(2024) 03 NCLT CK 0052

National Company Law Tribunal, Chandigarh Bench

Case No: CP (IB) No.528/Chd/Hry/2019 And IA No. 302/2022

Mr. Tek Chand Narula	APPELLANT
Vs	
M/s Vatika Ltd	RESPONDENT

Date of Decision: March 22, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 482
- Insolvency and Bankruptcy Code, 2016 - Section 5(8)(f), 7, 7(1), 60(5)
- Banning of Unregulated Deposit Schemes Act, 2019 - Section 2(1), 2(4), 2(17), 3
- Companies Act, 2013 - Section 2(31)

Hon'ble Judges: Dr. P.S.N. Prasad, Member (J); Umesh Kumar Shukla, Member (T)

Bench: Division Bench

Advocate: Sonal Anand, Anand Chhibar, Swati Vashisht, Vaibhav Sahni

Final Decision: Dismissed

Judgement

Dr. PSN Prasad, Member (Judicial); Umesh Kumar Shukla, Member (Technical)

1. The present petition has been filed by Mr.Tek Chand Narula, (hereinafter referred to as the “Applicant/Financial Creditor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process against M/s Vatika Ltd, (hereinafter referred to as the “Respondent/ Corporate Debtor”). The Petition is signed by Mr. Tek Chand Narula with the affidavit verifying the contents of the application appended thereto.

2 The Corporate Debtor namely, M/s Vatika Ltd is a company incorporated on 02.07.1998 under the provisions of the Companies Act 1956 with CIN No. U74899HR1998PLC054821 having its registered office at Vatika Triangle, 4th Floor, Sushant Lok Phase I, Block A, Mehrauli-Gurgaon Road, Gurugaon-122002 and

Corporate Office at Flat No.62`1-A, 6th Floor, 6 Nehru Place, New Delhi-11001. As the registered office of the Corporate Debtor is in Haryana, the jurisdiction lies with this Adjudicating Authority.

FACTS OF THE CASE

3 Brief facts of the case, as stated in the petition, are summarized below:

(i) In the year 2012, the Corporate Debtor through their Officials & Representatives approached the Financial Creditor and offered to sell Commercial Units in the Project/ India Next City Centre, Gurugram and promised "guaranteed and assured returns" on the money invested/ paid for the said units by the Financial Creditor to them.

(ii) Believing upon their assurances, the Financial Creditor paid them an amount of Rs.1,60,00,000/- towards the basic sale consideration, along with a sum of Rs.4,12,000/- towards the Service Tax for 8 Units. Subsequently, the Corporate Debtor and the Financial Creditor entered into 8 distinct Builder Buyer Agreements dated 16.04.2012, 16.04.2012, 17.03.2012, 17.04.2012, 16.04.2012, 14.03.2012, 17.03.2012 and 17.03.2012, vide which, the Corporate Debtor allotted 8 Units bearing No.(s) 201E, 202E, 203E, 204E, 211E, 212E, 213E and 214E respectively, in the name of the Financial Creditor, all having a Super Area of 500 sq. ft. each. The copy of the Builder Buyer Agreements in favour of the Financial Creditor for 8 Units of the Project, along-with the receipts issued by the Corporate Debtor for the basic sale consideration as well for the Service Tax paid for each Unit have been attached as Annexure A-I/2 Colly.

(iii) Vide Clause 12 of the said Agreement, the Corporate Debtor had assured to provide a monthly assured amount @ Rs.65/- per Sq. Ft. of the Super Area of each Unit to the Financial Creditor as an assured return/committed return, from the date of execution of the respective agreements, till the completion of the construction of the said Building. The same was also to be paid for 3 years from the date of completion of the construction of the said Building or till the said Unit is put on lease, whichever is earlier. Therefore, as per the agreed terms, a sum of Rs.2,60,000/- + 18% G.S.T was payable by the Corporate Debtor to the Financial Creditor, every month for the 8 Units, which totaled as Rs.3,06,800/-.

(iv) Vide letter dated 26.03.2018, the Corporate Debtor intimated that the Block E was completed in February 2018 and thus, the assured committed return was to be paid by them till February 2021. The Copy of the letter has been attached as Annexure A-I/3.

