

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH - II**  
**IB-667/ND/2019**

**IN THE MATTER OF:**

**RENU PROPTECH PVT. LTD.**  
**31, Jungpura Road, Bhogal,**  
**New Delhi – 110014.**

**...Applicant**

**VERSUS**

**RED TOPAZ REAL ESTATE PVT. LTD**  
**Having its registered office at:**  
**Gopi Ram Building,**  
**Khasra No. 300,**  
**Sultanpur Village,**  
**New Delhi-110030**

**...Respondent**

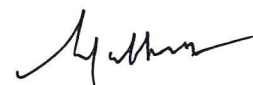
**Date:23.08.2019**

**CORAM:**

**MS. INA MALHOTRA, MEMBER(JUDICIAL)**

**DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)**

PRESENT – Anand Chibber, Sr, Advocate with Sanjay Goswami, Advocate  
for the Applicant  
K. Dutta, Vivek Sinha, Vivek Malik, Sanjay Goyal and Pallavi  
Srivastava, Advocates for Respondent



**ORDER**

**Per Dr. V. K. Subburaj (Member Technical)**

1. This is an application filed by Renu PropTech Pvt. Ltd. seeking to initiate the Corporate Insolvency Resolution Process (“CIRP”) against Red Topaz Real Estate Pvt. Ltd., the Respondent Company under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default on the part of the Respondent Company to refund an amount of Rs.14,39,72,910/- including the interest component towards the financial credit availed by the Respondent Company. The transactions leading to the filing of this application are as follows:

- i. On 01.06.2017 the Respondent entered into a restructured agreement of loan with the Applicant in recognition of its earlier dealings with the Applicant whereby the loan was availed by it and under the said agreement admits its financial liability for a total sum of Rs.12,07,32,000/- towards the Applicant as on 31.03.2018.
- ii. The Respondent after 31.03.2018 issued certain cheques dated 30.06.2018 and 30.09.2018 for due interest to the Applicant on quarterly installment basis with an assurance that the cheques in question would be duly honored on presentation.



towards payment of advance for an amount of Rs.9,39,24,600/- or to repay the EDC charges an amount of Rs.2,56,27,850/-. These payments/book entries were made by the Applicant under SPA DLF to take over the Respondent.

- ii. The Applicant after taking over the Respondent as subsidiary company through related party dealings, approached current shareholder M/s Ninex Developers Limited and entered upon a fresh Share Purchase Agreement dated 31.12.2014. the same agreement SPA New was entered upon the Applicant as Seller, the Respondent as Company and with the abovenamed purchaser. While entering into such transaction under the SPA New on 31.12.2014 the Applicant and the Respondent was represented by same director Mr. Rajesh Gupta, the deponent in the current application, demonstrating thereby that at the time of such execution of the SPA New both the Applicant and the Respondent was under the same management and all transactions or dealings which happened prior to the date of execution of SPA New was related party transactions.
- iii. The consideration clause 2 of the said SPA New, demonstrated the payment consideration and modalities of payments. Through the same clause the Applicant acknowledged and confirmed that sale shares consideration of Rs.19,36,07,500/- represents



- iii. The Applicant on 05.12.2018 presented the two cheques issued by the Respondent towards payment of interest, amounting to Rs.1,14,09,174/-. The same are however dishonored for insufficient funds. The Applicant issues a notice of dishonor to the Respondent.
- iv. The Applicant issues a final notice dated 05.01.2019 for total recall of the loan amount as per clause 22 of the agreement dated 01.06.2018 in light of the failure of the Respondent to maintain financial discipline in terms of the agreement. The total recall amount of loan along with interest due is Rs.13,97,47,290/- as on 31.12.2018. The notice is duly received by the Respondent. The Applicant however has not received any payment from the Respondent towards principal or interest after the agreement dated 01.06.2017 till date.
- v. As per the ledger account of the Respondent the total amount due as per ledger account as on 28.02.2019 to the Applicant from the Respondent including the amount of the dishonored cheque dated 30.09.2018 and 05.10.2018 is Rs.14,39,72,910/- which the Respondent has failed to pay despite the entire loan being recalled.
- vi. The Applicant in light of the aforesaid facts and circumstances and in view of the Respondent having defaulted in payment of



its admitted dues and having failed to maintain financial discipline as per the terms of the agreement is therefore constrained to file the present application in its capacity as an Applicant under Section 7 of the Code.

