

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -2714/I&BP/MB/2018

Under Section 7 of the I&B Code,
2016

In the matter of

Dipco Private Limited,
Radhasagar, Ground Floor, 8,
Moira Street, Kolkata West
Bengal - 700017

.... Petitioner

Vs.

Ariisto Developers Private Limited
8th Floor, Ariisto House, N. S.
Phadke Road, Near East West
Flyover, Andheri (East), Mumbai
- 400069

.... Respondent

Order delivered on:20.11.2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V.Nallasenapathy, Member (T)

For the Petitioner: Mr. Sanjay Udeshi, Mr. Darshan Udeshi, Mr. Parth
Chaudhary, Advocates i/b Sanjay Udeshi & Co.

For the Respondent: Ms. Saloni Shah, Mr. Viraj Sami, Advocates i/b
DSK Legal.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Dipco Private Limited(hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Ariisto Developers Private Limited(hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 15.07.2018 onwards in repayment of loan facility granted to the Corporate Debtor to the extent of Rs. 16,44,23,029/- including interest, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner granted a loan of Rs. 12,10,00,000/- which carries an interest of 15% p.a. to the Partnership Firm namely Ariisto Developers, which was subsequently converted into Private Limited Company under Part I of Chapter XXI of the Companies Act, 2013. The following are the details of disbursement:
 - i. Rs. 5,00,00,000/- paid on 29.09.2010 by RTGS.
 - ii. Rs. 5,00,00,000/- paid on 08.10.2011 by RTGS.
 - iii. Rs. 1,00,00,000/- paid on 17.10.2012 by RTGS.
 - iv. Rs. 1,10,00,000/- paid on 15.03.2016 by RTGS.
3. The Petitioner enclosed many Bills of Exchanges and post dated cheques issued by the erstwhile partnership firm in support of the loan. The latest Bill of Exchange dated 01.04.2017 for Rs. 12,10,00,000/- which is due on 01.07.2017 issued by the Corporate Debtor along with the post-dated cheque dated 01.07.2017 for Rs. 12,10,00,000/- clearly shows that the Corporate Debtor owes money to the Petitioner. Further the Petitioner has enclosed the letter written by the Corporate Debtor to the Petitioner on 16.05.2017 which shows that there is a loan of Rs. 12,10,00,000/- and interest was paid up to 30.06.2017 after deducting TDS. Hence, the debt is proved.
4. On 18.05.2018 the Petitioner has written to the Corporate Debtor saying that they are holding a cheque no. 151662 for Rs. 12,10,00,000/- issued by the Corporate Debtor towards repayment of the outstanding loan, interest from 01.04.2016 to till date is due and referring the request of the Corporate Debtor not to present the cheque the Petitioner requested to make the payment of Rs. 12,10,00,000/- along with interest immediately. Subsequently the Petitioner has deposited the above said cheque which was dishonoured on 09.07.2018 due to insufficiency of funds. In view of this, the Corporate Debtor defaulted in payment of the loan.
5. The Corporate Debtor filed reply and let us discuss the issues raised in the reply one by one:
 - i. It is submitted that the Petition is not maintainable in law and the same is liable to dismissed in limine but the said

contention was not supported by any reasoning and hence it has to be rejected.

- ii. It is contended that the Petitioner is misusing the process of Insolvency and Bankruptcy Code but this Bench could not find any substance in this contention.
- iii. It is submitted that there was no document or record evidencing the loan, however, there are sufficient documents like Bill of Exchange, post-dated cheques, proof for transfer of money etc. were produced by the Petitioner. In fact, the Corporate Debtor itself has acknowledged the liability vide its letter dated 16.05.2017 and also stated in the letter that they are enclosing four cheques towards interest payment for certain periods. Hence the contention of the Corporate Debtor is not sustainable.
- iv. The Corporate Debtor has submitted that the Petitioner has invested money which bears interests @ 15% p.a. and as security towards the investment the Corporate Debtor executed Bills of Exchange and handed over post-dated cheques which were renewed/replaced periodically. Further due to certain problems the Corporate Debtor was not in a position to pay interest regularly. It is also submitted that they are going to commence some real estate projects and the debt will be repaid to the Petitioner.
- v. The Corporate Debtor submitted that the post-dated cheques were given only for security purpose. However, this contention cannot be accepted in view of the fact that Corporate Debtor was paying interest to the Petitioner according to their own submissions. Hence the debt is a Financial Debt as defined u/s 5(8) of the Code.
- vi. The Corporate Debtor submitted that the Petitioner has not issued any written communication to them till date highlighting the major issues. Even though the Petitioner is not required to issue any Demand Notice to the Corporate Debtor for a Petition u/s 7 of the Code, the Petitioner issued

a Notice on 18.05.2018 and hence this contention is unsustainable.

- vii. The Corporate Debtor submitted that the Petitioner is also pursuing separate proceedings u/s 138 of the Negotiable Instrument Act, 1881 but that is nothing to do with the CIRP process herein.

6. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (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.
- (II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH

CP(IB) No.2714/I&BP/MB/2018

- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from 20.11.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr.S. Gopalakrishnan, R-2,/202, Moraj Riverside Park, Takka, Panvel – 410206, Maharashtra Email:-gopi63.ip@gmail.com, having Registration No. IBBI/IPA-002/IP-N00151/2017-18/10398 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
7. Accordingly, this Petition is admitted.
8. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional within seven days from the date order is made available.

sd/-
V. Nallasenapathy
Member (T)

sd/-
Bhaskara Pantula Mohan
Member (J)