

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

CP (IBPP) No.-002(PB) /2023

**ORDER UNDER SECTION 54C OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016 READ WITH RULE 4 OF THE INSOLVENCY
AND BANKRUPTCY (PRE-PACKAGED INSOLVENCY RESOLUTION
PROCESS) RULES, 2021**

IN THE MATTER OF:

KVIR TOWERS PRIVATE LIMITED

HAVING REGISTERED OFFICE AT:

G-06, GROUND FLOOR, PLOT NO. SU LSC B-BLOCK RG CITY CENTRE,
LAWRENCE ROAD, NORTH WEST, DELHI, DELHI, INDIA, 110035

CIN- U70200DL2013PTC255199

.....Corporate Debtor/Applicant

Order Pronounced On: 20.02.2024

CORAM:

**CHIEF JUSTICE (Retd.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER TECHNICAL**

PRESENT

For the Applicant:Mr. P. Nagesh, Sr. Advocate, Saurabh Jain, Advocate

ORDER

1. The present application is being filed under section 54C of the Insolvency and Bankruptcy Code, 2016 (**the Code**) read with Rule 4 of the Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 (**PPIRP Rules**) seeking initiation of Pre-Packed Insolvency Resolution Process (**PPIRP**) under Chapter III-A of the Code with respect to KVIR Towers Private Limited (**Corporate Debtor**).
2. The Corporate Debtor is a company limited by Shares (Non-Government Co.) incorporated on 11.07.2013. The Authorized Share Capital of the Corporate Debtor is INR 5,00,000 and Paid-Up Share Capital is INR 1,00,000. On the date of application the Corporate Debtor is engaged in Real Estate Activities.
3. It is submitted that the Corporate Debtor has given Corporate Guarantee for an amount of Rs. 170 crore. The principal borrower RG Residency Pvt. Ltd. for whom the Corporate Debtor has given guarantee is stated to be under a default of Rs. 255.40 crore (Two Hundred Fifty Five Crore and Forty Lakhs) which is owed to Prithvi Asset Reconstruction and Securitization Company Ltd. (**Unrelated Financial Creditor**). However, as per the Loan Recall Notice dated 28.08.2023 issued by Unrelated Financial Creditor i.e. Prithvi Asset Reconstruction and Securitization Company Ltd., amount of default is Rs. 762.03 crore.
4. Copy of the Base Resolution plan was submitted by the Applicant. Part –II of the Base Resolution Plan provides for settlement proposal, relevant portion of which is extracted below:

“3. PPIRP Costs

3.1 The PPIRP Costs shall be paid in full and in priority, towards final payment of the PPIRP Costs payable under Section 30(2a) of the Code.

3.2 The PPIRP Costs shall be paid in priority to Creditors of the Corporate Debtor in accordance with the Code.

3.3 The PPIRP Costs shall be paid out of the Total Plan Value.

3.4 In order to enable the Corporate Debtor to pay the PPIRP Costs, the Resolution Professional shall provide details (including the names, amounts payable to and bank account details of such Persons) of relevant persons to

the board of directors of the Corporate Debtor in writing within 3 (three) Business Days of the Sale Date initial.

Note: Sale Date Initial is defined in Clause 2.1.2 of the base plan as the date on which 10% of Total Sale Proceeds-Unit is received.

4. Operational Creditors

4.1 Full payment is proposed for the Operational Creditors without any impairment

4.2 The Corporate Debtor shall pay INR --232.74 Crores from the Total Plan Value to the Operational Creditors ("OC Settlement Amount") within 32 months from the NCLT Order Date. The distribution of the OC Settlement Amount within the Operational Creditors would be as follows:

4.2.1 Operational Creditors (except GREATER NOIDA Authority) to be paid INR 12.38 Crores

4.2.2 GREATER NOIDA Authority to be paid INR 220.36 Crores

4.2.3 Upon payment of the OC Settlement Amount: (i) all related Claims shall stand irrevocably and unconditionally satisfied and extinguished, (ii) all outstanding obligations of the Corporate Debtor towards Operational Creditors including Employees and Workmen shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled; (iii) all legal proceedings initiated before any forum by or on behalf of any Employees or Workmen or Operational Creditors, to enforce any rights or Claims against the Corporate Debtor shall immediately, irrevocably and unconditionally stand abated, withdrawn, settled and / or extinguished and the Employees and Workmen and Operational Creditors shall take all necessary steps to ensure the same; (iv) Corporate Debtor shall stand discharged of all or any default or event of default under any documents or other agreements or arrangements (including any side letter, letter of comfort, letter of undertaking etc.) whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future and all rights/ remedies of the operational creditors shall stand permanently extinguished in relation to any period prior to the date of the NCLT Order and (v) the Employees and Workmen of the Corporate Debtor shall have no further rights or Claims against the Corporate Debtor, in respect of the period prior to the Insolvency Commencement Date.

