

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (I.B.C) No. 135/KB/2023

***An Application under Section 7 of the Insolvency and Bankruptcy
Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy
(Application to the Adjudicating Authority) Rules, 2016.***

IN THE MATTER OF:

Ashley Brian Hyams

... Financial Creditor/ Applicant.

Versus

Greentech City Private Limited

... Corporate Debtor/ Respondent.

Date of Pronouncement: 12.06.2026.

Coram:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

CMDE . SIDDHARTH MISHRA, MEMBER (TECHNICAL)

Appearance:

For the Financial Creditor

:Mr. Sanway Banerjee, Adv.

For the Corporate Debtor

: Ms. Urmila Chakraborty, Adv.

: Ms. Madhuja Barman, Adv.

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ORDER

PER: Siddharth Mishra, Member (Technical):

1. The Court congregated through physical / hybrid mode.
2. Heard the Learned Counsels for both the parties.

3. Factual matrix:

The instant company petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, for brevity I&B Code, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by **“Ashley Brian Hyams”**, hereinafter referred to as **“Financial Creditor”/ “Applicant”** against **“Greentech Private Limited”**, hereinafter referred to as **“Corporate Debtor”/ “Respondent”** seeking direction to initiate Corporate Insolvency Resolution Process (for brevity “CIRP”) in respect of the Corporate Debtor due to a default in repayment of a financial debt amounting to Rs.2,24,78,796.81/-.

4. Submissions of the Ld. Counsel for the Applicant:

- 4.1 It is submitted that the Applicant and the Corporate Debtor executed an Agreement for Sale dated 24.11.2016 under which the Corporate Debtor undertook to hand over possession of the Villa within 24 months from the effective date. It is claimed that despite receiving substantial payments starting from 2013, the Corporate Debtor failed to hand over possession within the stipulated time. It is further submitted that the default occurred on 24.11.2016, being the expiry of the agreed 24-month period.
- 4.2 The Applicant contends that multiple demand notices were duly communicated. It is submitted that the first notice was sent through India Post on 11.06.2018. It is further submitted that another demand notice was issued by email on 30.11.2018. It is claimed that a Final Demand-cum-Termination Notice was also sent on 10.03.2023, and all notices fall within limitation once the exclusion of COVID-19

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limitation period, as directed by the Hon'ble Supreme Court in SMW(C) No.3/2020, is applied.

- 4.3 It is contended that the Petition filed on 23.06.2023 is well within limitation. The Applicant submits that under Section 22 of the Limitation Act, failure to hand over possession constitutes a continuing breach, and limitation does not begin to run until possession is delivered. It is further submitted that several judgments, including Samruddhi Co-operative Housing Society Ltd., Yadubir Singh Sajwan, and Amit Joshi, hold that a homebuyer's claim is not barred by limitation until delivery of possession.
- 4.4 It is submitted that the Applicant undertook all reasonable steps to ascertain whether the real estate project was registered under RERA or whether requisite approvals existed. It is claimed that RTI replies from Panchayat, BDO, and Zilla Parishad revealed that no sanction plan/approval existed for the project. It is further submitted that WBREDA confirmed that the project was not registered. Therefore, the project has no recorded number of allottees, and the Applicant, being the only known allottee, qualifies under the Section 7 proviso.
- 4.5 It is contended that once the Applicant produced evidence that no information exists regarding allottees, the burden shifted to the Corporate Debtor to prove otherwise. It is submitted that the Corporate Debtor failed to produce a single sanctioned plan, allotment list, or RERA documents and thus cannot challenge the Applicant's locus under Section 7.
- 4.6 It is submitted that the Applicant is entitled to claim interest under Section 18(1)(b) of RERA read with Rule 17 of the West Bengal RERA Rules. It is contended that interest at SBI PLR + 2% is compensatory and statutory and therefore forms part of financial debt. Reliance is placed on Pioneer Urban Land & Infrastructure Ltd. and Vidya v. Parasnath Developers to argue that refund with interest is a statutory right of a homebuyer when possession is not delivered.

