

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

CP (IB) 4147/MB/C-II/2019

Under section 7 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

STCI Finance Limited

...Financial Creditor

Versus

Parinee Developers Private Limited

[CIN: U45200MH2006PTC159393]

...Corporate Debtor

Order pronounced on: 09.06.2020

Coram:

Mr. Rajasekhar V. K.	:	Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy	:	Hon'ble Member (Technical)

Appearances:

For the Financial Creditor	:	Ms Ferzana Z. Behramkamdin i/b FZB & Associates, Advocates
For the Corporate Debtor	:	Ms. Prachi Wazalwar, Advocate. Mr. Hemant Sethi, Advocate

ORDER

Per: Ravikumar Duraisamy, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by STCI Finance Limited ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Parinee Developers Private Limited ("the Corporate Debtor"). The Corporate Debtor is a private company limited by shares and incorporated on 01.02.2006 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45200MH2006PTC159393. Its Registered Office is situated in 201, 2nd Floor, Parinee Crescenzo, Plot no. C 38-39, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai 400051 within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
2. The present petition was filed on 17.10.2019 before this Adjudicating Authority on the ground that the Corporate Debtor(CD) failed to make payment of a sum of ₹1,02,45,22,090/- (Rupees One Hundred Two crore forty-five lakh twenty two thousand ninety only) together with further interest as on 30.09.2019, which is the date of default.
3. The case of the Financial Creditor is as follows: -

- (a) The Financial Creditor (FC) had extended two Term Loan (LAP) of Rs 50 crore and Rs 80 crore. Rs 50 crore Corporate Term Loan was disbursed on 30.08.2016 and Rs 80 crore Corporate Term Loan was disbursed on 07.09.2017. (part IV of the Petition at page 3 thereof);
- (b) For the 50 crore Term Loan the Corporate Debtor had created Security by way of an indenture of Mortgage dated 29.08.2016 over 11 units and 6 garages in Bharatiya Bhavan Co-operative Housing Society Limited situated in Khar (West), Mumbai 400052 and the same is duly registered with the Sub-Registrar of Assurances, Bombay and the same is annexed as Exhibit "E".
- (c) For the Rs 80 crore Term Loan the CD had created Security by way of an indenture of Mortgage dated 06.09.2017 over 23 units and 2 garages in the same Bharatiya Bhavan Co-operative Housing Society Limited situated in Khar (west), Mumbai 400052 and the same is duly registered with the Sub - Registrar of Assurances, Bombay and the same is annexed as Exhibit "G".
- (d) The estimated value of the mortgaged security for both the loans were approx. Rs 190.86 crore as on 04.07.2017 and the total valuation was Rs 285.72 crore.
- (e) Sanction Letters, Loan Agreement, Indenture of Mortgage , Deed of Guarantee executed by Mr Mukesh Patel, Mr Vipul

shah and Mr Dhaval Shah in favour of STCI, undertaking by PDPL to STCI, Undertaking by Promoters/ Directors, Demand Promissory Note executed by PDPL in favour of STCI etc. for both the loans were submitted and marked as Exhibit “K to GG”

- (f) In response to the letters dated 18.06.2019 from the Financial Creditor, undated letters of acknowledgment of debt of both Rs 50 core and 80 crore Term Loans by Mr Mukesh Patel, Mr Vipul shah and Mr Dhaval Shah were received by the FC on 01.08.2019 (Exh HH to KK).
- (g) FC also submitted Commercial Credit Information Report dated 11th October 2019 as record of Default. (Exh LL)
- (h) FC vide letter dated 03.08.2019 called upon the CD to pay an aggregate overdue amount of Rs 25,06,62,372/- within 5 business days. Thereafter despite repeated requests/ reminders made by STCI, Corporate Debtor had failed to make payments therefore, FC vide notice dated 13.08.2019 recalled the Loans and called upon the CD to pay the entire outstanding amount of Rs 100,33,94,533 /- together with interest @ contracted rate and penal interest @ 2% PA. Further FC on 13.09.2019 addressed a notice to all the Guarantors calling upon them to repay the outstanding amounts however the same was not paid by the Guarantors as well.

- (i) FC requested the Adjudicating Authority to admit the petition against the CD.
4. Managing Director of the Corporate Debtor Mr Mukeshbhai Balabhai Patel filed an undated Affidavit in Reply to the Petition and the same was submitted to this Tribunal on 01.01.2020. The main submissions are:
 5. The Corporate Debtor is facing deadlock situation in its management hence he is filing the present reply in the capacity of MD of the CD. Further a petition bearing CP No. 4391 of 2019 has been filed under section 241 of the Companies Act to resolve the deadlock in the management.
 6. I deny the claims of FC in toto. I deny any debt being payable as claimed by the FC. I say that there are dialogue's going on between the parties and hence there is no liability on the part of the CD and the amount claimed as debt due is denied.
 7. He has argued that the petition filed by FC is defective on various grounds viz No Authority to initiate IBC Proceedings, No Record in the information Utility, Proper Form 1 not Filed, Entries in Banker's Book not attached.
 8. The unsold stock of the CD is sufficient to pay off all the liabilities of the CD. CD is financially strong and healthy company and the intent of the FC is malicious, with vested interest apart from recovery of its loan by making ill use of the provisions of IBC.

9. We have heard the arguments of the Learned Advocates for both the sides and perused the records.
10. Based on the records submitted by the FC, we are satisfied that the FC had extended corporate Term Loans to the CD and CD has failed to pay instalments, overdue amount and the Principle amount as stated in para 3(h) above. FC also submitted Commercial Credit Information Report dated 11th October 2019 as record of Default.
11. Mere denial of the claim of FC without any supporting evidence such as regular repayment of instalments, overdue amount, principal loan amount etc will not satisfy the submission of the MD of CD. Also, mere dialogues going on between the parties cannot amount to no default as claimed by the MD in his reply.
12. W.r.t No Authority to initiate IBC Proceedings, the argument will not help in view of the judgment of Hon'ble NCLAT in the matter of **Palogix Infrastructure Private Limited Vs. ICICI Bank Limited— Company Appeal (AT) (Insol.) No. 30 of 2017**.
13. Petition filed under sec 241 of the Companies Act will not have any bearing for the current proceedings initiated under IBC.
14. Promoters, Directors of the CD themselves vide their undated letters acknowledged outstanding debt amount as stated in para 3(f) above.

15. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
16. The Financial Creditor has proposed the name of **Mr Subhash Chandra Modi**, Registration No.IBBI/IPA-003/IP-N000176/2018-19/12119, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
17. It is, accordingly, hereby ordered as follows: -
 - (a) The company petition bearing **CP (IB) 4147/MB/C-II/2019** filed by **STCI Finance Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Parinee Developers**

Private Limited [CIN: U45200MH2006PTC159393] the Corporate Debtor, is **admitted**.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (Sarfaesi) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,

- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr Subhash Chandra Modi, [Registration No. IBBI/IPA-003/IP-N000176/2018-19/12119],** having address at 1301/02, Silver Oak, Raheja Willows CHS Limited, Akurli Road, Kandivali East, Mumbai 400101 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the Resolution

Professional (RP) shall be in compliance with such Regulations, Circulars and Directions issued, as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP/ RP shall carry out the functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the process of the CIRP in respect of the Corporate Debtor as prescribed under various provisions.
- (i) The Financial Creditor shall deposit a sum of ₹3,00,000/- (Rupees three 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).
- (j) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by

Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

09.06.2020

Sd/-

RAJASEKHAR V.K.
Member (Judicial)