5. Financial Creditors

5.1 Payment to Dissenting Financial Creditors

5.1.1 In the event the Dissenting Financial Creditors are entitled to an amount in the nature of liquidation value in terms of Sections 30 and Section 53 of the Code read with Regulation 45(5)(b) of the PPIRP Regulations ("DFC Payout"), then the Dissenting Financial Creditors would be provided the DFC Payout by the Corporate Debtor over and above the Total Plan Value.

5.1.2 Notwithstanding anything to the contrary contained in this Resolution Plan, the Dissenting Financial Creditors shall neither be entitled to, nor shall they receive any amounts other than the amounts due to them in the nature of liquidation value as stipulated hereinabove i.e. the DFC Payout. The Corporate Debtor submits that such treatment of Dissenting Financial Creditors is fair and equitable, and in compliance with Section 30(2),53 of the Code and Regulation 45(5)(b) of the PPIRP Regulations.

5.2 Payment to the Assenting Financial Creditors

5.2.1 The Assenting Financial Creditors shall be paid an amount aggregating to INR 246.49 Crores.

5.3 Related party Financial Creditors

5.3.1 The related party Financial Creditors to be paid out of surplus of the project of Corporate Debtor, if any.

6. No Person shall be entitled to receive any settlement more than the proportionate settlement payable to a similarly placed class of creditors or stakeholders, as stated in this Plan.

7. The relevant stakeholders of the Corporate Debtor shall provide to the Corporate Debtor details of the bank accounts in which payments to them are required to be deposited at least 7 (seven) Business Days prior to Payment Initiation Date.

Statutory Compliances

5. The Applicant has stated that it is duly registered as MSME (Micro, Small and Medium Enterprise) under the MSME Act, 2002 in the category (**"Micro Enterprise"**) and the copy of UDYAM (Udyog Aadhar Memorandum) Registration Certificate dated **31.05.2022** of the Corporate Debtor is annexed as **Annexure A-5** with the application. Therefore, as per the Applicant, it is eligible to file this application as per Section 54A(1) of the Code.

6. A special resolution by the Members of the Corporate Debtor to initiate the PPIRP under Section 54A (2) (g) of the Code was passed on 11.10.2023. The meeting of the members was held at the School Building, Plot No. 07A, Sector 16B, Greater Noida, U.P. The special resolution is produced at **Page 70** and annexed as **Annexure A-7** with the application.
7. A copy of declaration dated 18.11.2023 given by the majority of the directors of the Corporate Debtor for filing an application for initiating PPIRP as referred to in Section 54A(2)(f) of the Code is set out in **Form P6** of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 (**PPIRP Regulations**), which is on record at **Page No. 71-72** and marked as **Annexure A-8** of the application.
8. A copy of the approval of Non-Related Financial Creditor of the Corporate Debtor under Section 54A(3) of The Code for filing an application for PPIRP in **Form P4** of the PPIRP Regulations dated 06.12.2023 is on record at **Page No. 74-76** and marked as **Annexure A-10** of the application.
9. The Non-Related Financial Creditor of the Corporate Debtor under Section 54A(2)(e) of the code, approved the appointment of Insolvency Professional, Mr. Rajeev Lochan having Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885. It is produced at **Page 77-79** and marked as **Annexure A-11**, thereby complying with the provision of Section 54A (2) (e) of the Code read with Regulation 14(5) of the PPIRP Regulations. The said Insolvency Professional is proposed to be appointed as Resolution Professional to conduct the PPIRP and to discharge duties before initiation of PPIRP.
10. The Resolution Professional's written consent under Regulation 7(1) of the PPIRP Regulations in **Form-P1** is produced at **Page No. 80-81** and marked as **Annexure A-12** of the application and the Resolution Professional's report dated 09.12.2023 under section 54B(1)(a) of The Code read with Regulation 17 of the PPIRP Regulations in **Form-P8** is produced at **Page No.82-83** and marked as **Annexure A-13** of the application.