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- 4.7 It is further submitted that the disbursements began in 2013 and interest has been calculated from the date of each deposit as upheld by the Supreme Court. It is contended that the total claim of Rs. 2,24,78,796.81 clearly exceeds the threshold under Section 4.
- 4.8 It is submitted that the Corporate Debtor started refunding amounts from 19.02.2020 onwards, thereby acknowledging liability. It is further submitted that the Corporate Debtor's reliance on Neptunus Power Plant Services is misplaced since that case relates to operational debt, whereas in a financial debt, interest forms part of the debt inherently due to time value of money.
- 4.9 It is finally submitted that CIRP must be initiated since the debt is undisputed, the default is evident, and the Corporate Debtor has failed to raise any legally sustainable defense.

5. Submission of the Respondent:

- 5.1 It is claimed that the Petition is wholly misconceived and filed to extract money. It is submitted that the Applicants have approached the Tribunal with an inflated, fictitious, and exaggerated claim. It is further submitted that the Petition constitutes an abuse of process and should be dismissed with exemplary costs.
- 5.2 It is contended that the Applicants, being only three in number, do not satisfy the minimum threshold of allottees under the second proviso to Section 7. It is submitted that the Applicants lack the requisite percentage or number of homebuyers and therefore have no locus to file a Section 7 petition.
- 5.3 It is submitted that the Applicants themselves defaulted in payment of the total agreed sale consideration. It is claimed that against the agreed sale price of Rs. 1.5 crore plus service tax, the Applicants paid only Rs. 78,89,680 as per their own computation. It is contended that they cannot claim possession without making full payment, nor can they take advantage of their own breach.

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- 5.4 It is claimed that the cause of action arose in 2016, and the Petition filed in 2023 is barred by limitation. It is submitted that the Applicants raised no demand for nearly five years, and therefore their claim suffers from delay, laches, waiver, and acquiescence.
- 5.5 It is contended that there is no interest clause in the Agreement for Sale. It is claimed that the Applicant's demand for interest is exorbitant, unfounded, and contrary to contract. It is further submitted that interest cannot be claimed unless specifically agreed, and the Petitioners' computation is fabricated.
- 5.6 It is submitted that the principal claim is only Rs. 44,89,680, which is below the statutory minimum of Rs. 1 crore. It is argued that the interest component cannot be reckoned since the Agreement does not provide for interest, and therefore the Petition must fail.
- 5.7 It is submitted that the Applicants have already invoked WBHIRA and filed a criminal complaint. It is further claimed that the parties executed a Memorandum of Settlement on 30.08.2022 under which Rs. 57,89,680 was agreed as the full and final settlement amount, below the statutory threshold. Therefore, it is contended that the present Petition is based on a breach of settlement and is not maintainable under Section 7.
- 5.8 It is claimed that no financial debt exists since the disbursements were not against time value of money. It is contended that the Applicants are misusing IBC for recovery and acting with malice, and the Petition ought to be dismissed.

6. Rejoinder of the Applicant

- 6.1 At the outset, I reiterate the averments made in the Company Petition and the Supplementary Affidavit and deny all allegations in the Corporate Debtor's reply. It is submitted that several crucial facts could not be placed earlier as responses under the Right to Information Act, 2005 were awaited. The said RTI replies, now

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received, clearly demonstrate that the project “Aqua Golf Villa Phase-I” was never sanctioned by the competent authorities at any level Gram Panchayat, Panchayat Samiti, or Zilla Parishad. The Corporate Debtor’s entire stand that a valid real estate project existed is therefore wholly untenable.

6.2 It is further submitted that three RTI applications were filed before Chandpur Gram Panchayat, Rajarhat Panchayat Samiti, and the North 24 Parganas Zilla Parishad seeking sanctioned plans, permissions, completion/occupancy certificates, and all statutory records pertaining to the project. Each of the authorities categorically stated that no such application, no sanction, and no completion/occupancy certificate have ever been issued in respect of the project promoted by the Corporate Debtor. Under the West Bengal Panchayat Rules, Rule 65, Rule 74, Rule 79(1)–(3), and Form 4 / 4A / 4B requirements no construction can legally commence without such approvals, and no completion/occupancy certificate can be issued without statutory inspection. The complete absence of these records establishes that the project is not a lawfully sanctioned real estate project.

