

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.1042/MB-IV/2020**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Innova Premises Co-operative Society  
Limited**

[CIN: MUM/WGS/GNL/O/8750/2016]

...Financial Creditor/Applicant

V/s

**Marathon Nextgen Realty Limited**

[CIN: L65990MH1978PLC020080]

...Corporate Debtor/Respondent

**Order Dated: 24.02.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Simil Purohit a/w Mr. Punit Damodar, Ms. Nikita Vardhan & Mr. Vishal Tiwari i/b Kanga and Company, Advocates.

For the Respondent(s) : Mr. Nausher Kohli a/w Mr. Ashish Parwani, Ms. Gitika Makhija, Ms. Anjali Dhoot & Mr. Chintan Gandhi i/b Rajani Associates, Advocates.

**ORDER**

*Per: Kishore Vemulapalli, Member (Judicial)*

1. This is an application bearing C.P. (IB) No. 1042/MB/C-IV/2020 filed by Innova Premises Co-operative Society Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Marathon Nextgen Realty Limited, Corporate Debtor.
2. The Application is filed by Mr. Nikesh Jalamchand Sakaria, Hon. Secretary of the Financial Creditor, duly authorised vide the Resolution passed by its Managing Committee dated 05.12.2019, claiming total default of Rs.1,55,31,417/- (Rupees one crore fifty-five lakh thirty-one thousand four hundred seventeen only).
3. The Date of Default is stated to be 31.03.2017 in the Petition. The Petition is filed on 12.02.2020.
4. The case of the Financial Creditor is that the Corporate Debtor is in default of a sum of Rs.1,55,31,417/- being the surplus amount of corpus collected from its members for the maintenance for the building, occupied by members of the society, in the year 2016 to 2017 in relation to commercial office building known as 'Marathon Innova'. It is stated that the members of the society had purchased the commercial office flats in the said building developed by the Corporate Debtor. The Financial Creditor is a Co-operative Housing Society registered on 31.05.2016 under the Maharashtra Co-operative Societies Act, 1960. The Society comprising of 100 members who are allottees, being

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purchasers of the units in the commercial office building. It is further stated that the Applicant Society is maintaining the common area pertaining to the office flats owned by its members.

5. The members of the Applicant Society had entered into Premises Ownership Agreement on different dates and were handed over the possession and occupation of the flats owned by them upon completion of the development of the building. In terms of Clause 11 said agreement, the Corporate Debtor had received 6 months deposit for proportionate share of outgoings for the premises on estimated basis upon notice for occupation given to the buyers of the flats. The amount so collected were provisional amounts in terms of Clause 13 of the Agreement and did not carry any interest. These collections were meant for meeting out charges towards the common lights, repairs, salaries of clubs, bill collectors, securities, sweepers, and also other expenses necessary and incidental to the management and maintenance of the building as clarified in Clause 14 of the agreement.
6. By a letter dated 06.08.2016, addressed by the Corporate Debtor to the allottees of the Building, the Corporate Debtor submitted the collection and disbursement account of the building for the year 2005 to 2016 and drew attention to Clause 8 & 9 of the Agreement whereby the Allottees has expressly agreed upon to form the condominium. Vide letter dated 25.07.2018, the Corporate Debtor also furnished collection and disbursement account for 01.04.2016 to 31.03.2017 wherein a sum of Rs.1,16,37,411/- is shown as payable by the Corporate Debtor to the proposed condominium after deducting a sum of Rs.38,94,006/- on account of infra debit notes from April 2017 to June 2018.

