

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

Item No. 115
IB/196/ND/2023

IN THE MATTER OF:

Mr. Satyabrata Mitra & Ors.	...	Applicant
Versus		
Earth Towne Infrastructure Pvt Ltd	...	Respondent

Order under Section 7 of IBC, 2016.

Order delivered on 31.10.2023

CORAM:

MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

List IB/196/ND/2023 on 01.02.2024 for further consideration.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
COMPANY PETITION NO. (IB) 196 OF 2023**

IN THE MATTER OF:

MR. SATYABRATA MITRA & ORS.

**...APPLICANTS / FINANCIAL CREDITOR
VERSUS**

EARTH TOWNE INFRASTRUCTURE PRIVATE LIMITED

...RESPONDENT/CORPORATE DEBTOR

Order Delivered on: 31.10.2023

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)**

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant application is jointly filed by Mr. Satyabrata Mitra & 145 other home buyers ('Applicants') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s Earth Towne Infrastructure Limited ('Corporate Debtor') for defaulting in payment of financial debt amounting Rs. 28,64,48,786/- .

2. The Respondent Company M/s. Earth Towne Infrastructure Private Limited bearing CIN No. U70101DL2010PTC206120 is a private limited company incorporated on 27.10.2010 having its registered office situated at B-100, Second Floor, Naryana Industrial Area, Phase-1, New Delhi – 110028. Since the registered office of the respondent Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent/Corporate Debtor under sub-section (1) of Section 60 of the Code.

SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE APPLICANTS/ HOME BUYERS

3. Succinctly stated, the facts of the present case as averred by the applicants in the present application are that in the year 2010, the Greater Noida Industrial Development Authority ('GNIDA') had floated the Scheme for Allotment of large group Housing/Builders Residential Plots vide Scheme Code No. BRS-01/2010 and the allotment of Land being Plot No. GH-04, Sector – 01, Greater Noida ('project land') was awarded to the consortium consisting of M/s. Earth Infrastructure Limited ('EIL'/Lead Member') and its other two subsidiaries in terms of Reservation/Acceptance Letter dated 04.03.2010 and Allotment Letter No. dated 19.03.2010. Accordingly, a Special Purpose Vehicle in the name of M/s. Earth Towne Infrastructure Private Limited ('Corporate Debtor') was incorporated by the consortium members and the GNIDA, in terms of Clause C-8(e) of the brochure, had

approved allotment of the project land in the name of the Corporate Debtor vide letter dated 20.08.2010.

4. The Applicants further submitted that a 'Development Agreement' dated 09.09.20210 was entered into between M/s. Earth Towne Infrastructure Private Limited ('Corporate Debtor') and M/s. Earth Infrastructure Limited ('EIL'), wherein the EIL was to develop the project land. According to the said Agreement, the Corporate Debtor shall remain the lease right holders of the project land and EIL shall have the permission to enter into the project land for carrying out the construction activities as a Licensee. The GNIDA issued sanction letter dated 30.09.2014 in favour of EIL for the development of the project land.
5. Furthermore, it was submitted that various Homebuyers/Allottees including the Applicants herein had entered into Agreements with the Corporate Debtor being the Landowner/Owner of Leasehold Rights and Earth Infrastructure Limited being the Developer of the Subject Land owned by the Corporate Debtor for the purpose of Allotment of Apartments in the Project and paid substantial amounts towards the said allotment, and have collectively disbursed an amount of Rs. 28,64,48,786/- (Rupees Twenty-Eight Crores and Sixty-Four Lakhs and Forty Eight Thousand Seven Hundred Eighty Six only) in favour of both the Corporate Debtor and M/s. Earth Infrastructure Limited, which was ultimately transferred by Earth Infrastructure Limited to the Corporate Debtor, in lieu the Units/Apartments in its Project. Moreover, as per the UPRERA Registration for the said project, the date of completion of the Project was mentioned as

31.12.2021, however, the applicants have not received the possession till the time of filing the instant application.

6. It was further submitted that this Hon'ble Adjudicating Authority vide order dated 06.06.2018 had initiated Corporate Insolvency Resolution Process against Earth Infrastructure Limited and Mr. Surinder Singh was appointed as the Interim Resolution Professional and subsequently Shri Akash Singhal was appointed as Resolution Professional. Accordingly, the applicants pray for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

ANALYSIS AND FINDINGS

7. This Adjudicating Authority vide order dated 12.04.2023 had issued notice upon the Corporate Debtor for its appearance and for filing of reply. The Applicants had vid e-mail dated 02.05.2023 had served notice to the Corporate Debtor, however the same got bounced back with the remark 'Adress not Found'. Also, the Applicants had sent the notice of hearing via courier on 03.05.2023, but the same could not be delivered and was returned on 04.05.2023 due to the reason "Receiver Shifted from the Given Address".
8. This Adjudicating Authority vide order dated 08.05.2023 had directed the Applicants to effect service of notice upon the Corporate Debtor by substituted service i.e., by publication of the Notice. The Applicants in compliance of the order dated 08.05.2023 had published the Notice in 'Jansatta' Hindi and 'Financial Express' English newspaper on 14.05.2023. The Applicants had placed on record the affidavit of service dated

16.05.2023. Since, there was no response or appearance on behalf of the Corporate Debtor, this Adjudicating Authority had vide is order dated 19.07.2023 proceeded against the Corporate Debtor ex-parte.