11. A copy of declaration regarding the non-existence of avoidance transaction relating to Corporate Debtor as per Section 54C(3)(c) of The Code, read with Regulation 16(2) of the PPIRP Regulations filed by Rajesh Goyal, Director, (DIN-01339614) in **Form P-7** is produced at **Page 73** and marked as **Annexure A-9** of the application.
12. A copy of affidavit dated 09.12.2023 stating that the Corporate Debtor is eligible under Section 29A of the Code to submit a Resolution Plan has also been filed which is provided at **Page 65-69** and marked as **Annexure A-6**. Thus the provision of Section 54A(2)(d) of the code are complied with.
13. The Corporate Debtor has also produced the audited financial statement of the company for the FY 2021-2022, 2022-2023 along with provisional balance sheet as on 30.11.2023 which are produced at **Page 238-286** and annexed as **Annexure A-19** of the application. Thus the Corporate Debtor has complied with the provisions of 54C(3)(d) of the Code.
14. The Corporate Debtor has furnished the name of the Insolvency Professional to be appointed as Resolution Professional (RP) as per the provision of Section 54C(3)(b) of the Code. Such RP has also given consent in writing in **Form-P1** which is placed at **Page No. 80-81** and marked as **Annexure A-12**. Thus the Corporate Debtor has complied with the provisions of 54C(3)(b) of the Code.
15. We are constrained to observe that the CD has obtained an UDYAM Registration Certificate based on his declaration of having Rs.13.50 Lakhs invested in Property, Plant and Equipment and revenue as Zero (Nil) as on March 31, 2022. Based on the above said declarations, the CD has been declared as "Micro Enterprise." We also observe that CD is engaged in Real Estate Business and it has given a Corporate Guarantee of INR170 crore.
16. Further, as per its Profit and Loss Account of F.Y. 2022-23, its revenue is zero meaning that there are no operations being carried out by the Corporate Debtor.

17. In the present facts and circumstances, we deem it appropriate to bring the above facts to the notice of the Govt. of India, Ministry of Micro, Small and Medium Enterprises as well as Ministry of Corporate Affairs as to whether any safeguard is in place in respect of corporates in Real Estate Sector who seek the status of MSME on account of the nature of its operations where plant and equipment is taken on rent or construction work is subcontracted, and there is a usual period of construction (before completion and sale of properties) during which turnover remains quite low.
18. Further, it would be relevant to note that the Resolution Professional and the Committee of Creditors would be responsible to check whether the Corporate Debtor should receive the benefits of being categorized as “Micro Enterprise”. In the event of the Corporate Debtor losing its status of Micro Enterprise at a later point of time on account of turnover from operations being above the threshold limit, the RP will report to this Adjudicating Authority for appropriate orders as per law.
19. On perusal of the proceedings, we find that the Corporate Debtor has produced the required document and material in order to comply with the provisions of the Code. The application is complete and meets the requirement of the law. Therefore, we are inclined to admit this application under Section 54C of the Code.

ORDER

20. We admit this application and pass the following orders:
- i. The application for Pre-Packed Insolvency Resolution Process of KVIR Towers Private Limited stands admitted under Section 54C of the Code.
 - ii. In view of the commencement of PPIRP, the moratorium is declared as envisaged under the provisions of Section 14(1) of the Code for prohibiting all of the following:
 - (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.

iii. The Resolution Professional (RP) as proposed by the Financial Creditor namely Mr. Rajeev Lochan having Registration No. IBBI/IPA-002/IP-N00606/2018-19/11885 is appointed as a Resolution Professional to conduct PPIRP as per the provisions of the Code. Further, the Resolution Professional shall also perform his duties and functions as per the provisions given under Section 54F of the Code.

iv. The RP is directed to make public announcement of PPIRP of the Corporate Debtor as per Section 54E of the code and invite and collate all the claims of the creditors.

v. As mentioned under Section 54F(5), the personnel of the Corporate Debtor shall extend all the assistance and cooperation to RP.

vi. In case of non-cooperation, the RP can approach this Adjudicating Authority under Section 19(2) of the Code. The management of the Corporate Debtor shall remain vested with the Board of Directors of the Corporate Debtor as per the provisions of 54H subject to action under 54J of the code, if any. The Board of Directors shall discharge their duties as specified under 54H(b) and Section 54H(c) of the Code. Also, in the event of the Corporate Debtor losing its status of Micro Enterprise at a later point of time on account of turnover from operations being above the threshold limit, the RP will report to this Adjudicating Authority for appropriate orders as per law.

vii. We direct the RP to file an interim report within 30 days to this authority

viii. The Registry is directed to communicate a copy of this order to Financial Creditor, the Corporate Debtor and to the RP and the concerned ROC, after completion of necessary formalities, within 7 days of working and upload the same on the website immediately after pronouncement of the order. The Registry is further directed to send a copy of the order to the IBBI also for their record.

ix. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

x. Copy of the order also be issued to Govt. Of India, Ministry of Micro, Small and Medium Enterprise and Ministry of Corporate Affairs with reference to Para-17 above.

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)**