

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

C.P. (IB) No. 277/MB-IV/2021

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016.

In the matter of

SREI Equipment Finance Limited

[CIN: U70101WB2006PLC109898]

...Financial Creditor

v/s.

M/s. Blue Arcade Properties Private Limited

[CIN: U70200MH2005PTC152665]

...Corporate Debtor

Order Delivered on: **28.03.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

CP (IB) No. 277/MB-IV/2021

For the Financial Creditor:

Mr. Nausher Kohli a/w Mr. Darshit
Dave and Mr. Pawan Kulkarni i/b
M/s. AVP Partners, Ld. Counsel for
the Financial Creditor.

For the Corporate Debtor:

Mr. Amir Arsiwala a/w Ms.
Bhagyashree Lembhe i/b Naik, Naik

& Co., Ld. Counsel for the Corporate
Debtor.

ORDER

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by **SREI Equipment Finance Limited** (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **M/s. Blue Arcade Properties Private Limited**, the Corporate Debtor.

1.1 The present petition is filed on 01.03.2021 and the total default as on 30.09.2020 amounts to INR 82,79,19,838/- (Rupees eighty-two crores, seventy-nine lakhs, nineteen thousand, eight hundred and thirty-eight only), which has been arrived at via Principal outstanding of INR 57,40,40,664/-, an Overdue amount of INR 20,46,71,103/-, and Overdue charges of INR 4,92,08,071/-. The date of Default, as specified in Part IV of the petition, is 15.05.2019.

Submissions of the Financial Creditor:

2. The Financial Creditor submits that *vide* Rupee Loan Agreement *dated* 16.08.2018 (“**Agreement**”), a loan of INR 62,45,00,000/- (Rupees Sixty-two crores, forty-five lakhs only) was disbursed to the Corporate Debtor herein. As a primary security for the afore-mentioned financial facility, a Deed of Hypothecation *dated* 16.08.2018 was executed by the Corporate Debtor in favour of the Financial Creditor. Subsequently, a Certificate of Registration of Charge *dated* 16.08.2020 was issued on behalf of Ministry of Corporate Affairs, Government of India with Charge Identification Number 100219440.

3. As per terms and conditions of the said Agreement, the financial facility extended *via* the Financial Creditor was repayable by the Corporate Debtor in 59 monthly instalments carrying a 14.01% rate of interest per annum.
4. The Financial Creditor submits that consequent to successive defaults in repayment of the afore-mentioned financial facility, the Financial Creditor issued an Insolvency-cum-Demand notice *dated 10.10.2020* to the Corporate Debtor, calling upon the latter to clear the outstanding dues amounting to INR 25,38,79,175/- (including overdue charges) as on 30.09.2020. The defaults as against the respective dates are tabulated as hereinunder:

| Date of Default | Amount claimed to be in Default (INR) |
|-----------------|--|
| 15.05.2019 | 78,29,229 |
| 15.06.2019 | 81,84,422 |
| 15.07.2019 | 79,64,056 |
| 15.08.2019 | 81,84,422 |
| 15.09.2019 | 81,84,422 |
| 15.10.2019 | 79,64,056 |
| 15.11.2019 | 81,84,422 |
| 15.12.2019 | 79,64,056 |
| 15.01.2020 | 81,78,122 |
| 15.02.2020 | 81,78,122 |
| 15.03.2020 | 77,43,774 |
| 15.04.2020 | 19,352,000 |
| 15.05.2020 | 19,352,000 |
| 15.06.2020 | 19,352,000 |
| 15.07.2020 | 19,352,000 |
| 15.08.2020 | 19,352,000 |
| 15.09.2020 | 19,352,000 |
| | Total = 20,46,71,103 |

5. Subsequently, the Financial Creditor herein was admitted into CIRP *vide* Order dated 08.10.2021 (“Admission Order”) by National Company Law Tribunal, Calcutta Bench in C.P.(IB) No. 294/KB/2021 and C.P. (IB) No. 295/KB/2021 filed by Reserve Bank of India under Section 227 of the IBC, 2016 read with Rule 5 of Insolvency & Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.
6. The Financial Creditor submits that in furtherance of the said Admission Order dated 08.10.2021, an application for approval of Resolution Plan was submitted by National Asset Reconstruction Company Limited (“NARCL”), and subsequently approved by National Company Law Tribunal, Calcutta Bench *vide* Order dated 11.08.2023 in I.A. (IB) No. 428/KB/2023 ad I.A. (IB) No. 434/KB/2023.
7. The Financial Creditor further submits that pursuant to the approval of the Resolution Plan in the Second meeting of Implementation and Monitoring Committee (“IMC”) of Financial Creditor on 17.08.2023; a Resolution was passed by the IMC therein authorising Mr. Rajneesh Sharma, the Administrator and Chairman of IMC to continue to undertake various activities required to ensure the company’s status as a going concern during the implementation of the Resolution Plan. The Financial Creditor therefore submits that the IMC is duly authorized to contest and continue the present proceedings against the Corporate Debtor.