(v) The Financial Creditor kept on raising the monthly invoices amounting to Rs.306,000/- for the assured committed return, including GST as asked by the Corporate Debtor and Corporate Debtor kept paying the Financial Creditor, the assured monthly assured amount and the G.S.T. for all the 8 Units till September 2018, post which, the Corporate Debtor arbitrarily stopped the payments. The copy of the Bank

Statement of the Financial Creditor from August 2018 till December 2018 has been attached as Annexure A-I/4.

(vi) As per the terms, the Financial Creditor further raised the Invoices for the months of October and November 2018, however, the Corporate Debtor did not remit the amount and was told that the Corporate Debtor is undergoing some internal transition, thus there shall be some delay in the payments and same shall be resumed in sometime. The copy of the Invoices raised by the Financial Creditor has been attached as Annexure A-1/5 Colly.

(vii) The Corporate Debtor kept on delaying the payment of the assured committed return to the Financial Creditor on some pretext or another, despite various meetings/ discussions and visits by the Financial Creditor. The Financial Creditor has deposited the G.S.T. amounts also and fulfilled all his obligations, however, the Corporate Debtor has failed in their commitments as per agreed terms. The copy of the receipts of the G.S.T. paid by the Financial Creditor for the months of October 2018 and November 2018 have been attached as Annexure A-I/6.

(viii) After a continuous failure by the Corporate Debtor to remit the amounts, the Financial Creditor through his Counsel, sent a Legal Notice dated 28.08.2019 to the Corporate Debtor, demanding a sum of Rs.33,74,800/-, which was the due amount from October 2018 till end of July 2019 at that point of time, along with 18% interest within 15 days from the date of the said notice. Despite duly receiving the legal notice on 31.08.2019, the Corporate Debtor did not pay any heed towards the same and did not reply. The copy of the legal notice dated 28.08.2019, along with the postal receipt and the tracking report has been attached as Annexure A-I/7 with the petition.

(ix) The amount of debt as stated in Part IV of Application is Rs.36,81,600/-(Rupees Thirty Six Lacs Eighty One Thousand Six Hundred only) at the end of August 2019, along with 18% per annum interest towards the compensation/ damages w.e.f. 01.10.2018, and date of default is 01.10.2018.

4 The Adjudicating Authority, vide its order dated 11.10.2019, directed to issue notice of this petition to the Respondent-Corporate Debtor to show cause, as to why this petition be not admitted.

REPLY OF THE RESPONDENT- CORPORATE DEBTOR

5 The Corporate Debtor, after several directions, filed his reply, vide Dairy No.01124/10 dated 10.04.2023, wherein it is stated that:

(i) The present petition is not maintainable, as the Financial Creditor has failed to prove about the existence of outstanding debt and default on the Corporate Debtor.

(ii) During the pendency of the petition on 28.12.2019, the Central Government amended section 7 of the Insolvency and Bankruptcy Code, 2016 to include a provision that would provide for a threshold that has to be met for a petition to be admitted into CIRP at the behest of a real estate allottee, which provided minimum requirement for such initiation that of either 100 real estate allottees or in the alternative 10% of the total allottees of a particular project promulgated by the real estate developer.

(iii) The petitioner has not modified or amended his petition as per the direction of the Hon'ble Supreme Court in the judgment passed in “Manish Kumar v. Union of India ,(2021) 5 SCC 1” case to be able to meet the threshold as set down by the Code, 2016 within a period of 2 months from the date of the judgment failing which the case would have been deemed withdrawn and Clause 12 of the Builder buyer Agreement, on which the petitioner is relying heavily, is not satisfying the ratio laid in the said judgement.

(iv) After the enactment of the Banning of Unregulated Deposit Schemes Act, 2019, (hereinafter referred as BUDS Act) the 'Assured Return' and/ or any "Committed Returns" on the deposit schemes have been banned. Section 2 (4) of the BUDS Act defines the term "Deposit" to include an amount of money received by way of an advance or loan or in any form, by any deposit taker and the Explanation to Section 2(4) further expands the definition of the "Deposit' in respect of Company, to have same meaning as defined within the Companies Act, 2013. Section 2(31) of the Companies Act, 2013 defines that deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount, as may be prescribed in consultation with the Reserve Bank of India”. The Legislature while defining the term "deposit" intentionally used the term prescribed, so as to further clarify and connect the same to be read with Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, which defines the term “deposit” to include any receipt of money by way of deposit or loan or in any other form, by a company and further explanation for the Clause (c) of Section 2(1) states that any amount received by the company, whether in the form of instalments or otherwise, from a person with promise or offer to give returns, in cash or in kind, on completion of the period specified in the promise or offer, or earlier, accounted for in any manner whatsoever, shall be treated as a deposit. Thus, the simultaneous reading of the BUDS Act with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, results in making the assured return/ committed return and similar schemes illegal. Further as per Section 2(17) of the BUDS Act, 2019, the "Unregulated Deposit Scheme" means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme, as specified under column (3) of the First Schedule. As per Section 3 of the BUDS Act, all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements