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7. The Financial Creditor has filed this Application for a default of Rs.1,55,31,417/-, which is the amount shown as due from the Corporate Debtor in the summary appended to letter dated 25.07.2018 without deducting infra debit note as claimed by the Corporate Debtor. On perusal of this letter it is seen that there is no stipulation as to when this amount is payable.
  8. From the letter dated 11.09.2019 addressed to Corporate Debtor by the legal counsel from the Applicant Society it is noticed that the responsibility towards maintaining the building was completely handed over to the Applicant Society on or around October 2016 whereupon the Applicant Society asked the Corporate Debtor to hand over the corpus. Through this letter, the Corporate Debtor was further called upon to pay the total amount of Rs.2,27,39,547.60 (Rupees two crore twenty-seven lakh thirty-nine thousand five hundred forty-seven and sixty paise only) to be payable within 15 days from the receipt of the notice.
  9. The Corporate Debtor has filed its Affidavit-in-reply dated 19.11.2020 Additional Affidavit 15.12.2021 and Counter Affidavit dated 14.07.2021 objecting to the present Application on the ground that: a) the Applicants had not paid the amount towards financing of the respective units but the same was paid as their contribution to corpus to meet out maintenance charges, hence the amount due from the Corporate Debtor does not satisfy the conditions of section 5 (8) (f) of the Code; b) the responsibility of towards maintenance of common layout amenities of the entire project like paved internal access, campus security, recreation ground with event space and grand entrance lobby etc. was carried out by the Corporate Debtor, accordingly the

Corporate Debtor had raised debit note towards allottees shares of maintenance charges of common layout amenities for period April 2017 to June 2020; and c) instead of amount due from it, the members of the Applicant Society owes Rs.5,59,481/- after appropriation of charges pertaining to maintenance of common amenities. The Corporate Debtor has placed on record invoices raised for recovery of property tax and other maintenance charges on a sample basis.

10. The Financial Creditor has also filed Re-joinder dated 16.12.2020 and Affidavit dated 28.02.2022 and 13.12.2021. Vide letter dated 15.04.2017, the Financial Creditor had objected to the debit note raised by the Corporate Debtor on the ground that the Corporate Debtor ought to have formed an apex body of societies in the complex for the maintenance of common areas and infrastructure in the said complex.

*Findings/Observations:*

11. We have heard the arguments of the Learned Counsel for Operational Creditor and the Corporate Debtor.
12. From the perusal of the Premises Ownership Agreement entered with members of the Applicant Society, it is noticed that the amount claimed due from the Corporate Debtor is on account of surplus of collections made by the Corporate Debtor for maintenance of the building owned by the members of the Applicant Society till the handing over of such maintenance obligation to the condominium formed by such flat owners. The amount so collected was in nature of advances, paid by the flat allottees upon occupation of said flats, towards maintenance charges/taxes recoverable from such flat owners for the period subsequent to the occupation of the flats as well as period of

development of the flats. From the perusal of these documents the Bench is of the view of that there is no dispute that this money was collected for the maintenance/taxes payment and there is no default in handing over the flats booked by members of the Applicant Society. In our considered view the amount in question is akin to the money paid in advance to a service provider for availing services and defraying expenses to be incurred by such service providers in rendition of agreed services.

13. Any debt arising from supply of goods or services including advance paid towards supply of such goods or services fall under the definition of Operational Debt. In the present case, the Applicant has filed this Application claiming itself to be a Financial Creditor under section 5 (8) (f) of the Code whereas the amount in question is in nature of an Operational Debt recoverable from the Corporate Debtor, even if the debit notes towards common amenities as claimed by the Corporate Debtor for the period subsequent to the handing over are not considered.
14. Since the amount in question is not a financial debt, the Applicant cannot said to be a Financial Creditor so as to make eligible to file an application under section 7 of the Code.
15. In view of this the Present Application is not maintainable and hence is liable to be dismissed.

**ORDER**

16. This Application being C.P. (IB) No. 1042/MB/C-IV/2020 filed by Innova Premises Co-operative Society Limited, the Financial

Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Marathon Nextgen Realty Limited, Corporate Debtor is hereby **Rejected**.

17. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present Petition.

Sd/-  
Prabhat Kumar  
Member (Technical)  
24.02.2023

Sd/-  
Kishore Vemulapalli  
Member (Judicial)