6.3 In these circumstances, the Corporate Debtor cannot rely on the Section 7 proviso to challenge maintainability when it has failed to produce even a single sanctioned plan, approval, allottee list, or RERA registration. The RTI replies themselves show that no lawful project exists in the eyes of law, and therefore the Applicants remain the only known allottees, fully satisfying the statutory threshold. The Corporate Debtor’s objections on locus, limitation, and threshold are baseless, and the rejoinder supports admission of the petition based on continued default, absence of approvals, and complete failure of the Corporate Debtor to rebut the documentary evidence now placed on record.

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7. Supplementary Affidavit dated 03.06.2025 by Respondent

- 7.1 It is submitted that in terms of the second proviso to Section 7(1) of the Insolvency and Bankruptcy Code, 2016, in matters relating to a real estate project, an application is required to be filed jointly by not less than one hundred allottees of the same project or not less than ten per cent of the total number of such allottees, whichever is less. In the present case, the subject project, Aqua Golf Villa, comprises 41 allotted units. The instant petition has been filed jointly by the financial creditors under a single allotment, which is far below the prescribed threshold. Accordingly, the petitioners lack the requisite locus to maintain the present petition. Copies of the Certificates of Taking Key Hand Over to the homebuyers are collectively marked and 41 annexed as **Annexure A** to the supplementary affidavit.
- 7.2 Ld. Counsel submits that the sanction map of the project i.e., Aqua Golf villa have been issued by the competent authority and a copy of the same is annexed as **Annexure B** to the supplementary affidavit.
- 7.3 Ld. Counsel submits that the Chandpur Gram Panchayat on 11.08.2018 has provided the Completion Certificate stating that the Housing Complex comprising of 44 nos. bungalows in Greentech IT City Pvt. Ltd. had been sanctioned by the Panchayat and the same is completed and fit for use. A copy of the same is annexed as **Annexure C** to the supplementary affidavit.
- 7.4 Ld. Counsel submits that the Respondent Company have issued possession notices to certain homebuyers as well demonstrating the fact that quiet, vacant, actual, legal and peaceful possession of their respective units have been handed over to the buyers and that the buyers have also taken possession of their respective units as well. Copies of the possession notices issued are collectively annexed as **Annexure D** to the supplementary affidavit.
- 7.5 Ld. Counsel further submits that the attached documents shows the entire project has been developed, completed and there are

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occupants who are currently residing thereto.. Further, it is stated that the alleged Financial Creditors have not been handed over possession of their bungalow booked by them as they have not made payment of the instalments as per terms of the Agreement dated 24.11.2014.

8. Supplementary Affidavit dated 30.06.2025 by Applicant

8.1 Ld. Counsel submits that the Respondent affidavit dated 03.06.2025, the Respondent annexed two documents i.e., Sanction Map as Annexure B and Completion Certificate as Annexure C. That, on date 19.06.2025, to verify the authenticity of the sanctioned plan and completion certificate, my Ld. Advocate physically submitted one application under RTI Act before the State Public Information Officer (SPIO) / Executive Assistant (E.A) in Charge, Chandpur Gram Panchayat, with legible copies of above-mentioned sanctioned plan and completion certificate.

8.2 That on 28.06.2025, my Learned Advocate provided me the replies of the SPIO / E.A in-Charge, Chandpur Gram Panchayat. In the said reply the SPIO stated that no sanction plan was given from their office to 'Aqua Golf Villa' or any other name for any construction. Even no renewal document of sanction plan was found at the GP office. No completion certificate was found at the GP office till date. A copy of the reply by SPIO, Chandpur (GP) is annexed as **Annexure D**.

9. Supplementary Affidavit dated 27.08.2025 by Respondent

9.1 Ld. Counsel submits that on 30.06.2025, the Financial Creditor filed a supplementary affidavit bringing on record documents pertaining to an RTI application dated 19.06.2025 with its annexure, reply dated 26.06.2025 with its attached documents along-with other relevant documents.

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9.2 Ld. Counsel submits that the residents of the Aqua Golf Villa has been continuously paying the tax on land and building indicating the fact that the project has been completed and is in possession of the homebuyers who have made the entire payment for their respective units. A copy of tax receipts and fees paid by Ms. Smaranika Tripathy is annexed as marked as **Annexure A**.