soliciting participation or enrolment in; or accept deposit. Thus, the section 3 of the BUDS Act, makes the Assured Return Schemes, of the builders and promoter, illegal and punishable under law. Further as per the SEBI Act, 1992, Collective Investment Schemes ,as defined under Section 11 AA can only be run and operated by a registered person/ company. Hence, the assured return scheme of the Respondent Company has become illegal by the operation of law and the Corporate Debtor cannot be made to run a scheme, which has become infructuous by law.

(v) Hon'ble High Court of Punjab & Haryana in CWP No. 26740 of 2022 titled as "Vatika Limited Vs. Union of India & Ors.", took the cognizance in respect of Banning of Unregulated Deposits Schemes Act, 2019 and restrained the Union of India and the State of Haryana from taking coercive steps in criminal cases registered against the Company for seeking recovery against deposits till the next date of hearing. The copy of order dated 22.11.2022 have been attached as Annexure R/2 with the petition. In the said matter, the Hon'ble High Court has already issued notice and the matter was adjourned to 15.02.2023. On 15.02.2023, the Hon'ble High Court had adjourned the proceedings to 17.05.2023 while extending the interim order which were passed on 22.11.2022. The copy of order dated 15.02.2023 have been attached as Annexure R/3 with the petition.

(vi) Further the reliance is placed upon Naresh Prasad vs. M/s Vatika Ltd.& Anr, in CS No.328 of 2022, wherein Ld. Additional Civil Judge (Senior Division), Gurugram, vide order dated 19.04.2022, held that the respondent is justified in withholding the assured returns to the applicants and in order to continue such assured return scheme, it has to register itself with the Securities and Exchange Board of India, being part of the collective investments schemes. Further the reliance is also placed upon Director, Splendor Landbase Ltd & Ors. Haridev Vikram & Ors v/s A.M Mir India Handicrafts Pvt. Ltd CRM(M) No.283/2019, CRM(M) No.284/2019, wherein Hon’ble High Court of Jammu & Kashmir while deliberating over the issue of charges being framed in FIR lodged for non-payment of assured returns held that the such transaction is purely of civil nature and it is a fit case to exercise the power given under section 482 Cr.P.C to prevent the abuse of law and secure the ends of justice. Further reliance is placed upon Bharam Singh & Ors vs. Venetian LDF Projects LLP (Petition No. 175 of 2018) and Jasjit Kaur Grewal vs M/s MVL Ltd (Petition No. 58 of 2018), wherein Hon’ble Real Estate Regulatory Authority, Gurugram have held to not entertain the matter related ‘collective investment scheme’ without the approval of SEBI.

(vii) The reliance is also placed upon Pioneer Urban Land and Infrastructure Limited and Another Vs. Union of India and Others (2019) 8 SCC 416, wherein Hon’ble Supreme Court has observed as under:

"**56.. .....At this stage also, it is important to point out, in answer to the arguments made by the petitioners, that under Section 65 of the Code, the real estate developer can also point out that the insolvency resolution process under the Code has been invoked fraudulently, with malicious intent, or for any purpose other than the resolution of insolvency. This the real estate developer may do by point out, for example, that the allottee who has knocked at the doors of the NCLT is a speculative investor and not a person who is genuinely interested in purchasing a flat/apartment. They can also point out that in a real estate market which is failing, the allottee does not, in fact, want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and really get back, by way of this coercive measure, monies already paid by it. Given the above, it is clear that it is very difficult to accede to the Petitioners' contention that a wholly one-sided and futile hearing will take place before the NCLT by trigger-happy allottees who would be able to ignite the process of removal of the management of the real estate project and/or lead the corporate debtor to its death."**

(viii) The short written submissions have also been filed by respondent/Corporate Debtor vide diary no. 01124/5 dated 20/11/23 reiterating the facts stated in reply.

