

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

CP (I&B) 3162/NCLT/MB/MAH/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Indiabulls Housing Finance Limited

...Financial creditor

V/s

Yashaswini Leisure Private Limited

...Corporate Debtor

Order dated 14.01.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr. Gaurav Joshi, Senior Advocate, Mr. Chirag Kamdar, Advocate, Mr. Denzil Arambhan, Advocate, Mr. Paridhi Saraf, Advocate, Ms. Henna Goradia, Advocate i/b Wadia Gandhi & Co.

For the Respondent: Mr. Nikhil Ratti Kapoor, Advocate i/b The Law Point.

Per Ravikumar Duraisamy, Member

ORDER

1. It is a Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (**IBC**) by Indiabulls Housing Finance Limited, Financial Creditor, against Yashaswini Leisure Private Limited, Corporate Debtor having its registered office at Raaj Chambers, S.K.M. Fabrics, Andheri Premises, Plot No. 115, 115/IT-03, R.K. Paramhans Marg, Andheri East, Mumbai – 400 069, to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the ground that as on 17.08.2018, the Corporate Debtor has defaulted in making payment to the extent

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₹104,80,93,792/- along with TDS for an amount of ₹15,68,666/- to the Financial Creditor.

2. The Financial Creditor, granted a loan facility in favour of the Corporate Debtor on the terms and conditions stated in the Loan Agreement dated 30.09.2013 against some security documents executed between both the parties to secure the said loan. The total amount of loan granted was ₹52,00,00,000/- and the tenure of the Agreement was 60 months from the date of disbursement at a rate of interest of 18.10% per annum. Subsequently, on 01.10.2013, an Addendum Agreement was executed between the parties, inter alia, to make Mr. Vikas Kasliwal, shareholder director of the Corporate Debtor, as guarantor for securing the loan. The computation table as furnished by the Petitioner is reproduced below:-

Loan Account No.	S000237778
Applicable interest as per demand notice dated 16.12.2018	18.10%
Recall Amount (in Rupees)	93,33,14,062
Interest till 17.08.2018 (in rupees)	11,47,79,730
No of days	248
Total outstanding as on 17.08.2018 (in rupees)	104,80,93,792
Pending TDS (In rupees)	15,68,666

3. The said loan was secured by a Mortgage Deed dated 30th October, 2013 executed by the Corporate Debtor in favour of the Petitioner for ₹52,00,00,000/-. On 17.10.2013, a Share Pledge Agreement was executed by the Corporate Debtor as confirming party in favour of the Petitioner as lender. On 03.03.2015, a Debenture Pledge Agreement was executed by the Corporate Debtor as pledger in favour of the Petitioner.

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4. The petitioner has enclosed the CIBIL Report dated 20.07.2018 with the Petition, which shows that the Corporate Debtor has taken the loan of ₹52,00,00,000/-.
5. The petitioner sent a letter dated 24.10.2017 stating that the last payment made by the Corporate Debtor was on 30.09.2015 and have failed to repay instalments as per terms of the loan agreement. In view of the default, the petitioner had recalled the entire loan facility.
6. The petitioner sent notice under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 16.12.2017 stating that as the interest and/or instalment of principal has remained overdue for a period of more than 90 days, its account has been classified as a Non-Performing Asset (NPA) on 30.09.2017, in accordance with the Prudential guidelines issued on the Assets Classification by the regulatory body. It was called upon to repay the outstanding amount of ₹93,33,14,062/-, as on 12.12.2017 along with future interest @18.10% p.a. w.e.f. 13.12.2017 and pending TDS for an amount of ₹15,68,666/-.
7. The Respondents vide their letter dated 14.02.2018 replied to the petitioner's notice dated 16.12.2017 stating, among other things, that it had requested for settlement of dues and that the relation between the petitioner and the respondent is more than that of a mere Lender and Borrower. It is stated that the petitioner has been a strategy advisor at various phases of the project undertaken by the respondent.
8. The Petitioner vide its reply dated 06.04.2018 denied all the contentions raised by the respondent in its letter dated 14.02.2018. The petitioner has annexed the account of the Corporate Debtor as appearing in its books for the period from 30.09.2013 to 17.07.2018.

