IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

CP (IB) No.937/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Inter Globe Finance Limited

[CIN: L65999WB1992PLC055265]

…Financial Creditor/Applicant

V/s

Shah Group Builders & Infraprojects Limited

[CIN: U45202MH2007PLC177072]

...Corporate Debtor/Respondent

Order Dated: 06.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Gauraj Shah, Advocate.

For the Respondent(s) : Mr. Rohit Gupta, Advocate.

ORDER

Per: *Kishore Vemulapalli, Member (Judicial)*

1. This is an application being C.P. (IB) No. 937/MB/C-IV/2021 filed by Interglobe Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Shah Group Builders & Infraprojects Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Navin Jain, Director of the Financial Creditor claiming total default of Rs.1,48,91,068/- (Rupees one crore forty-eight lakh ninety-one thousand sixty-eight only) which includes:

   Principal Amount of Rs.1,09,49,315/- (Rupees one crore nine lakh forty-nine thousand three hundred fifteen only)

   Interest of Rs.39,41,753/- (Rupees thirty-nine lakh forty-one thousand seven hundred fifty-three only)

3. The Date of Default as mentioned in the Petition is 15.07.2019. The Petition is filed on 04.10.2021.

4. The case of the Financial Creditor is as under:

   a) The Financial Creditor is a listed NBFC registered with the RBI. A copy of its registration certificate is at p. 26 of the petition.

   b) The Financial Creditor granted a Business Loan to the Corporate Debtor of Rs.2,00,00,000/- (Rupees two crore only) for three months with interest @ 1.5% per month. The amount was disbursed on 03.06.2014 after which the loan was extended several times. According to the Loan Agreement dated 01.12.2015 at pp. 27-29, the loan was extended till 29.02.2016. Thereafter, the loan was extended again till 31.12.2016 vide Loan Agreement dated 29.08.2016. The Corporate Debtor has further agreed that in case of dishonour of the

post-dated cheques issued to the Financial Creditor, either of principal amount or of interest or any part thereof, then additional penal interest or damages @3% per month from the date of such delay or dishonour of such cheques till the actual payment thereof.

c) The Financial Creditor disbursed full amount through RTGS from Karnataka Bank Limited, Central Avenue Branch, Kolkata on 03.06.2014. The Corporate Debtor issued post-dated cheques bearing Nos. 418016, 887003, 887000, 887038 dated 29.02.2016, 01.08.2016, 15.08.2016, 30.09.2016 respectively drawn on The Catholic Syrian Bank Limited, Navi Mumbai and 735662, 735435, 735436, 735435, 735673 dated 22.04.2016, 25.02.2016, 27.02.2016, 29.02.2016, 25.09.2016, 30.09.2016 respectively drawn on the Kotak Mahindra Bank Ltd, Navi Mumbai Branch to secure timely payment of the loan amount alongwith interest.

d) The Financial Creditor submits that the said loan was renewed from time to time and fresh post-dated cheques were issued by the Corporate Debtor on every occasion for security of the said loan amount.

e) The Financial Creditor submits that the Director of the Corporate Debtor, Mr. Nalin Virji Shah has executed a Deed of Guarantee to secure the said loan amount together with the interest @1.5% per month and further interest/damages @3% per month. The Corporate Debtor has also executed a Demand Promissory Note in favour of the Financial Creditor on the extension of the loan amount vide the loan agreement dated 29.08.2016 and the Demand Promissory Note dated 31.12.2016 is attached on p. 55 of the petition.

f) Again, for security of the said loan amount, the Corporate Debtor issued two fresh post-dated cheques dated 31.12.2016 and bearing numbers 735700 and 887449 and when the Financial Creditor presented the said cheques for encashment on their due dates with its bankers viz. Karnataka Bank Limited, Central Avenue Branch, Kolkata, both the cheques were dishonoured and returned by the bank on 02.01.2017 with the remarks of "Funds insufficient" and "Exceeds Arrangement" respectively and the same are annexed at pp. 56-58 of the petition.

g) The Financial Creditor has filed complaints against the Corporate Debtor and its directors under section 138 read with 141 of the Negotiable Instruments Act, 1881 against such dishonour of cheques that are pending before 3rd Metropolitan Magistrate, Calcutta.

