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NCLT, Bengaluru Bench

C.P (IB) No.39/BB/2021

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

C.P. (IB) No.39/BB/2021

U/s 7 of IBC, 2016

R/w Rule 4 of I&B (AAA) Rules, 2016

Between:

M/s. Microsun Solar Tech Private Limited

Plot No. 55, KIADB Road,
No.54, 1st Stage,
KIADB Industrial Area,
Sompura Hobli, Nelamangala
Taluk, Dabaspeth,
Bangalore - 562 111

... Petitioner/Financial Creditor

And

M/s. Maharaja Techno Chromes Private Limited

Plot No. 55, KIADB Road,
No.54, 1st Stage,
KIADB Industrial Area,
Sompura Hobli, Nelamangala
Taluk, Dabaspeth,
Bangalore Rural - 562 111

... Respondent/ Corporate Debtor

Pronouncement of Order: 6th April, 2021

- Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri. Kondisetty Dushyant Kumar &
Shri. Hari Babu Thota

For the Respondent: Shri. Dinesh .P Jain

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P (IB)No.39/BB/2021 is filed by M/s. MicroSun Solar Tech Private Limited U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia



seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Maharaja Techno Chromes Private Limited, on the ground, that it has committed default for total amount of Rs.2,35,45,628/- (Rupees Two Crore Thirty Five Lakhs Forty Five Thousand Six Hundred Twenty Eight Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Microsun Solar Tech Private Limited (hereinafter referred to as Petitioner/Applicant/Financial Creditor) was incorporated on 14.08.2007 having CIN: U40106KA2007PTC043606, having its registered office situated at Plot No. 55, KIABD Road No.54, 1st Stage, KIABD Industrial Area, Sompura Hobli, Nelamangala Taluk Dabaspeth Bangalore - 562111.

(2) M/s. Maharaja Techno Chromes Private Limited (hereinafter referred to as Respondent/Corporate Debtor) was incorporated on 08.10.2001 having CIN: U27209KA2001PTC029627 and having its registered Office situated at Plot No. 55, KIABD Road No.54, 1st Stage, KIABD Industrial Area, Sompura Hobli, Nelamangala Taluk Dabaspeth Bangalore Rural - 562111. Its Authorised Share Capital is Rs.15,00,000/- (Rupees Fifteen Lakhs Only) divided into 15,000 Equity Shares of Rs.100/- each and Paid-up Share Capital is Rs.15,00,000/- (Rupees Fifteen Lakhs Only) divided into 15,000 Equity Shares of Rs.100/- each.

(3) The Corporate Debtor had acquired the scheduled property bearing Plot No. 55, measuring 4,137.97 square meters in Industrial Area, Sompura 1st Stage, Dabaspeth, Sompura Hobli, Nelamangala Taluk, Bangalore- 562111 from KIADB by lease cum sale agreement dated 04.02.2010 and registered as Doct. No. 8149 of 2009-10 Book-1, registered on 29.03.2010



and filed in the file of the Sub-Registrar, Nelamangala Taluk, Bangalore District, which as per the terms shall be transferred to the Corporate Debtor by KIADB on completion of 10 years from the date of lease cum sale deed. The Corporate Debtor being in dire need of funds for the purpose of clearing debts has decided to sell the property more fully described in the Schedule and the Applicant has offered to purchase the same.