Submissions of the Corporate Debtor:

8. In response to the averments raised by the Financial Creditor in the present petition, the Corporate Debtor has filed an Affidavit-in-Reply dated 01.03.2023. It submits that the financial default cited by the Financial Creditor is barred by way of Section 10A of IBC, 2016 based on date of filing of the present petition

and that the “*..alleged default in payment during the period March 2020 till September 2020, which as stated aforesaid in terms of Section 10A stands excluded and therefore, the alleged default cannot and ought not to be taken into consideration.*”.

9. The Corporate Debtor further submits that the present petition by Financial Creditor suffers from want of jurisdiction for failing to resort to the Dispute resolution mechanism warranted for by clause 9.11 of the Rupee Loan Agreement No. 169126 dated 16.08.2020. Furthermore, the Corporate Debtor cites insufficient stamping of the said Agreement thereby purporting the Financial Creditor’s claim to be bad in law.
10. Additionally, the Corporate Debtor through Written Submission dated 30.10.2023 submits that, the deponent acting on behalf of the Financial Creditor “*..is not an Authorized Representative*” and thereby lacks authorisation to move the present petition at the backdrop of order dated 08.10.2021 by the National Company Law Tribunal, Calcutta Bench in C.P. No. 294 of 2021.

Findings:

11. We have heard the arguments of Learned Counsel(s) for Financial Creditor and the Corporate Debtor.

12.1 At the outset, this Bench is of the considered view that the present proceedings have been undertaken by person(s) with valid authorisation(s) on behalf of Financial Creditor. The Financial Creditor’s contentions in Para (7) hereto regarding the same are evidenced as part of the records and thus duly stand the test of judicial prudence.

12. With regards to the averments raised by the Corporate Debtor regarding the locus and maintainability of the captioned petition filed by Financial Creditor, this Bench is of the considered view that there is no dispute regarding the fact

that the Corporate Debtor owes 'financial debt' to the Financial Creditor in terms of Section 5(8) of IBC, 2016. We further note that the default amounts from 15.05.2019 to 15.03.2020 *i.e.* before the 10A period, amount to more than INR 1,00,00,000/- (Rupees one crore) and thereby satisfy the threshold requirement warranted for by Section 4 of IBC, 2016.

13. In so far as the contention raised by the Corporate Debtor with regards to the loan documents not being sufficiently stamped is concerned; It is trite in law that the question of insufficiently stamped loan documents is not relevant while adjudicating upon the admissibility of a Petition under Section 7 of the code. This position is also settled in *SpiceJet Limited v/s Credit Suisse AG [2022 SCC OnLine Mad 112]*, wherein the Hon'ble Madras High Court has held as hereinunder:

"... the point at issue is not whether the document sought to be relied by the petitioner is sufficiently stamped or stamped at all. The only point to be verified is whether the debt is bonafide disputed and whether the said defence is a substantial one. Applying this test, keeping in view the binding decision in this regard, which is referred to by the Company Court in the impugned order, independent of the satisfaction recorded by the Company Court, we also hold that such a defence cannot be said to be a bonafide defence and at the stage of admission of the petition, it need not be gone into. This argument therefore needs to be rejected."

14. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, *i.e.*, existence of 'debt' due and 'default', for admission of a petition under Section 7 of the Code, have been duly met in this case.

ORDER

It is accordingly hereby ordered as follows:

15. The above **Company Petition No. (IB) 277/MB-IV/2021** is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Blue Arcade Properties Private Limited.
16. This Bench hereby appoints **Mr. Gaurang Chhotalal Shah**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00947/2019-2020/13002, Address: Flat 204 A Wing Raj Vaibhav 1 Chs , Dahanukar Wadi Mahavir Nagar Kandivali West, Mumbai Suburban, Maharashtra-400067 [E-mail: fcsgaurang.shah@gmail.com] as the Interim Resolution Professional to carry out the functions as mandated under IBC, 2016.
17. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the Resolution Professional in terms of section 17 of the IBC, 2016. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
18. The Financial Creditor shall deposit a sum of **INR 5,00,000/-** (Rupees Five-lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
19. There shall be a moratorium under section 14 of the IBC, 2016 in regard to the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

20. Notwithstanding the above, during the period of moratorium:

- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

21. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the Resolution Plan under sub-

section (1) of section 31 of the IBC, 2016 or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016 as the case may be.

22. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
23. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
28.03.2024
Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)