



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III
IB – 482/ND/2024**

Order under Section 10 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 7 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

ELEGANCE MALLS LIMITED

Having Its Registered Office at:

D-3, District Centre Saket, South Delhi

New Delhi, India – 110017.

CIN: U70101DL2005PLC134697

..... Corporate Applicant

Order Pronounced On: 09.06.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : Mr. Ravi Prakash, Sr. Adv., Mr. Shahan
Ulla, Mr. Varun Kalra, Mr. Pranav Khanna,
Adv.

For the Respondent : Mr. Ashish Jha, Adv.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. **IB – 482/ND/2024** is an Application filed by **M/s Elegance Malls Limited**, the Corporate Applicant, before this Adjudicating Authority, under Section 10 of the Insolvency and Bankruptcy



Code, 2016 (“IBC” or “Code”) read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (**“Adjudicating Authority Rules”**), for initiating the Corporate Insolvency Resolution Process (**“CIRP”**) and declaring moratorium and for appointment of Interim Resolution Professional (**“IRP”**), against itself. The Application has been filed through its Director **MR. Sahil Anand, DIN: 07976399** duly authorized *vide* Special Resolution dated 25.06.2024 passed by board of Directors which is filed along with the Application. The Corporate Applicant has committed the default in paying the debt as mentioned in the Part -III of the Application is of Rs. 84,91,224/- financial debt and Rs. 24,30,000/- operational debt, total debt being Rs. 1,09,21,224/-.

2. The Corporate Applicant was incorporated on 05.04.2005, as a Company Limited by Share (Non- govt. Company) having CIN: U70101DL2005PLC134697, under the Companies Act, 1956. The Authorised Share Capital of the Corporate Applicant is Rs. 25,00,000/- and the Paid-up Share Capital of the Corporate Applicant is Rs. 21,77,250/-. The Corporate Applicant was incorporated to carry on the business of Real estate projects and construction companies. The Registered Office Address of the Corporate Applicant is D-3, District Centre Saket, South Delhi, New Delhi, Delhi, India, 110017. Therefore, this Bench has jurisdiction to deal with this application. A copy of the Company Details/Master Data of the Corporate Applicant which is filed along with the Application.

3. **The averments made by the Corporate Applicant in the application, which are necessary for adjudicating the matter are summarized as under:**

- i. The Corporate Applicant was incorporated under the provisions of the Companies Act, 1956 on 05.04.2005. The Corporate Applicant changed its name from Unitech Malls Limited to



Elegance Malls Limited on 15.09.2009. The Corporate Applicant was incorporated to carry on the business of Real estate projects and construction companies.

- ii. Corporate Applicant entered into a Memorandum of Understanding dated 04.08.2014 with **Prius Real Estate Private Limited ("FC-1")** to provide unsecured financial assistance of Rs. 2,00,00,000/- (Rupees Two Crores Only) to the Corporate Applicant. Out of the said loan facility, the FC-1 disbursed an amount of Rs. 1,30,00,000/- on 06.08.2014, Rs. 1,50,000/- on 29.04.2015 and Rs. 1,00,000/- on 29.04.2016.
- iii. On 15.01.2016, the Corporate Applicant had paid back Rs. 75,00,000/- which was duly adjusted against the Principal loan amount by FC-1, with a remaining balance of Rs. 57,50,000/-. As per Clause 2 of the Memorandum of Understanding dated 04.08.2014, the Corporate Applicant was liable to pay an interest @ 14.75% p.a to FC-1 against the disbursed loan amount. Whereby the Corporate Applicant has failed to pay and comply with the requisite clause of Memorandum of Understanding dated 04.08.2014 and defaulted upon the payments. The interest amount till 31.03.2017 is aggregated to a sum of Rs. 22,29,424/- (Rupees Twenty-Two Lakhs Twenty-Nine Thousand Four Hundred and Twenty-Four Only) i.e., duly reflected in the books of accounts of the Corporate Applicant and is unpaid till date.
- iv. Corporate Applicant entered into another Memorandum of Understanding dated 29.08.2016 with Prius Real Estate Private Limited ("FC-1") for another unsecured financial loan to the sum of Rs. 1,00,00,000/- (Rupees One Crore Only). However, the Memorandum of Understanding dated 29.08.2016 was not given effect to and no amounts were disbursed to the Corporate Applicant.
- v. On 17.04.2019 Prius Real Estate Private Limited ("FC-1") served Demand notice, for repayment of the outstanding debt of Rs.



94,00,000/- (inclusive of Interest amount of Rs. 36,00,000/- aggregated till 30.11.2018) as reflected in its books of accounts. The debt amount of Rs. 57,50,000/- along with Interest tuning to Rs. 22,29,424/- till 15.03.2017 is unpaid till date.