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9. The Corporate Debtor filed its Affidavit in reply wherein it is contended that the Financial Creditor has vested interest in the flagship real-estate project known as 'Palais Royale' undertaken by the company known as Shree Ram Urban Infrastructure Limited ("SRUIL"). It is submitted that the Petitioner is a partner of SRUIL and time and again a party in the financial decisions making process of SRUIL and its connected companies. The Petitioner provided loans to the associate companies of SRUIL so that the amounts could be transferred to SRUIL to enable SRUIL to repay its own loans taken from the Petitioner. It is submitted that the Petitioner thus was aware of the financial hardships faced by the SRUIL and despite, it advanced loans to the associate companies of SRUIL including the Respondent. The Corporate Debtor submitted that the Petitioner advanced monies to group companies/associate companies/sister concerns of SRUIL. It is submitted that the loan amount of ₹52crores was remitted to the Debtor on 18.10.2013 in a single payment but majority of these funds were then transferred to SRUIL on the very same date and was used to service the loan taken by SRUIL from the Petitioner itself.
10. The respondent submitted that the loans disbursed by the Petitioner to the Corporate debtor does not fall under the definition of 'financial debt' as provided u/s 5(8) of the Code as the funds disbursed was not against the time value of money. It is submitted that the funds were never advanced to the respondent for its own use, but instead were advanced so that they could be sent to SRUIL for the purpose of repaying the Petitioner, therefore, the Petitioner and Respondent do not share a relation of 'Financial Creditor' and 'Corporate Debtor'. The Corporate Debtor lastly submitted that the entire modus operandi of Petitioner's dealings with SRUIL and its related entities

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including the Respondent requires a detailed and thorough forensic audit.

11. Upon perusal of the Petition, the submissions made by the counsels and the documents filed, we are of the considered view that the respondent's contentions raised in the Affidavit in reply are short of any merit in the present proceedings. The existence of debt is clear from the loan agreement dated 30.09.2013, subsequent Addendum dated 01.10.2013 and various mortgage deed, share pledge agreement, debenture pledge agreement and promissory note. None of these documents are disputed by the respondent.
12. The contention of the Corporate Debtor that the loan availed from the Financial Creditor was not for its own use but were sent to SRUIL through various associate companies to repay the loan taken by SRUIL from the Petitioner is not tenable as the documents show disbursement of loan to the Corporate Debtor.
13. The submission of the Corporate Debtor requesting detailed and thorough forensic audit of modus operandi of Petitioner's dealing with SRUIL is without any merit and deserves to be rejected all the more SRUIL is not Corporate Debtor in present petition.
14. Further, the annexed CIBIL Report dated 20.07.2018 with the Petition, which shows that the Corporate Debtor has taken the loan of ₹52,00,00,000/- and that the same is outstanding as on that date. This report is also not disputed by the Corporate Debtor. Further the respondent in its affidavit in reply has stated that it would be in a position to substantially make good the outstanding dues of the petitioner on completion of sale of the flats. Therefore, default is substantiated.
15. The Petitioner has proved the existence of debt as well as default.
16. The Petitioner has also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional

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and there are no disciplinary proceedings pending against the proposed Resolution Professional.

17. The Application under sub-section (2) of Section 7 of IBC, 2016 is taken as complete and accordingly this Bench hereby admits this Petition.

ORDER

This petition filed under Section 7 of IBC, 2016, against the Corporate Debtor for initiating corporate insolvency resolution process is hereby admitted. We further declare moratorium u/s 14 of IBC with consequential directions as mentioned below:

- I. That this Bench hereby prohibits:
 - 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.
- 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.

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- III. That the provisions of sub-section (1) of Section 14 of IBC 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 14.01.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, 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 IBC.
- VI. That this Bench hereby appoints Mr. Ravi Prakash Ganti, having Registration Number [IBBI/IPA-002/IP-N00103/2017-18/1255] as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.
18. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

SD/-
RAVIKUMAR DURAISAMY
Member (Technical)

SD/-
V.P. SINGH
Member (Judicial)

14th January, 2019