- (4) Accordingly, the Applicant had entered into an agreement for sale dated 20.04.2016 with the Corporate Debtor for purchase of scheduled property bearing Plot No. 55, measuring 4,137.97 sq. mtrs, in Industrial Area, Sompura 1st Stage, Dabaspet, Nelamangala Taluk, Bengaluru - 562111 in favour of the Applicant for total consideration of Rs.3 Crores. As per the Clause 2 of the agreement for sale, the Corporate Debtor upon receipt of Rs.1,50,00,000/- shall become liable to execute a sale deed and convey the scheduled property to the Applicant on demand or within a period of 3 years from the date of execution of the agreement whichever shall be earlier. Further, non-performance of the same by the Corporate Debtor shall make it liable to pay an interest of 12% on the amount advanced by the Applicant till the execution of the said sale deed.
- (5) The Applicant from the date of execution of the agreement of sale till 01.04.2019 had paid an amount of Rs.1,67,03,041/- in tranches being eligible to demand for execution of the sale deed. However, the Applicant demanded for execution of the sale deed on 18.01.2020 vide notice dated 08.01.2020 during which the Applicant had made a collective remittance of a sum of Rs.1,99,47,225.90/- (Rupees One Crore Ninety-Nine Lakhs Forty-Seven Thousand Two Hundred Twenty-Five and Ninety Paise only). The Corporate Debtor vide its letter dated



08.02.2020 informed their inability to execute the sale deed due to the financial stress. Thus giving rise to the financial default of Rs.2,35,45,628/- including the principle of Rs.1,91,02,231.90/- and interest at the rate of 12% amounting to Rs.44,43,397/- from 01.04.2019 till 18.03.2021. Further, interest has been computed from 01.04.2019 considering that advance exceeded the trigger amount necessary to demand for execution of sale deed i.e. Rs.1,67,03,041/- of Rs.1,50,00,000/-. Hence the petition.

(6) Further another Application has been preferred against the Applicant u/s 9 of the I & B Code, 2016 before this Adjudicating Authority by S.V Solar Solutions Operational Creditor for default of debt amounting to Rs. 1,23,12,720/- and the default occurred due to financial stress caused by the Corporate Debtor to the Applicant. Thus, in this scenario, the Corporate Debtor also being the Company managed by the same management, as the Applicant herewith this Application is preferred u/s 7 of the I & B Code, 2016 as resolution of the Applicant shall not be feasible without resolution of the Corporate Debtor that owes a huge sum to the Applicant. Further, the schedules property has been provided as corporate guarantee for the debt taken by the Applicant.

3. Heard Shri Hari Babu Thota, learned PCS for the Petitioner, and Shri Dinesh P. Jain, Director of the Respondent Company. We have carefully perused the pleadings of the Parties and the extant provisions of the Code, the Rules made there under, and the law on the issue.

4. Shri Hari Babu Thota, while reiterating various averments made with regard to debt and default in question, as briefly stated supra, has further submitted that debt and default is admittedly are not in dispute. The Petition is filed in accordance with law, and also



suggested a qualified Insolvency Professional namely Shri Venkata Subbarao Kalva, with Registration No. IBBI/IPA-002/IP-N00179/2017-18/10655, who has filed his written Consent in Form 2 on 19.03.2021 by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency. Therefore, he has urged the AA to admit the case as prayed for.

5. Mr. Dinesh P Jain, Director of the Respondent Company has filed Written Submissions on behalf of the Respondent dated 01.04.2021 by *inter-alia* contending as follows:

(1) The Corporate Debtor is not in a position to honour its financial commitments. Further, the details of the Creditors to whom the Corporate Debtor is due and has to pay amounts that are outstanding as on 28.02.2021 were Canara Bank OD Account amounting to Rs.10,26,565/-and secured loan of Rs.87,89,041/- and to the Applicant principal amounting to Rs.1,91,02,231.90/-. As per the Annual financial statement for the Financial Year, though the assets are more than the existing liabilities, there are no liquid assets to pay off the debts of the Company. Due to the absence of the liquid assets, the Corporate Debtor will not be able to honour any payments with respect to the existing debts in the near future. The Corporate Debtor also is not in a position to ascertain the credit worthiness of the trade and conversion of its fixed assets into liquid assets for re-payment of debts. The Corporate Debtor hereby fails the test of Cash Flow and is facing insolvent conditions owing to its cash flows. The Corporate Debtor is now facing cash-flow insolvency.