9. Heard the Learned Counsel for the Applicants and meticulously perused the averments made in the application and documents annexed thereto. The Applicants had annexed Copy of the Master Data of the Corporate Debtor as available on the Website of the Ministry of Corporate Affairs as Annexure A-2 of the application. On perusal of the Master Data of the Corporate Debtor, we observe that the name of the Corporate Debtor has been 'Struck off' from the register of Company by the Registrar of Companies. The extract of the Master Data of the Corporate Debtor as available on MCA Portal is extracted below:-

Company Master Data

CIN	U70101DL2010PTC206120
Company Name	EARTH TOWNE INFRASTRUCTURES PRIVATE LIMITED
ROC Code	RoC-Delhi
Registration Number	206120
Company Category	Company limited by Shares
Company SubCategory	Non-govt company
Class of Company	Private
Authorised Capital(Rs)	500000
Paid up Capital(Rs)	100000
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	21/07/2010
Registered Address	B-100, Second Floor, Naryana Industrial Area, Phase-1 Delhi South West Delhi DL 110028 IN
Address other than R/o where all or any books of account and papers are maintained	-
Email Id	secretarial@earthinfra.com
Whether Listed or not	Unlisted
ACTIVE compliance	
Suspended at stock exchange	-
Date of last AGM	30/09/2015
Date of Balance Sheet	31/03/2015
Company Status(for efilling)	Strike Off

Charges

Charge Id	Assets under charge	Charge Amount	Date of Creation	Date of Modification	Status
No Charges Exists for Company/LLP					

Directors/Signatory Details

DIN/PAN	Name	Begin date	End date	Surrendered DIN
00077970	RAJNEESH MITTAL	21/07/2010	-	
00524384	VIKAS GUPTA	21/07/2010	-	
00524660	ATUL GUPTA	21/07/2010	-	
BBRPK1510J	RENU SEMWAL	01/08/2016	-	

(Extract of the Corporate Debtor Master Data)

10. The term ‘Striking off’ means an act by which the name of the company is removed or struck off from the register of companies which is maintained by the Registrar of Companies. The consequences of Strickingoff the ‘name of company’ is that the business entity has been removed from the official Register of Companies and is no longer legally recognized as a valid business or capable to hold any asset in its name. The legal recognition of the Company pursuant to strike off is lost, the certificate of incorporation is deemed to be cancelled and the Company stands dissolved under Section 248(5) of the Companies Act, 2013 subject to the discharge of liability towards its outstanding debt by its members, directors, managers in terms of Section 248(7) of the Companies Act, 2013.
11. The term “Corporate Debtor” is defined under Section 3(8) of IBC, 2016 and the term “Corporate Person” is defined under Section 3(7) of IBC, 2016. The relevant definitions and provisions of Insolvency and Bankruptcy Code, 2016 are reproduced herein below:

“3 (8) “corporate debtor” means a corporate person who owes a debt to any person;”

“3 (7) “corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;”

12. The term “Company” is defined under Section 2(20) of the Companies Act, 2013. The definition is reproduced herein below:-

“2(20) “Company” means a company incorporated under this Act or under any previous company law;”

13. On a co-joint reading of the above referred provisions, it is clear that the CIRP can be initiated against a Company incorporated and registered under the provisions of the Companies Act, 2013, ('Corporate Person') owing a debt to any person ('Corporate Debtor'). However, in the case before us, due to the action of striking off, taken against the Respondent Company by the Registrar of Companies, having jurisdiction under the provisions of the Companies Act, 2013, the legal existence of the Respondent Company itself has ceased and the certificate of incorporation also stands cancelled. Any assets of the Company shall have to be vested in the state on the principle of 'Bona Vacantia' which can be made available for discharge of its liability. The Liability, if any is to be discharged under Section 248(7) of the Companies Act, 2013 by the Directors, Members, Managers but not by the Company.

14. Further, according to the provisions of Section 248(8) of the Companies Act, 2013, the Tribunal may order winding up of a Company, the name of which has been struck off, but no power can be exercised by the Tribunal for Insolvency Resolution under the Insolvency and Bankruptcy Code, 2016, unless the name of the Company is restored to the Register of Company in terms of procedure laid down under Section 252 of the Companies Act, 2013. The power of the Tribunal to restore the name of a struck off company under Section 252 of the Companies Act, 2013 is not a suo motu power, but is to be exercised either on the basis of an appeal filed by any aggrieved person under Section 252 (1) or to be exercised on an application filed by the Companies, its members or creditors or workmen aggrieved by the order of striking off under Section 252(3) of the Companies Act, 2013. Secondly, such power of

restoration is to be exercised under the powers confined to this Tribunal under the Companies Act, 2013 whereas the instant proceedings are initiated under the provisions of the I&B Code, 2016 before us being the Adjudicating Authority under the Code, 2016.

15. Having regard to the above finding and discussion, the applicants are directed to take appropriate steps to seek the restoration of the name of the Corporate Debtor in the Register of Companies, so as to proceed with the present application filed under Section 7 of the Code, 2016.

16. List the C.P.(IB)196/2023 on 01.02.2024 for further consideration.

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**