

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, DELHI

BENCH III

IB-236/ (ND)/2020 filed Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of K V Developers Private Limited

LIC Housing Finance Limited

....Financial Creditor

Versus

K V Developers Private Limited

....Corporate Debtor

Order delivered 28th October, 2020

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

Shri, NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For Financial Creditor:

*Mr. Pradeep Dahiya, Ms. Reha Luthra
(Advocates)*

For Corporate Debtor:

*Mr. Ramnesh Kumar Jerath, Mr. Tarun Gupta
(Advocates)*

ORDER

(Through Video Conferencing)

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL).

1. Under adjudication is an Application i.e., IB -236/(ND)/2020 filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, filed by the Authorised Representative of the Financial Creditor. The Financial Creditor is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., '*K.V.Developers Private Limited*', declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. As seen from the record, on 28.01.2020, the Registry was directed to issue notice to the Corporate Debtor and the Financial Creditor was also permitted to take private notice on the Corporate Debtor and the case was posted to 31.03.2020. The Financial Creditor filed an Application IA - 2878/C-III/ND/2020 for the purpose of early hearing of the present application and therefore the matter was heard on 25.09.2020.
3. Heard the Counsels for the Financial Creditor, Corporate Debtor, and perused the pleadings including the documents placed on file. The Financial Creditor has claimed an amount of Rs. 43, 38, 38,572.52 as outstanding against the Corporate Debtor as on the date of filing of the Application, which the Corporate Debtor has failed to pay.
4. The brief facts of the case are that the Financial Creditor viz., *LIC Housing Finance Limited* is one of the largest Housing Finance Companies in India and is involved in the business of lending to the housing sector including providing project loans to the builders and construction companies and also long term finance to individuals for the purchase of construction of house/flat for residential purpose in India. The Corporate Debtor viz., '*K.V.Developers Private Limited*', approached the Financial Creditor for availing a credit facility for repayment of a pre-existing loan from Bank of Maharashtra which the Corporate Debtor was desirous of being taken over by the Financial Creditor for its business requirements. The Financial Creditor provided the construction/ credit facility of Rs. 90,00,00,000/- (Rupees Ninety Crores Only) vide sanction letter dated 01.02.2017. The Corporate Debtor represented that from the said amount Rs. 22, 00, 00,000/- (Rupees Twenty two Crores Only) was to be utilized for repaying the loan of Bank of Maharashtra and the balance amount was to be utilised towards its other business requirements.
5. Subsequently, on 28.03.2017, a Loan Agreement was entered into between the Financial Creditor and the Corporate Debtor, as per which the tenure of the Credit Facility was 42 months, repayable in EMIs at the agreed rate of interest of 15.20% P.A. The Corporate Debtor in order to secure the said Loan Amount executed certain documents which are annexed with the Application:

- Resolution dated 02.02.2017 passed by the Board of Directors of M/s. Arhaan Infratech Private Limited providing corporate guarantee to the Corporate Debtor upon the loan amount.
 - Deed of Hypothecation dated 07.03.2017
 - Deed of Personal Guarantee dated 28.03.2017 of Mr. Vinod Kumar.
 - Deed of Personal Guarantee dated 28.03.2017 of Mr. Sudhanshu Agarwal.
 - Deed of Corporate Guarantee dated 28.03.2017 of M/. Arhaan Infra Tech Private Limited
 - Deed of Personal Guarantee dated 28.03.2017 of Mr. Aman Agarwal
 - Deed of Personal Guarantee dated 10.04.2017 of Mr. Himanshu Agarwal.
 - Letter issued by the Corporate Debtor dated 17.04.2017 permitting to mortgage plot.
 - Indenture of Mortgage dated 18.04.2017.
 - Declaration and Undertaking dated 24.04.2017.
 - Escrow Agreement dated 28.03.2017.
 - Demand Promissory note dated 28.03.2017.
 - Letter of Continuity dated 28.03.2017.
6. The Financial Creditor upon execution of some of the documents mentioned above on 29.03.2017 released an amount of Rs. 22,00,00,000/- (Rupees Twenty two Crores Only) to Bank of Maharashtra with regard to the credit facility advanced by it towards Corporate Debtor. After the compliance of the pre-conditions the Financial Creditor made further disbursements of the loan amount. The Corporate Debtor failed to abide by the financial discipline and defaulted in making payment of the outstanding amount under the said credit facility and having thus committed breach of terms and conditions executed under various agreements.
7. The details of the outstanding amount towards default in repayment of loan amount is as under:

Due Type	Amount (In Rs.)
Principal Outstanding	35,34,43,185.00
EMI amount (interest)	5,09,09,038.00
Broken Period interest	24,47,957.00

Additional interest	1,84,97,133.00
A/c closure charges	70,68,864.00
A/c Closure charges - interstate GST18%	12,72,395.52
Misc. Expenses	2,00,000.00
TOTAL	43,38,38,572.52

