

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH, KOLKATA

CP(IB) No. 372/KB/2019

IN THE MATTER OF

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

And

IN THE MATTER OF

M/s Sesa International Limited ,31 Shakespeare Sarani (Jasmine Tower),
6th Floor, Room No. 611, Kolkata West Bengal, 700017

....Applicant/Financial Creditor

Versus

Avani Towers Private Limited, Avani Heights 59A, Chowringhee Road, Kolkata
West Bengal, 700020

....Respondent/Corporate Debtor

Date of Hearing : 04.10.2019

Delivered on : 15.10. 2019

Coram:

Madan B Gosavi, : Member (J)


Virendra Kumar Gupta, : Member (T)

For the Financial Creditor : Mr. Saurav Jain , Advocate

For the Corporate Debtor : Mr. M.S.Jiwan, Advocate







ORDER

Per Virendra Kumar Gupta, Member(Technical)

This application has been filed Under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the Financial Creditor namely M/s Sesa International Ltd. to initiate Corporate Insolvency Resolution Process against Corporate Debtor namely M/s Avani Towers Pvt. Ltd..The amount of default has been stated at Rs. 2,21,45,755.00/- (Rupees Two Crores Twenty One Lakhs Forty-Five Thousand Seven Hundred and Fifty Five only) and the date of default has been stated as 01.01.2019.

2. The facts, in brief, are that the Financial Creditor given an advance a sum of Rs.60,00,000.00 (Rupees Sixty Lakhs) on interest in connection with the Project. For this purpose an agreement was entered into between the parties on 5th August 2014.

3. Learned counsel narrated these facts and drew our attention to pages 21 to 26 of the paper book containing the copies of the above said agreement. He drew our attention to Clause No.4 of the said agreement, wherein it has been stated that within four years from execution of this agreement, Corporate Debtor was to obtain sanction and start construction and in case Corporate Debtor failed to do so, then after expiry of further grace period of four months, the Financial Creditor was entitled to seek refund of its investment alongwith interest therein



including penal interest. Based upon this Clause, it was pleaded that the amount was payable in December, 2018. Hence, the application was well within the limitation period, debt became due and payable and there was a default in the payment thereof.

4. The learned counsel for the Corporate Debtor submitted that due to adverse business conditions, the amount could not be paid. It was further pleaded that there was no understanding as regard to penal interest and further no advance was to be refunded. It was also pleaded that the delay occurred due to sanction not being granted by Government.

5. We have considered the submissions made by both the sides and matter on record. Admittedly, there is a debt due and payable by Corporate Debtor, which is not barred by limitation. The Corporate Debtor has defaulted in repayment thereof. Petition filed under section 7 of IBC is complete in all respects. The name of IP proposed by Financial Creditor was not approved during the course of hearing. For the reason that such IP was already having sufficient assignments of CIRP/ liquidation as per the consent form submitted along with the petition. However, vide letter dated 4th October, 2019 the proposed IRP had submitted the current status of assignments in his hand and has also submitted details of two other IP professionals. On consideration of the factual position of number of assignments, which is handled by Mr. Jitendra Lohia, original I.P. proposed by the Financial Creditor, we are

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of the view that this assignment can also be handled by him. Accordingly, we approve his name as IRP.

6. The application is hereby admitted and we order as under:-

ORDER

- i. The application filed by the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Avani Towers Private Limited is hereby admitted.
- ii. We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii. 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 Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv. Moratorium under Section 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 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 (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.
- v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi. 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.
- vii. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii. 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 Section 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.
- ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x. Shri Jitendra Lohia having registration No. IBBI/ IPA-001/P00170/2017-18/10339 e mail id jitulohia@knjainco.com is appointed as Interim Resolution Professional for ascertaining the



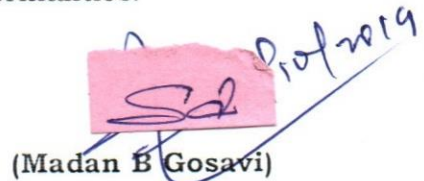
particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

- xi. The Financial Creditor to pay a sum of Rs. 1,000,00/- to IRP as advance fee as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.
- xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xiii. Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.
7. List the matter on 15.11.2019 for the filing of the progress report.
8. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



Virendra Kumar Gupta)

Member (T)



(Madan B Gosavi)

Member (J)

Signed on 15th October, 2019