REJOINDER BY THE PETITIONER:

6 The rejoinder has been filed by way of an affidavit by the Financial Creditor vide diary no. 01124/12 dated 13/06/23, wherein it is stated that:

(i) The Corporate debtor's contention that the present Application U/s 7 of the IBC being covered by the dictum of the Manish Kumar case supra has already been dealt with by this Hon'ble tribunal vide Order dated 05.03.2021, which Order has attained finality.

(ii) The Applicant is not before this Hon'ble Tribunal in the capacity of a homebuyer and nor is it a case of the Applicant, where he is claiming that he was promised an Apartment or Office, which has not been delivered, but the Applicant is seeking payment of the Assured return, which is due to him as per the agreed terms between the parties and thus the present Financial debt is clearly outside the purview of the judgment in the Manish Kumar case supra and that "debt in default" is the Assured return and not the principal amount of the units purchased. Reliance for the same has been placed upon he judgements "Nikhil Mehta v. AMR Infrastructure Ltd 2017 SCC Online NCLAT 377" and Satish Chand Gupta v. Severel India Pvt Ltd 2021 SCC Online NCLAT 9".

(iii) The BUDS Act came into effect from February 2019, which means that the deposits made prior to this date are legal and not prohibited deposits and that Sections 1 and 3

of the BUDS Act make it clear that the prohibition is prospective and not retrospective and the said Act will only affect a new contract of deposits and not contracts, which are already entered into by the parties prior to the enactment of the Act.

(iv) In the present case default occurred on 01.10.2018 and all the Builder Buyer Agreements with regard to all the 8 units were executed in the year 2012, which was much prior to the enactment of the BUDS Act, therefore claim of the Financial Creditor of the assured returns is not barred by the said Act.

(v) Seeking of initiation of Insolvency proceedings owing to the reason that there is an existing financial debt and the Corporate Debtor is unable to pay its debts is neither a coercive step nor a proceeding of criminal nature. Hence the stay granted by the Hon'ble High Court of Punjab & Haryana in case Vatika Ltd. v. UOI & Anr. bearing CWP No. 26740/2022 has no effect in the present case.

(vi) The plea of Corporate Debtor as to the delay in construction of project has no effect, as present application pertains to assured return and not for seeking the possession of the said units.

(vii) The Citations relied upon by Petitioner/Financial Creditor have also been filed, vide Diary No. 01124/07 dated 19/12/22.

(viii) The short written submissions have been filed by Petitioner/Financial Creditor, vide Diary No. 01124/13 dated 24/07/23, wherein it has further been stated that Corporate Debtor has not even mentioned in his reply that he is capable of clearing the dues/ debt that he owes to the Financial Creditor, therefore there is a clear admission on the Corporate Debtor as to the existing financial debt.

(ix) The Petitioner/Financial Creditor have also filed short written submissions vide Diary No. 01124/14 dated 21/11/23, wherein it has further been stated that Hon'ble NCLT Delhi recently in judgement titled as "Devyog Solutions Private Limited v. Dwarkadhish Projects Put. Ltd." being (IB)/369(ND)/2019" on identical facts admitted the petition, wherein the builder/ Corporate debtor had raised identical arguments to Section 7 and the judgement in Manish Kumar case. The said judgement was appealed against by the Corporate Debtor in the Hon'ble NCLAT in CA (AT) (Ins.) No. 672 of 2022, however no stay was granted nor the judgement of the Hon'ble NCLT over-ruled and hence remains good law. It has also been argued that as is settled law, 'Interest' is also a financial debt & non-payment of interest is also a default as re-iterated in "Kocentric Investments Ltd. V. Standard Chartered Bank" CA(AT) Ins. No.911 of 2021. Relying on the Judgements of Hon'ble Supreme Court in M. Suresh Kumar Reddy v. Canara Bank & Ors.; (2023) 8 SCC 387 and Innoventive Industries Ltd. v. ICICI Bank Ars.; (2018) 1 SCC 407, it has been argued that in the present case, there is clearly a financial debt, which is due and payable and the default has already occurred, the present case is a fit case

to initiation of CIRP.

