

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

Company Petition No. (IB) 142/(ND)/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s Digital Compusystems Private Limited

APPLICANT/FINANCIAL CREDITOR

Vs.

Mahamay Building Solution Private Limited

RESPONDENT/CORPORATE DEBTOR

ORDER DELIVERED ON: 23.08.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR.BINOD KUMAR SINHA, HON'BLE MEMBER (T)

ORDER

PER: DR.BINOD KUMAR SINHA, MEMBER (T)

The applicant namely M/s Digital Compusystems Private Limited, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Mahamay Building Solution Private Limited, referred to as the corporate debtor on the ground that the Corporate Debtor committed a default in payment of Rs. 3,66,84,383/- .

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2. It is appropriate to mention that the applicant M/s Digital Compusystems Private Limited is a company registered under the provisions of The Companies Act, 1956 on 31.07.2006 having its registered office situated at Shop No. 216, 217, 218 Ganpati Arcade, Gurudwara Road, Gurgaon-122001. Mr. Rakesh Kumar Yadav, duly authorized on behalf of applicant vide Resolution dated 21.01.2022, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent corporate debtor.
3. The Respondent Company M/s. Mahamay Building Solutions Private Limited (CIN No. U70100DL2011PTC229258) against whom initiation of Corporate Insolvency Resolution Process has been prayed for was incorporated under the provisions of the Companies Act, 2013 on 26.12.2011 having its registered office situated at 2-A/3, S/F Front side Kundan Mansion Asaf Ali Road, Turkman Gate, New Delhi-110002. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
4. The case of the applicant precisely is that the corporate debtor had availed financial facility from the financial creditor, Digital Compusystems Private Limited for construction finance by way of loan to meet the developmental costs of project and upon mutual discussions the applicant agreed to provide the same against the security of immovable property and executed MOU dated 15.04.2019 for disbursement and repayment of the loan amount. The loan facility amount was disbursed as detailed hereunder :

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S.NO	DATE OF DISBURSEMENT	AMOUNT
1.	07.05.2019	25,00,000/-
2.	04.06.2019	25,00,000/-
3.	25.06.2019	35,00,000/-
4.	08.07.2019	10,00,000/-
5.	22.07.2019	35,00,000/-
6.	23.07.2019	30,00,000/-
7.	26.07.2019	15,00,000/-
TOTAL		1,70,00,000/-

Further, Clause 4 of MoU categorically provided for repayment of the loan accordingly, the said loan amount was required to be repaid by the corporate debtor upon lapse of 2 years from the date of first disbursement by the applicant along with interest @ 36% compounded annually. Thus, the corporate debtor was required to repay the entire loan amount on 07.05.2021.

5. Therefore, as per part IV of the application it is claimed that as on 07.05.2021 a sum of Rs. 3,66,84,383/- is due and payable by the respondent company.
6. Despite opportunities provided to the Respondent, none appeared on behalf of the corporate debtor nor any reply has been filed and as a result, the Respondent was proceeded ex-parte vide order dated 04.07.2022.
7. The applicant has placed following documents on record to prove its claim:
 - i. Copy of MoU dated 15.04.2019
 - ii. Copy of ledger account statement of the corporate debtor maintained by the applicant
 - iii. Copies of Account statement of the applicant maintained with HDFC Bank, Sector 14, Gurugram held by the applicant

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- iv. Copy of Bank Certificate issued by the Banker of the applicant certifying sums received from the corporate debtor
- v. Copy of the various correspondences between financial creditor and the corporate debtor.
8. Notice by this Authority was issued in response to which the Corporate Debtor failed to appear before the Authority. No reply has been filed and as a result the Respondent was proceeded ex-parte. We further observe that the corporate debtor had defaulted in repayment of the loan amount as per the terms of the MoU on 07.05.2021.
9. On perusal of record, we find that an email dated 19.12.2021 was sent by the applicant to the corporate debtor seeking repayment of loan. The corporate debtor vide email dated 29.12.2021 had replied to the email of the applicant wherein the corporate debtor had unconditionally acknowledged the financial debt due and payable to the applicant.
10. Needless to say, that an application under Section 7 of the Code is maintainable if the debt is proved to be due and there is default. In view of the Section 4 of the Code, the moment default is for an amount exceeding the pecuniary threshold of Rupees one hundred lakhs, an application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.
11. The applicant clearly comes within the definition of Financial Creditor. The material placed on record as stated in the paras above further confirms that respondent has debt due and has committed default in repayment of the outstanding financial debt. On a perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the



form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

12. We are satisfied that the present application is complete in all respect. The applicant financial creditor is entitled to move the application against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor. The default in repayment of the financial debt is not refuted by the Corporate Debtor.
13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted.
14. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Sanjeet Kumar Sharma for appointment as Interim Resolution Professional having registration number IBBI/IPA-01/IP-P01132/2018-19/11827 resident of BE-149, Street No.5, Hari Nagar, New Delhi with email - id. sansharma1975@gmail.com. Mr. Sanjeet Kumar Sharma has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Sanjeet Kumar Sharma as per the requirement of the IBBI

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Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

15. Mr. Sanjeet Kumar Sharma, having registration number IBBI/IPA-01/IP-P01132/2018-19/11827 is appointed as an Interim Resolution Professional for corporate debtor.
16. In pursuance of Section 13 (2) of the Code, we direct that public announcement 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 admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
17. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Sanjeet Kumar Sharma 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 said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.
18. We also declare 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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(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 possession of the corporate debtor.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearance or similar grant or 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, on the grounds of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period”.

18. 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.

19. 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 an 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.

19. 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, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

(DR.BINOD KUMAR SINHA)

MEMBER (T)

(DHARMINDER SINGH)

MEMBER (J)