

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)
(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)**

CP (IB) No. 846/KB/2019

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

**Orchid Barter Private Limited, having its registered office at
5, Russel Street, First floor, Kolkata- 700 071**

...**Applicant/Financial Creditor**

-Versus-

In the matter of:

**Skipper Homes Private Ltd., having its registered
office at 16F, East Topsia Road, First floor, Kolkata- 700 046
CIN: U51109WB2006PTC109299;**

...**Respondent/Corporate Debtor**

Counsel appeared:

1. Mr. Nikunj Berlia, Advocate] For Corporate Debtor

1. Ms. Urmila Chakraborty, Advocate] For Financial Creditor

2. Mr. A. Dutta, Advocate]

Date of Pronouncement of Order: 21.10.2019

ORDER




Per Shri M. B. Gosavi, Member(J):

Orchid Barter Private Limited - the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Skipper Homes Private Ltd.** – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.72,08,850/-.

2. Financial Creditor stated that on 21.01.2015, it has granted and disbursed the corporate debtor inter corporate deposit of Rs.70 lakhs at the interest rate of 9% per annum. The Corporate Debtor was to repay the loan on or before 21.08.2018. Corporate Debtor failed and neglected to repay the loan as agreed. Hence, on 17.12.2018, notice of demand of loan was sent to the corporate debtor. In spite of receipt of notice, corporate debtor committed default in paying the debt. Hence, this proceeding is filed.

3. Financial Creditor suggested name of Shri Mahesh Chandra Gupta (Mob.98301046652) of FE 202, Sector-III, Salt Lake City, Kolkata- 700 106 having registration no. IBBI/IPA-001/IP-P01489/2018-2019/12304 and email Id. mcgupta90@gmail.com for appointment as the IRP. Proposed IRP has submitted written communication in Form-2 dated 19.04.2019, wherein he has declared that there is no disciplinary enquiry pending against him.

4. The corporate debtor was served with the notice. One of its director, Mr. Kamalesh Agarwal filed affidavit-in-reply. It appears from perusal of reply that corporate debtor denied the debt and default also. It is prayed that the application may be rejected.





5. We head the Ld. Advocate, Ms. Urmila Chakraborty for the Financial Creditor and Ld. Advocate, Mr. Nikunja Berlia for the Corporate Debtor. We perused the records.

6. The Financial Creditor produced the receipt dated 29.01.2015 executed and issued by the corporate debtor in favour of the financial creditor for having received loan of Rs.70 lakhs. It is seen that corporate debtor agreed to repay loan on 28.01.2018 alongwith the interest @9% p.a. (Annexure "F"). Not only that, Financial Creditor also produced on record its bank statement. Perusal of it shows that the loan amount was transferred to the account of the corporate debtor by way of RTGS. In our considered opinion, it is enough evidence to hold that the financial creditor gave the corporate debtor loan of Rs.70 lakhs and corporate debtor committed default in paying the sum when it became due.

7. The corporate debtor did not raise any substantial defence except denying the contention of the financial creditor. We hold that it is denial of debt and default, which is only to avoid its admission in CIRP. Since the financial creditor proved both the facts that there is debt due and payable by the corporate debtor and the corporate debtor committed default, we admit the corporate debtor in CIRP. The application is defect-free. Hence, we pass the following order.

ORDER

- (i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **Skipper Homes Private Ltd.** Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.



- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (54 of 2002);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

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- iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- (ix) As per proposal given by the Financial Creditor, Shri Mahesh Chandra Gupta (Mob.98301046652) of FE 202, Sector-III, Salt Lake City, Kolkata- 700 106 having registration no. IBBI/IPA-001/IP-P01489/2018-2019/12304 and email Id. mcgupta90@gmail.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- x) The Financial Creditor to pay to IRP a sum of Rs.1,00,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI




(Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

xii) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **05.12.2019** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 21st day of October, 2019.