I.A.No.302 of 2022

7 The above I.A. in the Main Petition bearing CP (IB) No.528/Chd/Hry/2019 has been filed, vide Diary No 00428 dated 25.04.2022, by the Corporate Debtor under section 60(5) of the Insolvency and Bankruptcy Code, 2016. It has been prayed in the IA to reject the petition of the Financial Creditor, as being not maintainable in the teeth of the Insolvency and Bankruptcy Code Amendment of 2020 read with judgement "Manish Kumar v. Union of India, (2021) 5 SCC 1" passed by the Hon'ble Supreme Court.

8 The reply in the IA was filed by the Financial Creditor vide Diary No. 00428/01 dated 11.07.2022, wherein the Financial Creditor, reiterating the pleadings made in his petition & rejoinder, submitted that the IA is bereft of merit and has been filed purely to delay the proceedings and thus sought initiation of the CIRP on the basis of non-payment of debt.

ANALYSIS AND FINDINGS

9 We have heard the arguments advanced by the learned counsels for the Financial Creditor and the Corporate Debtor and we have carefully gone through the pleadings and written submissions filed by them in support of their claim and contentions.

10 The first issue for consideration is "**Whether the present petition has been filed within limitation."**

It can be seen from the records that the date of default is 01.10.2018 and the present petition has been filed vide diary No. 5126 dated 25.09.2019 and was refiled vide diary No. 5430 dated 09.10.2019. Hence, the present petition is well within the period of limitation of three years.

11 The next issue for consideration is that "Whether the Assured Returns can be claimed as a debt and the threshold limit as provided in section 7 IBC,2016 and dictum of Manish Kumar v. Union of India (2021 SCC Online SC 30) is applicable to present case or not."

11.1 The petitioner has purchased 8 commercial units in the project of the respondent, which have distinct letter of allotments by virtue of which units have been allotted to the petitioner. The relevant part of one such letter of allotment is reproduced below:

"**We have this day allotted in your name the aforesaid unit measuring 500 Sq. ft. (Super area) on Second Floor, bearing Unit No. 201E in our new project INXT City Centre, Gurgaon. Towards this ,1 No. Builder Buyer Agreement, duly signed, is being enclosed."**

11.2 The said letters of allotment are followed by 8 distinct builder buyer agreements, wherein various clauses regarding sale are contained. Clause 12 of the builder buyer agreement deals with Assured Return and Leasing Arrangement; the relevant part of the said clause is reproduced as below:

"Since the Buyer has paid the full basic sale consideration for the said Commercial Unit upon signing of this Agreement and has also requested for putting the same on lease in combination with other adjoining units/ spaces of other owners after the said Building is ready for occupation and use, the Developer has agreed to pay Rs.65 (Rupees sixty five only) per sq. ft. super area of the said Commercial Unit per month by way of assured return to the Buyer from the date of execution of this agreement till the completion of construction of the said building. The Buyer hereby gives full authority and powers to the Developer to put the said Commercial Unit in combination with other adjoining commercial units of other owners, on lease, for and on behalf of the Buyer, as and when the said Building/ said Commercial Unit is ready and fit for occupation.

.....

(i) The Developer will pay to the Buyer Rs.65 (Rupees Sixty Five) per sq. ft. super area of the said Commercial Unit as committed return for up to three years from the date of completion of construction of the said Building or till the said Commercial Unit is put on lease, whichever is earlier. After the said commercial unit is put on lease in the above manner, then payment of the aforesaid committed return will come to an end and the buyer will start receiving lease rental in respect of the said commercial unit in accordance with the lease document, as may be executed and as described hereinafter.

.....

(iii) The Developer shall have full, complete and unfettered authority to negotiate and finalize the leasing arrangement in respect of the said Commercial Unit in combination with other adjoining commercial units/spaces, with any suitable tenant/s, for whatever period and for whatever rent and with whatever conditions as may be negotiated by the Developer with the intending lessee(s) and as may be thought fit and appropriate by the Developer in its judgement and to execute the lease document with the said intending lessee in its own name or on behalf of the Buyer and other owners of such commercial units/spaces, as may be found convenient and practicable by the Developer, for which the Buyer has vested the Developer with all the powers and rights in respect of the said Commercial Unit, which shall not be questioned by the Buyer subsequently.