2. The Respondent in his reply has contended as follows:

- i. The Applicant acquired the Respondent through a Share Purchase Agreement dated 31.05.2014 from M/s Purandar Estates Developers Pvt. Ltd. whereby DLF was a confirming party. Through the said SPA DLF the Applicant took over the projects of the Respondent and in doing so has made various investments in the Respondent on 31.05.2014, the date of execution of the SPA DLF as part of its investment strategy. It is pertinent to note here that these are the same transactions which the Applicant has camouflaged as part of alleged loan/advance in its application and annexed as attachment of confirmation of accounts for the period 01.04.2014 to 31.03.2015, whereas it was known to the Applicant since start these dealings were on account of book adjustments like amount recoverable – DTCP for an amount of Rs.7,23,000/- or from other company adjustments like BDR Builders and Developers Pvt. Ltd. for an amount of Rs.16,47,00,000/- or as payments



sufficient and adequate consideration for the sale/transfer of the sale shares and the Applicant have been left with no right, title, interest or entitlement of any nature whatsoever in respect of the sale shares, said land and the project and or any other assets/properties of the Respondent. Further the same clause 2 provided that the current shareholder has paid Rs.32,91,55,450/- to the Respondent as business advance and/or unsecured loans for enabling the Respondent to further discharge all its existing liability. Thus, in a manner it was the current shareholder, Ninex Developers Ltd who had given business advance/unsecured loan to the Respondent so that the liabilities of the Respondent can be paid off. The same clause further reiterated that the Respondent confirmed that it has discharged all its existing liabilities till the 31.12.2014 and therefore the Applicant left with no claim on the Respondent. This is further reiterated that the same SPA New agreement all its clauses including payment consideration clause 2 was signed by Mr. Rajesh Gupta, on behalf of both the Applicant and Respondent and now he is wrongly concealing all such facts.

- iv. In fact after such sale of the shares by the Applicant of the Respondent to the current shareholder, the Applicant entered upon dealing of purchase of the property in the project of the



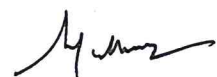
Respondent and hence make payments towards the same, which is admittedly transaction of sale purchase of properties and not the transaction of financial debt as alleged by the Applicant. Further the same facts can be seconded by the consequent events whereby allotment letters for the properties in the project of the Respondent was issued in the name of the Applicant. This is further commended by the fact that the Respondent never booked or made provisions of any interest and made any TDS payments on behalf of the Applicant as the same was only purchase consideration for the units in the project of the Respondent and the Applicant never raised any query or objection with respect to such TDS or interest payments as the same was never intended to be provided for. In fact, the alleged agreement dated 01.06.2017 even for a while considered to be true never mentioned any amount or rate of interest in it.

- v. The Applicant who basically entered upon dealings for the purchase of units in the project of the Respondent, being such with respect to transaction never asked or got the charges created for such financial transactions. The charge ID data as maintained by the Ministry of Corporate Affairs clearly shows that there was not a single charge created in favor of the Applicant and hence without any doubt suggest that there were no financial debts



owned by the Respondent towards the Applicant and the financial transactions were only on account of sale purchase of units in the project of the Respondent.

3. The Applicant has placed on record the agreement dated 01.06.2017 in which the Applicant has granted a debt of Rs.12,07,32,000/- to the Respondent which is to be returned with interest to the Applicant. The Applicant has also placed on record the copy of the two dishonored cheques dated 30.09.2018 and 05.10.2018 of Rs.57,04,587/- each issued by the Respondent in the Applicant's favor Respondent. Further, the Applicant has placed on record the balance sheet of the Respondent for the FY 2017-16 showing that Rs.12,88,50,450/- is owed under the head of Loans and Advances by the Respondent to the Applicant.
4. The Respondent has denied that the loan agreement dated 01.06.2017 was executed by it. It takes the stand that the money being claimed by the Applicant was given as consideration for the 31 apartment units booked by the Applicant in the Respondent's project which is now being shown has a financial loan. There is no explanation by the Respondent as to how the loan agreement came to be executed by it or why the two dishonored cheques were issued by it in the Applicant's





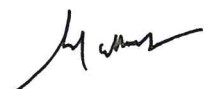
favour. It is also not explained by the Respondent why its balance sheet for FY 2016-2017 shows Rs. 12,88,50,450/- as loan and advances received from the Applicant, much before the actual allotment of the apartment units were made by the Respondent to the Applicant.

5. The Applicant has placed on record enough material to show that the financial debt is owed by the Respondent to the Applicant and that the Respondent defaulted on the repayment of the loan. Accordingly, the application is admitted. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

*“(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.*

*(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

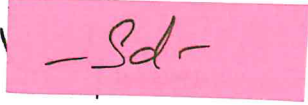
*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”*

6. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Vikas Kumar Garg (Email – vikasgarg\_k@rediffmail.com) and is being confirmed by this Bench.

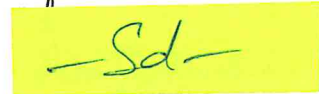


He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

7. Renotify this case for report of the IRP on 24.09.2019.



**(Dr. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**



**(INA MALHOTRA)**  
**MEMBER (JUDICIAL)**

Deepak