9.3 Ld. Counsel further submits that the receipt on record indicates that the project has been completed and that the occupants/homebuyers are paying the applicable land and building tax. The allegation of the Financial Creditor that the Corporate Debtor has failed to hand over possession of the flat is therefore misconceived. It is contended that possession has not been handed over solely due to the Financial Creditor's failure to fulfil his payment obligations under the Agreement dated 24.11.2014.

10. Analysis and Findings

10.1 We have carefully considered the pleadings, the documents placed on record, the rival submission advanced on behalf of the parties.

10.2 At the outset, it is not in dispute that the Applicants are allottees in respect of a Villa in the project styled as "Aqua Golf Villa" proposed to be developed by the Respondent. It is also not in dispute that substantial amounts have been paid by the Applicants to the Respondent from the year 2013 onwards and that an agreement for sale was executed thereafter.

10.3 The Respondent is a Real Estate Company and it is pertinent to note that for admitting the claim under Section 7 of the Code, the petition has to be filed by a threshold number of homebuyers/allottees. To maintain the application under Section 7 of the Code, the applicants must satisfy the requirement of minimum no. of allottees/homebuyers that is 100 in number or 10 percent whichever is less.

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10.4 It is noted that on 13.03.2020, the Insolvency and Bankruptcy (Amendment) Act, 2020 (No.1 of 2018) was amended wherein by virtue of Section 3 of Amending Act, 2020 the proviso was added to Section (7) of Code:

Section 7: Initiation of corporate insolvency resolution process by financial creditor.

“7. (1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred”.

.....

*The 2nd proviso to Section 7(1) states as follows:- “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 percent of the total number of such allottees under the same real estate project, whichever is less**”.*

(Emphasis Added)

10.5 It is pertinent to note that the constitutional validity of Section 3 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 has been duly upheld by the Hon'ble Supreme Court in ***Manish Kumar Vs. Union of India***, Writ Petition(C) No. 26 of 2020, decided on 19.01.2021. The Court upheld the constitutionality of the threshold requirement, highlighting the need for a critical mass of allottees to initiate Insolvency proceedings to balance the interest of all

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stakeholders and prevent misuse by individual allottees. The court further clarified that the threshold is to be seen as on the date of presentation of the petition.

10.6 Hon'ble Principal Bench, NCLT Delhi, in the case of **Surinder Kumar Jain and Ors. Vs. M/s Orris Infrastructure Pvt. Ltd.**, CP (IB) No. 319/PB/2020, dealing with the same facts rejected the petition of financial creditor to initiate CIRP reiterating its own judgment in **Ms. Rita Malhotra and Ors Vs. M/s Orris Infrastructure Pvt. Ltd.**, CP (IB) No. 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**”.*

(Emphasis Added)

10.7 The similar view was taken by Hon'ble NCLAT in the case of **Dheeraj Raikhy Vs. Raheja Developers Ltd.**, (2023) ibclaw.in 680 NCLAT,

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decided on 17.10.2023. The NCLAT while upholding the order of NCLT held that a single allottee does not meet the threshold requirement under the second proviso to Section 7(1) and therefore cannot trigger insolvency proceedings and observed the following:

*“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.**”*

- 10.8 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 03.03.2023 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”
- 10.9 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.
- 10.10 It is clear that a minimum threshold limit has been laid down for taking cognizance of an application under Section 7 of IBC, 2016 for triggering CIRP, when such an application is relatable to a Real Estate Project. In the present application, it is seen from the records that no documents have been filed by the applicant to satisfy the minimum threshold limit laid down in the second proviso to Section 7(1) of IBC, 2016.
- 10.11 In light of the above facts and circumstances, it is evident that the petitioner has not met the criteria prescribed under the law for

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initiation of CIRP proceedings in the matter. Hence, the Section 7 application stands **dismissed**.

11. Accordingly, **CP (I.B.C) No. 135/KB/2023** is **dismissed**.

12. The Certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

**Cmde. Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Order signed on the 12th day of June, 2026.

S.T (LRA)