(iv) The Developer shall also have the authority to negotiate, finalize and execute the renewals of the existing leases and the subsequent leases of the said Commercial Unit with the existing/new tenant(s) on behalf of the Buyer at his cost & expense, including any brokerage to be paid in respect of the same, and to get registered such renewals/fresh leases on behalf of the Buyer at his cost and expense. The rent, period and other terms and conditions of such renewals/fresh leases will be, as may be the outcome of negotiations conducted by the Developer with the existing/new tenant(s) and the Buyer shall not raise any objection in respect of the same. .....

(v) The Developer expects to lease out the said Commercial Unit (individually or in combination with other adjoining units) at a minimum lease rental of Rs.65 per sq. ft. super area per month for the first term (of whatever period). If on account of any reason, the lease rent achieved in respect of the first term of the lease is less than the aforesaid Rs.65 per sq. ft. super area per month, then the Developer shall pay to the Buyer, a onetime compensation calculated at the rate of @ Rs.120 only) per sq. ft. super area for every one rupee drop in the lease rental below Rs.65 (Rupees sixty five only) per sq. ft. super area per month. This provision shall not apply in case of second and subsequent leases/ lease terms of the said Commercial Unit.

(vi) However if the lease rental in respect of the aforesaid first term of the lease exceeds the aforesaid minimum rental of Rs.65 per sq. ft., then the buyer shall pay to the developer additional basic sale consideration calculated at Rs.60 (Rupees sixty Only) per sq. ft. super area of the said commercial unit for every one rupee increase in the lease rental over and above the said minimum lease rental of Rs.65 (Rupees sixty five only) per sq. ft. super area per month. This provision is confined only to the first term of the lease and shall not be applicable in case of second and subsequent leases/ lease terms of the said commercial unit.

(vii) The lease document will stipulate payment of rent by the lessee to the Developer, who in turn will remit the proportionate rent to the Buyer, after deducting expenses/costs of managing the leasing arrangement & collection of rentals, which presently work out to Rs.7/- per sq. ft. per annum of the super area leased. The said changes are subject to upward revision subsequently about which the Developer will keep the Buyer informed in a suitable manner. Although the basic liability to deposit service tax paid by the lessee on the rent lies with the Buyer but due to practical constraints, the Buyer has authorized the Developer to deposit the said service tax with the authorities on his behalf. .....

The Buyer shall also be liable to pay/reimburse to the Developer/Maintenance Company/Agency expenses incurred by them for periodical maintenance,

distemper/paint and repairs of the inside of the said Commercial Unit or the larger area of which it is a part.

……

(ix) The Developer shall not be responsible for any defaults, including non-payment of rent and other dues and similar such breaches by the lessee(s) and the Buyer shall be solely responsible for the same……and the Buyer shall not be entitled for any rent or return for the periods of such defaults/non-payment until the same are recovered through court process or otherwise. In case of partial recovery, the Buyer will be entitled for only proportionate rent out of rent recovered from the lessee after appropriation of cost and expenses thereof.

……

(xi) The lease document will stipulate payment of maintenance and other such charges by the lessee(s) during the period of the lease(s) to the Developer/Maintenance Company/Agency. However, in the event of non-payment or delayed payment of such charges by the lessee(s), the ultimate responsibility of the payment of the same shall be that of the Buyer.

11.3 On careful reading of Clause 12 of the agreement, it is noted that the return in the Builder Buyer Agreement is by virtue of payment of full basic sale consideration by the petitioner for the Commercial Units and agreeing to put the same on lease, for which he has given unfettered authority to the respondent to take necessary action, for which the respondent is entitled for specified expenses.

11.4 Hon'ble Principal Bench, NCLT Delhi, in the case of Surinder Kumar Jain and Ors. vs. M/s Orris Infrastructure Pvt. Ltd CP (IB) – 319(PB)/2020 dealing with the same facts rejected the petition of financial creditor to initiate CIRP reiterating its own judgement in Ms. Rita Malhotra and Ors versus M/s Orris Infrastructure Pvt. Ltd CP (IB) – 234(PB)/2019 and held that the requirement of satisfying the minimum threshold will be applicable to any amount raised from an allottee irrespective of the fact, whether the said allottee is alleging the default of interest or the principal amount and an amount raised from an allottee of a real estate project will remain an amount raised from an allottee irrespective of the nature of default. The relevant part of the said judgement is reproduced as below:

"iv. We also take note that the requirement of satisfying the minimum threshold will be applicable to any amount raised from an allottee irrespective of the fact whether the said allottee is alleging the default of interest or the principal amount. Further an amount raised from an allottee of a real estate project will remain an amount raised from an allottee irrespective of the nature of default. Therefore, the petitioners are

required to comply with the minimum threshold of either 10% or 100 allottees in order to maintain the present petition under Section 7 of the Code. The petitioners do not satisfy the requirement and hence their petition has to fail."