- vi.** On 26.06.2019 **SVIIT Software Private Limited ("FC-2")**, on behalf of the Corporate Applicant paid a sum of Rs. 99,900/- as professional fees to the Corporate Applicants' Auditor. Hence a financial debt of Rs. 99,900/- is pending and outstanding in the books of account of the Corporate Applicant payable to FC-2.
- vii.** **M/s Rapid Buildwell Limited ("FC-3/ OC")**, vide an oral loan agreement on 19.03.2021 between the Corporate Applicant and FC-3 provided a short-term loan amounting to Rs. 3,42,500/-. FC-3 is a related party to the Corporate Applicant, it had borne the external professional expense of the Corporate Applicant tuning to Rs. 69,400/- in the financial year 2021-2022. The aggregated total amount of Rs. 4,11,900/- could not be paid by the Corporate Applicant to FC-3 and is outstanding in the books of accounts of the Corporate Applicant.
- viii.** Apart from the above referred Financial Debts the Corporate Applicant also failed to repay Operational Debts owed to **M/s Rapid Buildwell Limited ("FC-3/OC")**.
- ix.** The Operational Debt arises out of Contract dated 24.03.2022 & 04.04.2022 ("Contract") entered between OC & Corporate Applicant for the Financial year 2021-2022 & 2022-2023 respectively. The said contract was pertaining to business support services comprising of insights into the real estate market analysis, regulatory compliance and investment opportunity to the Corporate Applicant for its operations and business growth. As per the agreed terms of the contract, the Corporate Applicant was liable to pay a lump sum fee of Rs. 18,00,000/- for the Financial Year 2021-2022 and Rs. 9,00,000/- for the Financial year 2022-2023.



- x.** Due to financial stress the Corporate Applicant failed to comply with the payment terms of the contract agreement and the defaulted amount had aggregated to Rs. 24,30,000/- (excluding TDS @10%). OC issued several demand letters dated 30.03.2022, 10.04.2022 and 24.04.2022 to the Corporate Applicant for the payment of the outstanding due amount reflected in their financial statements.
- xi.** The Corporate Applicant is not in a financial position to undertake any commercial activity to repay its creditors. Moreover, no commercial operations are reported in the Audited financial statement of the Corporate Applicant in the preceding 3 (three) financial years.
- xii.** The Corporate Applicant has identified the Creditors in their books of accounts, to whom they were unable to meet their payment obligations and the amount due to such creditors tunes to a sum of Rs. 1,09,21,224/- (Rupees One Crore Nine Lakhs Twenty One Thousand Two Hundred and Twenty Four Only) as on 25.06.2024.
- xiii.** Therefore, the Corporate Applicant vide its special board resolution dated 25.06.2024, board of directors resolved to file application under Section 10 of the Insolvency and Bankruptcy Code, 2016 and authorized the Applicant/director to sign the petition for initiating the Corporate Insolvency Resolution Process against itself under Section 10 of the IBC, 2016. Further, in The relevant Extract of the Board Resolution is reproduced below:



AUTHORIZATION TO FILE AN APPLICATION UNDER SECTION 10 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 ("IBC, 2016")

It was agreed unanimously that Mr. Sahil Anand chairs the meeting ("Chairman").

The Chairman informed the Board that the Company does not have any business operations in the immediately preceding two financial years on the basis of the Audited Financial Statement of the Company and also, the Company are not having any cash flows from which it can repay its debts borrowed.

The Chairman further apprised the members, the Company has also defaulted in making repayment towards the unsecured loans availed and also defaulted in making payment of the operational/other creditors.

"RESOLVED THAT approval of the members to file an Application under Section 10 of the Insolvency and Bankruptcy Code, 2016 with the National Company Law Tribunal ("**Application**") for commencing Corporate Insolvency Resolution Process ("**CIRP**") of the Company.

"RESOLVED FURTHER THAT Mr. Sahil Anand and/or Mr. Praveen Kumar and/or Md. Makhdoom Ahmad, Directors of the Company ("**the Authorised officers**") be and are hereby severally authorized on behalf of the Company to take all the required steps including in relation to the CIRP of the Company and either of the one authorized person can sign, verify, declare, affirm, make, present, submit and file the following:

xiv. The Corporate Applicant submits the below mentioned documents to prove the existence of default of the debt: -

- a) Copy of Audited financial statement for the financial year for the year ending 31.03.2020, 31.03.2021, 31.03.2022 and 31.03.2023, filed with the application as Annexure A-6(Colly).
- b) Copy of Provisional Financial statement for the period from 01.04.2023- 25.06.2024, filed with the application as Annexure A-7.
- c) Copy of Memorandum of Understanding dated 04.08.2014 and Memorandum of Understanding dated 29.08.2016 executed between Prius Real Estate Private Limited and the Corporate Applicant along with copy of the ledger account of the Prius Real Estate Private Limited in the books of Corporate Applicant, filed with the application as Annexure A-8(Colly).
- d) Copy of Loan ledger account of Rapid Buildwell Limited maintained by the Corporate Applicant, filed with the application as Annexure A-9.



