

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-771(PB)/2018

IN THE MATTER OF:

CAPRI GLOBAL CAPITAL LIMITED

.....FINANCIAL CREDITOR/PETITIONER

V.

VALUE INFRATECH INDIA PRIVATE LIMITED

.....CORPORATE DEBTOR/RESPONDENT

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Judgment delivered on 03.01.2020

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

MS. SAROJ RAJWARE
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner:

Mr. Kunal Godhwami, Mr. Karan Kanwal & Ms.
Juhi Bhambhani, Advocates

For the Respondent:

Ex-parte

M.M. KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Capri Global Capital Limited has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of Value Infratech India Private Limited (for brevity 'the Corporate Debtor').

2. The 'Corporate Debtor'-Value Infratech India Private Limited was incorporated on 25.07.2010. The identification number of the Corporate Debtor is U45204DL2010PTC205247 and its registered office is situated at 715, Naurang House, 21, KG Marg, Connaught Place, New Delhi-110001.

3. The 'Financial Creditor'-Petitioner has proposed the name of Interim Resolution Professional, Mr. Sanjay Kumar Singh with the address 003, Windsor Grand Forte, Plot No. 76, Sigma IV, Greater Noida, Uttar Pradesh – 201310, email id singhsk.adv@gmail.com. His Registration number is IBBI/IPA-002/IP-N00188/2017-18/10505. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. The pleaded case of the Petitioner is that loan Agreement dated 17th September, 2014 was reached and signed whereby a sum of Rs. 37.50 Crores was sanctioned to the Corporate Debtor, Value Infrabuild India Private Limited-Borrower No. 2 and Value Infracon India Private Limited-Borrower No. 3 against which the Corporate Debtor as well as Value Infrabuild India Private Limited-Borrower



No. 2 and Value Infracon India Private Limited-Borrower No. 3 are jointly and severally liable. The said loan was sanctioned for constructing and developing the Real Estate Projects namely 'Meadows Vista-Project 1', 'Skywalks, Greater Noida-Project 2' & 'Skywalks, Rajnagar Extension-Project 3'.

5. The Respondent executed several documents for availing the aforesaid financial assistance from the Petitioner. True Copies of each one of those documents namely, Loan Agreement, Memorandum of Equitable Mortgage, Deed of Hypothecation, Personal Guarantees of each of the Personal Guarantors, Corporate Guarantees of each of the Corporate Guarantors, Demand Promissory Note, all dated 17.09.2014 and letter of continuity dated 19.09.2014 have been placed on record [Annexure A-3, A-7 to A-12 (colly)].

6. The details of the security held by, or created for the benefit of 'financial creditor'-Capri Global Capital Limited along with the certificate of registration of charge (Annexure A-13) issued by the Registrar of Companies have been placed on record which fulfils the requirements of Section 77 & 78 of Companies Act, 2013.



7. In view of the repeated defaults on the part of the Corporate Debtor to comply with the schedule of repayment of the principal and interest dues, the Financial Creditor issued a Loan Recall Notice dated 19.08.2016 (Annexure A-15) to the Corporate Debtor, Corporate Guarantors, Personal Guarantors and both aforesaid entities namely Value Infrabuild India Private Limited-Borrower No. 2 and Value Infracon India Private Limited-Borrower No. 3. Subsequently a notice dated 25.02.2017 (Annexure A-16) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was sent by the Financial Creditor to said all parties but inspite of all such attempts they failed to clear the unpaid debt/liability.

8. The petitioner has then placed reliance on various post dated cheques (at pgs. 308, 317 to 327) issued by the Respondent in favour of the petitioner towards interest and Repayment of amount outstanding under the Loan Agreement dated 17.09.2014. Further reliance has also been placed on a covering letter dated 18.09.2014 (Annexure A-19) issued by the Respondent itself wherein it had admitted that the said cheques issued were for repayment of facility of Rs. 37.50 Crores and the interest accrued thereon, by Borrower to the Petitioner. However, upon presentation the said

cheques, the same bounced back with the endorsement 'Account Closed'. Feeling aggrieved, the petitioner served legal notice dated 24.11.2017 (Annexure A-18) under Section 138 of Negotiable Instrument Act upon the Corporate Debtor and its Directors.

9. In the light of directions issued by us vide order dated 13.09.2019, the petitioner has filed an affidavit vide diary dated 04.10.2019. In para 7 of the said affidavit it has been highlighted that the Resolution Professional of Value Infracon India Private Limited-Borrower No. 3 in terms of order dated 17.12.2018 passed by us in (IB)-22(PB)/2018 reconstituted the CoC and the claim of the Petitioner was reduced from Rs. 76,75,46,530/- to Rs. 1,86,00,000/-. In paras 10 & 11 it has then been asserted that the claim of the Petitioner of Rs. 1,86,00,000/- as admitted by the Resolution Professional of Value Infracon India Private Limited-Borrower No. 3 has not been claimed in the instant petition and the amended/rectified debt of Rs. 92,94,81,286/- as claimed to be in default in the instant petition is not part of any other pending insolvency proceeding. The sum and substance of the said affidavit is to seek amendment in respect of serial no. 2 of Part IV of form 1 under the heading '*amount claimed to be in default and the date on which the default occurred*'. As per said affidavit the amount

claimed to be in default is as under:

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURED	Amount claimed to be in default: Rs. 92,94,81,286/- Date of Default: 31.07.2015 The Computation of amount of default been annexed herewith as ANNEXURE E.
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10. Despite substituted service by publication no one had put in appearance even on the second call at the end of the board as is evident from the order dated 18.02.2019. Accordingly, respondent-Corporate Debtor proceeded *exparte* and the matter was listed for arguments on 12.03.2019.

11. We have heard learned counsel for the Financial Creditor and have perused the pleadings with his able assistance. According to the learned counsel service is complete and there is no resistance. Thus, the claim of the Financial Creditor in respect of 'unpaid debt' has remained uncontroverted. It must therefore be considered to have been admitted. We find substance in the submission.

12. Learned Counsel for the petitioner has then argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled

and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. She has further submitted that the details of default along with its dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence to prove default. The name of the resolution professional has also been specified.

13. It would first be necessary to examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

“Initiation of corporate insolvency resolution process by financial creditor.

7 (1)

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3)

7 (4)

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is

no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b)”

14. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred. As per requirement of Section 4 of the Code if default amount is one lac or more then the CIR Process would be issued. The application under sub section 2 of Section 7 is complete; and no disciplinary proceedings are pending against the proposed Interim Resolution Professional.

15. As a sequel to the above discussion, this petition is admitted and Shri Sanjay Kumar Singh is appointed as an Interim Resolution Professional.



16. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code.

17. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however



be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditors.

19. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

20. Before parting we must notice the complaint generally made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.

21. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the

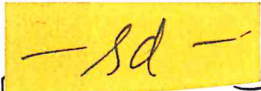


C.P. No. (IB)-771(PB)/2018

Capri Global Capital Ltd. v. Value Infratech India Pvt. Ltd.

earliest but not later than seven days from today. The Registrar of Companies shall update its Master data & its website by updating the status of 'Corporate Debtor' and by making a specific mention regarding admission of this petition.

22. A copy of this order shall also be sent to the Secretary, Ministry of Corporate Affairs, New Delhi for compliance of directions issued in para 21 above.


(M.M. KUMAR)
PRESIDENT


MS. SAROJ RAJWARE
MEMBER (T)

03.01.2020
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