11.5 The similar view was taken by Hon'ble NCLAT in the case Dheeraj Raikhy v. Raheja Developers Ltd. Company Appeal (AT) (Insolvency) No.1336 of 2023 & I.A. No.4741 of 2023, wherein it reiterated the judgment of Hon'ble Supreme Court in, Vishal Chelani & Ors. vs. Debashis Nanda "Civil Appeal No.3806 of 2023 and observed:

"In view of the law laid down by the Hon'ble Supreme Court, it is now well settled that the status of the party i.e. allottee does not change and therefore the Adjudicating Authority has rightly concluded that threshold being not met one allottee cannot trigger the insolvency."

11.6 Further, Hon'ble NCLAT in Neha Khanna vs M/S Tybros Infratech Pvt Ltd Appeal (AT)(Insolvency) No. 762 of 2021 based on the similar facts in the order dated 3rd March 2023 upheld the order of Hon'ble NCLT Delhi and reiterated that "the Appellant being single homebuyer cannot maintain the petition for the reason that the minimum threshold for Financial Creditors in the case of homebuyers as per Section 7(1) proviso as amended by act one of 2020"

11.7 Hon'ble Supreme Court of India in the matter of Manish Kumar v. Union of India (2021 SCC Online SC 30) dated 19.01.2021 gave 2 months' time to the applicants of various pending petitions under section 7 for modifying their petition in terms of the threshold limit. The relevant extract of the judgement is extracted as under:

"398. We uphold the impugned amendments. However, this is subject to the following directions, which we issue under Article 142 of the Constitution of India

i: If any of the petitioners move applications in respect of same default, as alleged in their applications, within a period of two months from today, also compliant with either first or second proviso under Section 7(1), as the case may be, then, they will be exempted from the requirement of payment of court fees, in the manner, which we have detailed in the paragraph just herein before."

11.8 The petitioner has stated that he is not covered by the dictum of Manish Kumar supra and has relied upon the judgement of Hon'ble NCLAT in the case of "Nikhil Mehta and Sons v. AMR Infrastructure Ltd., Company Appeal (AT) (Ins) No. 07 of 2017". The said judgement was delivered on 21.07.2017 i.e. before coming of the IBC Amendment Act of 2020.

11.9 The petitioner has also relied upon the judgement of Satish Chand Gupta v. Sevrel India Pvt Ltd, 2021 SCC Online NCLAT 9. The said judgment squarely deals with the "interest" thereby making it different from the facts of the current petition. Further, the

reliance is placed upon the judgement of Devyog Solutions Private Limited v. Dwarkadhish Projects Pvt Ltd. (IB) 369(ND)/2019, wherein Hon'ble NCLT admitted the petition, but the same was withdrawn in appeal. Further, the applicant has placed reliance upon Mohanlal Dhakad v. BNG Global India Ltd. 2021 SCC Online NCLAT 84, wherein Nikhil Mehta supra is again relied upon, but the facts in this case are not identical as the threshold, which is required for real estate allottee as per proviso to section 7 has been fulfilled, as the said petition is filed by 163 financial creditors, which thereby satisfies the threshold of minimum 100 allottees as required under section 7 of IBC, 2016.

11.10 We find that the present application was filed on 25.09.2019 i.e. before the coming of IBC Amendment Act of 2020 by which Section 7 was amended and a proviso was added which prescribes that for financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21 and 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 such creditors in the same class or not less than ten per cent of the total number of creditors in the same class, whichever is less. Therefore, we are of the considered view that the applicant falls under the category of "Allottee" under a real estate project under section 5(8)(f) of IBC and thus, the instant application as filed by single allottee does not satisfy the necessary requirement under IBC.

12 In light of the above facts and circumstances, it is evident that the petitioner not met the criteria prescribed under the law for initiation of CIRP proceedings in the matter. Hence, the Section 7 application and I.A. stands dismissed.