- e) Copy of Ledger account statement of SVIIT Software Limited maintained by the Corporate Applicant, filed with the application as Annexure A-10.
- f) Copy of business support services contract along with Copy of Invoice Memo raised by Rapid Buildwell Limited for the Financial year 2021-2022 & 2022-2023 and its ledger statement, filed with the application as Annexure A-11(Colly).
- g) Copy of Demand letters dated 30.03.2022, 10.04.2022 & 24.04.2022 issued by Rapid Buildwell Limited, filed with the application as Annexure A-13(Colly).
- h) Copy of Demand Notice issued by Prius Real Estate Private Limited, filed with the application as Annexure A-14.
- i) Copy of statement of assets and liabilities of Corporate Applicant as on 25.06.2024, filed with the application as Annexure A-15.

4. **Analysis and Findings**

- i. We have heard the Ld. Counsel for the Corporate Applicant and perused the records and documents submitted.
- ii. Vide order dated 22.08.2024 this Adjudicating Authority has issued notice to the Financial Creditors as well as Operational Creditors. On 19.09.2024 Ld. Counsel for the Applicant stated that pursuant to the order dated 22.08.2024 the notices have been served on M/s. SVIIT Software Private Limited and M/s. Rapid Buildwell Limited, the Financial Creditors. However, the notice on M/s. Prius Real Estate Private Limited could not be served which is the major Financial Creditor amongst the three. Hence liberty was granted to serve on M/s. Prius Real Estate Private Limited by paper publication. Order dated 19.09.2024 is reproduced below:

“It is stated by the Ld. Counsel appearing for Applicant that pursuant to the order dated 22.08.2024 the notices have been



served on M/s. SVIT Software Private Limited and M/s. Rapid Buildwell Limited, the Financial Creditors. However, the notice on M/s. Prius Real Estate Private Limited could not be served which is the major Financial Creditor amongst the three.

The Applicant is at liberty to serve on M/s. Prius Real Estate Private Limited by paper publication and shall file proof and affidavit of service within two weeks.

The Financial Creditor is directed to file response within two weeks from today.

List the matter on 18.10.2024.”

The Corporate Applicant vide newspaper publication in Financial Express newspaper dated 10.10.2024 has served M/s Prius Real Estate Private Limited.

- iii.** Considering the submissions made and documents placed on record, we find that the debt is due and payable by the Corporate Applicant to Operational Creditor and the Financial Creditors as specified in Part-III of the Form 6 and the Corporate Applicant is unable to pay the same.
- iv.** An affidavit dated 14.01.2025 is filed by Mr. Devarajan Raman, the Resolution Professional of M/s. Rapid Buildwell Limited, stating that Elegance Malls Limited hold 100% of Rapid Buildwell Limited which one of the Financial Creditor of Elegance Malls Ltd and the Resolution Professional has no objection if the captioned Petition is admitted. The relevant portion of the said affidavit is reproduced below:



/ I, Mr. Devarajan Raman, aged 69 years, Indian inhabitant, Resolution Professional of M/s. Rapid Buildwell Limited having my office at 9, 22 Rajabhadur Mansion, Mumbai Samachar Marg, Fort, Mumbai – 400001., state and declare as follows:

1. I say that, I am the Resolution Professional of M/s. Rapid Buildwell Limited vide Order dated 21.11.2022 in CP (IB) No.522 (ND) of 2022. Hereto annexed and marked as **Exhibit – ‘A’** is a copy of Order dated 21.11.2022.
2. I say that, when the captioned matter was listed on 03.12.2024 the undersigned apprised this Hon’ble Tribunal that he has no objections to the admission of the captioned Petition. The Hon’ble Tribunal allowed the undersigned to file the present affidavit. Hereto annexed and marked as **Exhibit – ‘B’** is a copy of Order dated 03.12.2024.
3. I say that, Elegance holds 100% of Rapid Buildwell Limited. I further say that, as one of the Financial Creditor of Elegance Malls Ltd. I have no objection if the captioned Petition is admitted.



