incorporates 3 provisos to Section 7(1), which reads as under:

"Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6,4) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent, of the total number of such creditors in the same class, whichever is less:

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:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission."

8. It is also pertinent to mention here that granting an opportunity to comply with the requirements of the first and second proviso within 30 days of the commencement of the said Act, no harm is caused to the stakeholders, insofar as, all this is done before the admission of the application.

9. Hence, in the light of the ordinance dated 28.12.2019 and the directions given by the Hon'ble Supreme Court in the decision dated 19.01.2021 in Manish Kumar v. UOI & ORS and The Insolvency and Bankruptcy Code (Amendment) Act, 2020 Dated 13th March, 2020 the applicant/ Financial creditor is directed to file the modified application within 30 days as per the new amended proviso of the Code 2016. However, if the creditor is unable to fulfil the threshold requirements to file such modified application within the grace period provided, the application filed by financial creditor would be deemed to be dismissed."