8. The Financial Creditor submits that it has sent numerous reminders via E-mail but has not received any payment from the Corporate Debtor and hence the Financial Creditor was constrained to classify the account of the Corporate Debtor as a Non-Performing Asset (NPA) on 02.05.2019 in terms of the guidelines of regulatory authorities. Further, the Financial Creditor has sent a recall notice dated 18.07.2019 under Section 13 (2) of the SARFAESI Act, 2002 to the Corporate Debtor along with all the corporate guarantors of the Corporate Debtor calling upon the outstanding amount of Rs. 39,15, 59, 400.52 (Rupees Thirty Nine Crores Fifteen Lakh Fifty Nine Thousand Four Hundred Point Five Two Only), however, the Financial Creditor did not receive any reply to the said notice. The Financial Creditor had also sent call notice dated 11.09.2019 to the personal guarantors (who are also the promoters/directors of the Corporate Debtor) of the Corporate Debtor under Section 13 (2) of the SARFAESI Act, 2002 calling upon an outstanding amount of Rs. 40, 14, 96, 600/- (Rupees Forty Crores Fourteen Lakh Ninety Six Thousand Six Hundred Only) but no reply to the said notice has been received by the Financial Creditor.
9. The Corporate Debtor in its defence has specifically denied all the averments, statements, contentions, submissions and stated that claim made by the Financial Creditor is false, baseless and incorrect. It is stated that the Corporate Debtor had come up with a plan of Residential Group Housing Project named "KVD Windpark" for developing and constructing the same. The Corporate debtor has accepted the fact that the Financial Creditor vide letter 01.02.2017 had sanctioned a sum of Rs. 90,00,00,000/- (Rupees Ninety Crores Only) towards construction finance. Further, it is stated that the Financial Creditor made insufficient and delayed disbursement without any fault or failure of the Corporate Debtor and repeated requests and

reminders for disbursing at the earliest were made by the Corporate Debtor. The Financial Creditor had made only two disbursements out of the total amount sanctioned i.e. (i) Rs. 22,00,00,000 (Rupees Twenty Two Crores Only) on 28.03.2017 towards repayment to Bank of Maharashtra and (ii) Rs. 112,50,00,000/- (Rupees Twelve Crores and Fifty Lakhs only) on 24.04.2017 to the Corporate Debtor before the Communication dated 06.11.2017 was made by the Corporate Debtor.

10. It is stated that despite ongoing verbal discussion and without citing cogent reason the Corporate Debtor was denied the entire disbursement and also delayed disbursement which became the prime cause of derailing of the project leading to over expense of cost and time thus pushing the Corporate Debtor in the dismal situation in which it stands today. The Financial creditor on 13.11.2017 arbitrarily and as per its whims and fancies released only a sum of Rs. 6, 00, 00,000/- (Rupees Six Crores Only). Further, the Corporate Debtor had made various communications asking for the reasons for non-issuance/delay in issuance of NoC to which no satisfactory answer was ever provided by the Financial Creditor. The Corporate Debtor had requested the Financial Creditor to consider and restrict the sanctioned amount to Rs.34/32.25 Crores only after adjusting the FDR provided by the Corporate Debtor and the EMI amount to be calculated accordingly and the moratorium period to be extended by 18 months starting from 1st January, 2019 and subsequently, the Corporate Debtor agreed to adjust the FDR amount first in as on that date interest dues and the principal but with an understanding to release NOC's for flats on urgent basis by which Corporate Debtor sought to honour the further cash flow for the project. The said requests were made in compelling circumstances created by the Financial Creditor only and with a view that loan outstanding would come down thereby enabling the corporate debtor to repay its amount and complete the construction in accordance with the new deadlines.

11. The Corporate Debtor as a last resort made another request on 04.07.2019 post visit of the officials of the Financial Creditor on 02.07.2019 requesting to consider the change in the facts and real estate market. It is stated that the Financial Creditor did not consider any request and kept on taking arbitrary decisions due to which the project got delayed by the Corporate Debtor. The Corporate Debtor had requested the Financial Creditor to reduce the loan amount by adjusting the Fixed Deposit of

Rs. 7,50,00,000/- which was with the Financial Creditor thereby sanction further amount and reduce the loan amount so that the repayment on the interest amount can be saved and further be used in construction activities for the completion of the project. The Financial Creditor adjusted the Fixed Deposit of Rs. 7,17,08,893/- (Rupees Seven Crores Seventeen Lakhs Eight Thousand Eight Hundred and Ninety Three Rupees Only) towards the repayment of principal amount of Rs. 4,27,01,541/- (Rupees Four Crores Twenty Seven Lakhs One Thousand Five Hundred and Forty One Only) and the interest to the tune of Rs. 1,92,07,352/- (Rupees One Crore Ninety Two Lakhs Seven Thousand Three Hundred and Fifty two Rupees Only) with a promise that the loan amount will be restructured, NoC's will be quickly issued, further disbursement will also be considered in due course of time which was never done.

12. The Corporate Debtor in the para wise reply has stated that the total amount of loan granted/sanctioned was Rs. 90,00,00,000/- (Rupees Ninety Crores Only) against which a partial amount of Rs. 40,50,00,000/- (Rupees Forty Crores Fifty Lakhs) was only disbursed in much more time that it was assumed to be released and that too after lot of representations and chase being made by the Corporate Debtor.
13. The plea taken by the CD is devoid of merits and therefore rejected. The documentary evidence which is placed on the case file is sufficient to ascertain the existence of a default on the part of the Corporate Debtor. The Financial Creditor has fulfilled all the requirements of law including the name of the Resolution Professional for appointment as the IRP. Hence, the Application stands **admitted** and the commencement of the Corporate Insolvency Resolution Process is Ordered.
14. Mr. Pankaj Narag, is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as reflects from Form-2. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

15. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
- (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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
16. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.
17. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.
18. The Financial Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of IBC, 2016. The e-mail and other details of the IRP are as follows:

Name: Mr. Pankaj Narag

Registration No: IBBI/IPA-001/IP-P01006/2017-2018/11657

Address: 304, Tower Apartment, Swasthya Vihar, New Delhi -110092

Phone No.: 9990399745

Email ID: pankajnarangca@gmail.com

19. The Financial is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.

20. The Order is pronounced.

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NARENDER KUMAR BHOLA
Member (Technical)

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CH. MOHD SHARIEF TARIQ
Member (Judicial)