- v. As per Section 10 of Insolvency and Bankruptcy Code, 2106 a Corporate Applicant can file an application before the Adjudicating Authority, seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor that has committed a default, for initiating Corporate Insolvency Resolution Process with the Adjudicating Authority, in a prescribed form by enclosing the following:
- a. The information relating to its books of account and such other documents for such period as may be specified;
 - b. The information relating to the resolution professional proposed to be appointed as an interim resolution professional; and



- c. The Special resolution passed by shareholders of the Corporate Debtor or the resolution passed by at least three-fourth of the total number of partners of the Corporate Debtor, as the case may be, approving filing of the application. As per 10(4) the Adjudicating Authority can admit an application if the same is complete and no disciplinary proceedings are pending against the proposed Resolution Professional.
- vi.** On perusal of the documents and records i.e Audited financial statement for the Financial year for the year ending 31.03.2020, 31.03.2021, 31.03.2022 and 31.03.2023, Provisional Financial statement for the period from 01.04.2023- 25.06.2024, ledger account of the Prius Real Estate Private Limited in the books of Corporate Applicant, Loan ledger account of Rapid Buildwell Limited maintained by the Corporate Applicant, Ledger account statement of SVIIT Software Limited maintained by the Corporate Applicant, Invoice Memo raised by Rapid Buildwell Limited for the Financial year 2021-2022 & 2022-2023 and its ledger statement, Demand letters dated 30.03.2022, 10.04.2022 & 24.04.2022 issued by Rapid Buildwell Limited, Demand Notice issued by Prius Real Estate Private Limited, statement of assets and liabilities of Corporate Applicant as on 25.06.2024; it becomes clear that in the instant case there was a debt due and there was a default of the same. It is also observed that the Corporate Applicant was not earning sufficient profits to repay its debts.
- vii.** On 25.06.2024 a special resolution was passed by the shareholders of the Corporate Applicant, in which it was resolved to file application under Section 10 of the Code, 2016. The certified true copy of the special resolution dated 25.06.2024 is annexed in the present Application.
- viii.** Further in this regard we rely upon the judgment of Hon'ble NCLAT in the case of **M/s Unigreen Global Pvt Ltd. Vs. Punjab**



National Bar 2017 SCC Online NCLAT 610 which has held that:

“20. Under both Section 7 and Section 10, the two factors are common i.e. the debt is due and there is a default. Sub-section (4) of section 7 is similar to that of Sub-section (4) of section 10. Therefore we, hold that the law laid down by the Hon'ble Supreme Court in "Innoventive Industries Ltd. (Supre) is applicable for Section 10 also, wherein the Hon'ble Supreme Court observed as "The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority"”.

It is therefore clear that once the Corporate Applicant has proved that it is in default in respect of the debts due and payable, the application is required to be admitted.

- ix.** The application is free from defects and complete in all aspects as required under the law. The Application shows that the Corporate Applicant is in default of a debt that is due and payable, and the default is more than the threshold amount as stipulated under section 4(1) of the Code at the relevant time.

We hold that the default stands established and there is no reason to deny the admission of the present application.

Hence, we are inclined to **admit this application.**

5. Order

In light of the above facts and circumstances, it is ordered as follows:-

- i.** The Application bearing **IB-482/ND/2024** filed by the Corporate Applicant under under Section 10 of the Insolvency and Bankruptcy Code, 2016 (**“IBC”** or **“Code”**)



read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (**“Adjudicating Authority Rules”**), in respect of **Elegance Malls Limited** the Corporate Applicant is **admitted**.

- ii. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the



condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”

- iii. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- iv. As per the proposal given by the Corporate Applicant, **Mr. Piyush Jani** (Registration No. IBBI/IPA-001/IP-P01439/2018-2019/12164), e-mail: capiyushj@gmail.com, contact number: 9922999355 is appointed as the IRP for ascertaining the particulars of Creditors and convening a Committee of Creditors for evolving a Resolution Plan. The Written Consent in **Form-2** dated 12.06.2024 and the Registration Certificate of the proposed IRP which is filed along with the Application. **The Indian Institute of Insolvency Professionals of ICAI had issued the Authorization for Assignment dated 06.11.2023 which was valid from 06.11.2023 to 05.11.2024 only as reflected which is filed along with the Application.** Therefore, the IRP shall file a valid Authorization for Assignment within 3 days of the pronouncement of this order.
- v. We direct that public announcement in pursuance of Section 13 (2) of the Code shall be made by the Interim Resolution Professional immediately (3 days as prescribed by



Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to the admission of this application under Section 10 of the Insolvency & Bankruptcy Code, 2016.

- vi.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- vii.** The IRP/RP shall submit to this Adjudicating Authority periodical reports on a quarterly basis with regard to the progress of the CIRP in respect of the Corporate Applicant.
- viii.** The Corporate Applicant to pay to IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh only)** to meet the initial costs, 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.

- ix.** The IRP/RP shall conduct CIRP in a time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- x.** Additionally, the Corporate Applicant shall serve a copy of this Order on the IRP and on the Registrar of Companies, Delhi by all available means for updating the Master Data of the Corporate Applicant. 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.
- xi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)**

-Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**