- (2) The Corporate Debtor is not in dispute with the claim of Rs.2,35,45,628/- to the Applicant including the principle and interest at the rate of 12% as stated in the Application filed in



Form-1. The Corporate Debtor is indeed due to the Applicant and the same is outstanding in the books of the Corporate Debtor. The Financial Creditor had given an advance of Rs.1,91,02,231.90/- as a consideration for purchase of the land to the Corporate Debtor and Non-performance of the same by Corporate Debtor shall make it liable to pay interest at the rate 12% on the amount advanced by the Applicant. Further, the Corporate Debtor has provided its land and buildings as security to Canara Bank for the borrowings made by the Applicant.

(3) On 08.02.2020, the Corporate Debtor signifies its inability in repayment of the advance amount as agreed in the Agreement of Sale and expressed its inability to register the land in favour of the Applicant due to the financial constraints so faced by the Corporate Debtor. The Corporate Debtor admits that there is a breach of the financial obligations on its part. This debt very much falls under section 5(8) of the Code. The Corporate Debtor admits the fact that the debt is a Financial Debt.

(4) The Corporate Debtor in the present scenario is not in a position neither to repay the advance amount nor transfer of the land to the Applicant and also the Corporate Debtor has many statutory and non-statutory liabilities in existence, which the Corporate Debtor is not in a position to extinguish all the liabilities, by way of repayment. The Corporate Debtor hereby signifies its willingness to admit the instant Application and directions as to initiation of CIRP process of the Company as the Company has been facing many difficulties due to financial stress it is under.

6. As stated supra, the debt and default in question are not disputed by the Respondent. The instant Petition is filed strictly in



accordance with the extant provisions of the Code, and also suggested a qualified Insolvency Professional namely Shri Venkata Subbarao Kalva, with Registration No. IBBI/IPA-002/IP-N00179/2017-18/10655, who has filed his written Consent in Form-2 on 19.03.2021 by inter alia declaring that no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professionals Agency. Therefore he is provisionally eligible to be appointed as IRP.

7. M/s. SV Solar Solutions has filed C.P. (IB) No.41/BB/2021, U/s 9 of IBC, 2016 by seeking to initiate CIRP against M/s. Microsun Solar Tech Private Limited (the Petitioner herein). Therefore, there is an interlink between the two case. Since, initiation of common proceedings against two different entities are not permissible under the Provisions Code, and winding-up of a Company is possible only in two ways viz., by way of Voluntary Liquidation or invoking provisions of Code to initiate CIRP to get Resolution Plan or to Liquidate two separate proceedings maintainable against two distinct Companies under the provisions of Code. And Section 11 of Code is not bar for the same. In both the cases, IRP suggested is common, and thus he can co-ordinate in both the Proceedings.
8. Hence, the instant Company Petition is fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Corporate Debtor.
9. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, under provisions of Section 7 (5) (a) of the Code, and other extant provisions of the IBC, 2016, we hereby admitted **C.P.(IB)No.39/BB/2021** by initiating Corporate Insolvency Resolution Process (CIRP) in respect **M/s. Maharaja Techno**



Chromes Private Limited, the Respondent/Corporate Debtor, with the following consequential directions:

- 1) Shri Venkata Subbarao Kalva, with Registration No. IBBI/IPA-002/IP-N00179/2017-18/10655, e-mail: subbaraocs@gmail.com, who is qualified Insolvency Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely M/s. Maharaja Techno Chromes Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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 Securitisation 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;
 - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be



- terminated or suspended or interrupted during moratorium period;
- f) 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;
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
- 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) The Registry is directed to forward a copy of this order immediately to both the Parties and IRP.
- 6) Post the case for report of IRP on **5th May, 2021**.

Sd/-

**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**

Sd/-

**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**



CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

[Signature]
for Deputy Registrar
National Company Law Tribunal
Bengaluru Bench
06/04/2021