



IBC AU-COURANT

Latest updates On Insolvency & Bankruptcy

4th August 2022

"Keep your face always toward the sunshine, and shadows will fall behind you"

➤ **Homebuyers Can't Be Defrauded ; NCLT Delhi Initiates CIRP Against Som Resorts And Its Marketing Agent**

The National Company Law Tribunal ("NCLT"), New Delhi Bench, comprising of Shri. Dharminder Singh (Judicial Member) and Dr. Binod Kumar Sinha (Technical Member), while adjudicating a petition filed in Yadubir Singh Sajwan & Ors. v Som Resorts Private Limited, has held that under the guise of 'separate legal entity' doctrine, a developer company cannot be permitted to defraud the homebuyers in connivance with its Marketing Agent. The Corporate Veil can be pierced in matters involving public interest and to ascertain the real nature of transactions. The Bench has initiated Corporate Insolvency Resolution Process ("CIRP") against real estate developer Som Resorts Pvt. Ltd. upon a petition filed by the home buyers.

In 2012, Som Resorts Pvt. Ltd. ("Corporate Debtor") had launched a commercial cum residential project named 'Casa Italia' in Ghaziabad, U.P. Yadubir Singh Sajwan alongwith 25 other home buyers ("Financial Creditors/Home Buyers") had booked space in the Casa Italia Project and had made payments to the Corporate Debtor and its agent named Cosmic Structures Ltd. ("Agent/Cosmic") for the booked spaces.

The Financial Creditors had entered into Builder-Buyer Agreement with the Corporate Debtor, as per which possession was to be handed over in 36 months to them.

However, the Corporate Debtor failed to hand over possession and refund the monies received from the home buyers.

On 11.01.2017 the Delhi High Court had ordered liquidation of Cosmic Structures Ltd. and the official liquidator had sealed the Casa Italia Project considering the same to be a property of Cosmic. Thereafter, a Memorandum of Understanding was entered between the Financial Creditors, Corporate Debtor and Cosmic on 14.09.2018 to complete the construction of the Project within 18 months of de-sealing of the same. The Corporate Debtor had also committed to take responsibility for the payments received by Cosmic from the Financial Creditors. Nonetheless, the Corporate Debtor yet again failed to abide by its commitments.

Consequently, the Financial Creditors filed a petition under Section 7 of the of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of CIRP against the Corporate Debtor, for a default of Rs. 15,37,19,463/- inclusive of interest.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclt-delhi-som-resorts-homebuyers-cirp-corporate-debtor-builder-buyer-agreement-205677>

➤ **Finding Regarding 'Default' Ought Not To Be Recorded Before Submission Of RP's Report**

The National Company Law Appellate Tribunal ("NCLAT / Tribunal") in its recent judgment in Kanchan Nanubhai Desai Personal Guarantor (Anoushka Medicare & Diagnostics Pvt. Ltd.) v. Finequest Financial Solutions Pvt. Ltd [1] has reaffirmed that in an application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("Code") the National Company Law Tribunal ("NCLT") ought not to record findings regarding 'default' before the report by the Resolution Professional, as required under Section 99 of the Code, is submitted.

The Resolution Professional for Anoushka Medicare & Diagnostics Pvt. Ltd. ("Corporate Debtor") filed a petition under Section 95 of the Code against the Personal Guarantors of the Corporate Debtor ("Appellants"). The NCLT directed the Resolution Professional to submit his recommendations with reasons in writing for accepting or rejecting the application, in accordance with Section 99 of the Code while holding that there was no doubt in the minds of the bench that there had been a 'default' by the Appellants. It was further stated that the application by Resolution Professional had been 'allowed'.

The order passed by the NCLT was challenged before the NCLAT on two grounds. Firstly, that the NCLT ought to have asked for confirmation of the appointment of the Resolution Professional from the Insolvency and Bankruptcy Board of India ("Board") as envisaged under Section 97 of the Code and Secondly, that there was no need to record any finding regarding default at the stage when the report of the Resolution Professional had not yet been submitted.

Source: Live Law

Read Full news at: <https://www.livelaw.in/law-firms/law-firm-articles-/rps-report-nclat-corporate-debtor-state-bank-of-india-205668>