h) The Financial Creditor herein, after constant defaults in repayment of loan by the Corporate Debtor, filed a Company Application bearing no. C.P. IB- 529/MB/2018 before the NCLT, Mumbai for outstanding debt of Rs. 2,69,49,315/- which was inclusive of principal amount and interest as on 05.03.2018.

i) The Corporate Debtor entered into a Settlement Agreement with the Financial Creditor after filing of the abovementioned Company Application for a sum of Rs. 2,50,00,000/- (Rupees two crores fifty lakh only) and signed a Memorandum of Understanding dated 21.09.2018 which is attached at pp. 59-63.

j) In the light of the settlement agreement, the Company Application bearing no. C.P. IB- 529/MB/2018 was dismissed as withdrawn vide order dated 17.12.2018 of Hon'ble NCLT, Mumbai Bench which is attached at p.64 of the petition. As per the Settlement Agreement, the

Corporate Debtor was to pay Rs. 2,50,00,000/- (Rupees two crores fifty lakh only) out of which Rs. 1,60,00,000/- was to be paid by selling of a Flat No. 1910, E Wing, Shah Kingdom, Plot No. 23 to 26, Sector 20, Kharghar, Navi Mumbai- 410210 and the balance of Rs. 90,00,000/- was to be paid to the Corporate Debtor vide six equal instalments and the post-dated cheques for the same were handed over to the Applicant which later on when presented for encashment, were again dishonoured. The flat was registered in favour of Mr. Santosh Kumar Jain in lieu of the outstanding debt of the Corporate Debtor as per the MoU. But the repayment of outstanding amount of Rs. 90,00,000/- is still due and payable and the Corporate Debtor has thereby breached the terms of the settlement i.e. MOU dated 21.09.2018.

k) Therefore, in light of the default in adhering to the terms of the settlement agreement, the Applicant herein has filed the present petition.

5. The Corporate Debtor has been given several opportunities to file reply in the matter. However, the Corporate Debtor chose not to file the reply. Hence, the Corporate Debtor has been unable to repay the amount of Financial Creditor as well as breached the settlement terms.

6. The Financial Creditor and the Corporate Debtor were directed to file written submissions vide order dated 10.03.2022. However, both the parties have not filed the written submissions in the matter.

Findings:

7. We have heard the arguments of the Learned Counsel for both the parties and perused the records.

8. For the purpose of settlement between the Financial Creditor and the Corporate Debtor, the MOU dated 21.09.2018 was entered between the Financial Creditor and the Corporate Debtor and some other parties, wherein the Corporate Debtor was supposed to make payment in two tranches i.e. Rs. 1,60,00,000 by selling the flat at Kharghar, Navi Mumbai and Rs. 90,00,000 in six instalments. However, the Corporate Debtor has only made payment of the first tranche i.e. Rs. 1,60,00,000. The Corporate Debtor has failed to make payment of Rs. 90,00,000 and the same is still due and payable by the Corporate Debtor.

9. It is observed by the Bench that the Corporate Debtor has time and again defaulted in repaying its dues. On the proposal of the Corporate Debtor, the Financial Creditor had even entered into a settlement agreement with it and agreed to settle. This in itself is an admission of liability.

10. After perusal of the material on record, this Bench is of considered view that the there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor has admitted its liability by entering into a Settlement Agreement and later on defaulted in abiding by the terms of that as well.

11. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, in our considered view, this is a fit case for initiation of CIRP against the corporate debtor and that this petition is filed within limitation period. This Tribunal is having the jurisdiction to adjudicate the Company Petition filed by the Financial Creditor and that there is

debt due and payable by the Corporate Debtor. The default has also been established herein. Hence, the Application filed by the Financial Creditor is liable to be admitted.

12. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.

13. The Applicant has proposed the name of Mr. Manish Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00582/2017-18/11023] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 937/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Interglobe Finance Private Limited**,** Financial Creditor/ Applicant against Shah Group Builders and Infraprojects Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this 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 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 the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order 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 I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.

VI. That this Bench appoints Mr. Manish Jain, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00582/2017-18/11023], Email: manishmahavir@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

g) The Registry is 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. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Kishore Vemulapalli
Member (Judicial)

Sd/-

Rajesh Sharma
Member (Technical)

06.06.2022