IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH – V

Company Petition (IB) No. 200/ND/2021

In the matter of:
Section 7 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

AND
In the matter of :
Bhadani Financers Pvt. Ltd.
Corporate Office:
KLJ House, 63, Rama Marg,
Najafgarh Road,
New Delhi- 110015
Regd. Office:
22, Ground Floor,
8, Camac Street,
Kolkata - 700017 (W.B) **...Applicant/Financial Creditor**

Versus

Karmic Energy Private Limited
Regd office at:
1517, Devika Tower,
6, Nehru Place,
Delhi- 110019 **...Respondent/Corporate Debtor**

ORDER DELIVERED ON: 09.06.2022

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Hemant Kumar Sarangi, Hon'ble Member (Technical)

PRESENT: -
For the Applicant: Mr. Manish Jain, Advocate

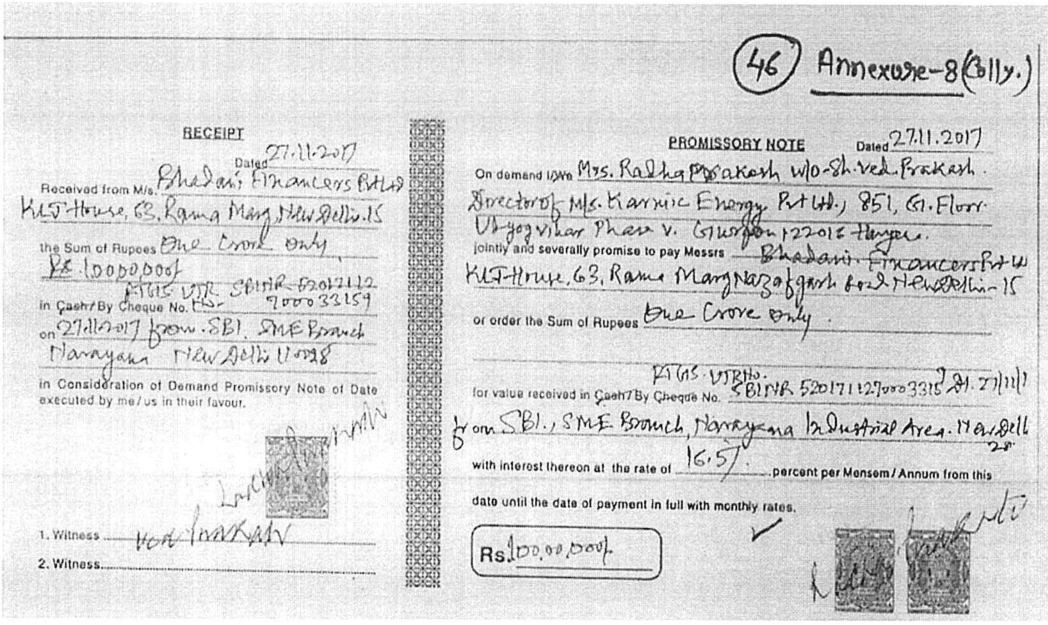
ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

1. We have heard the Ld. Counsel appearing for the applicant and perused the averments made in the application. From the perusal of record, we observe that right to file the reply of the respondent was closed vide order dated 18.11.2021, therefore, we would like to consider the averments made in the application only.

2. On perusal of the averments made in the application, we observe that the applicant contention is that he has advanced Rs. 1 crore on 27.11.2017 and apart from an agreement, that amount has also been secured by promissory note.

3. The loan amount is also secured by the demand promissory note dated 27.11.2017 placed at Page 46 of the application, therefore, at this juncture we would like to refer the promissory note. The scanned copy of the promissory note is reproduced below:-



46 Annexure-8 (Colly.)

RECEIPT

Dated 27.11.2017

Received from M/s. Bhadani Financers Pvt Ltd KLJ House, 63, Rama Marg New Delhi-15 the Sum of Rupees One Crore only Rs 10000000/- in Cash/By Cheque No. RTGS UTR SBINR 52017112 700033159 on 27.11.2017 from SBI SME Branch Narayana New Delhi 110028 in Consideration of Demand Promissory Note of Date executed by me/us in their favour.

1. Witness ....
2. Witness ....

PROMISSORY NOTE Dated 27.11.2017

On demand I/We Mrs. Radha Prakash W/o Sh. Ved Prakash Director of M/s. Karmic Energy Pvt Ltd., 851, Gr. Floor Udyog Vihar Phase V. Gurgaon 122016 Haryana jointly and severally promise to pay Messrs Bhadani Financers Pvt Ltd KLJ House, 63, Rama Marg Najafgarh Road New Delhi-15 or order the Sum of Rupees One Crore only for value received in Cash/By Cheque No. RTGS UTR No. SBINR 52017112700033159 dt. 27/11/17 from SBI, SME Branch, Narayana Industrial Area, New Delhi 28 with interest thereon at the rate of 16.5% percent per Mensem/Annum from this date until the date of payment in full with monthly rates.

Rs. 100,00,000/-

4. On perusal of the promissory note, we notice that the Corporate Debtor has promised to pay the amount shown in the promissory note on demand. At this juncture, we would also like to refer Section 5(8) of IBC and the same is reproduced below:-

Section 5(8) of IBC:-

*"**financial debt**" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—*

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[2][Explanation. -For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction,

only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

5. On perusal of the definition, it is seen that in terms of Section 5(8)(c), any amount raised pursuant to any **note** purchase facility or the issue of bonds, notes, debentures, loan stock, or any similar instrument comes under the definition of Financial Debt. Since the promissory note comes under the category of notes under the Negotiable Instrument Act, therefore, in our considered view, the promissory note issued by the Corporate Debtor comes under the definition of Financial Debt. We also observe that the amount has not been paid by the Corporate Debtor rather the Corporate Debtor vide letter dated 15.03.2019 has admitted the default. The scanned copy of the said letter placed at Page 57 of the application is reproduced below:-

KARMIC ENERGY PRIVATE LIMITED (57)

Annexure-11

15thMarch2019,

Bhadani Financiers Pvt Ltd
KLJ House,63,Rama Marg
Nazaf Garh Road
New Delhi-110015

Sub:Request for Extension of Loan taken on 27thNovember2017.

Company borrowed a Sum of Rs.1,00,00,000/by RTGs on 27.11.2017 under my signatures on behalf of the Company.The same was extended till 21.11.2018 on mutually agreed basis.

Unfortunately,owing to organ failure,the undersigned was unable to manage company matters and during this period,the lending bank SBI in its own discretion force closed our operations with HDFC and its own branches.

The undersigned post surgery is now recovering and encouraged with improved health,Bank is currently in advanced stage of considering a rehabilitation proposal.It is expected that our bank operations post favourable view shall be operational in a month or two.

I considering the present state of affairs request you to extend the loan to 22th November2019 and give us time to arrange your interest dues in coming months.

Considering our present constraints and rehabilitation time and documentation thereafter,It is not possible to issue a cheque from Company Account presently.

Neverthless,in view of your insistence,I tender a personal cheque numbering ~~183546~~ 183551 drawn on Punjab National Bank dated 22November2019,to be replaced with a Company cheque prior to presentation to hold good for encashment.

Thanking you for your favourable support.

For Karmic Energy Pvt Limited
Ved Prakash
(Ved Prakash)

For BHADANI FINANCERS (P) LTD
Auth. Sign

6. In sequel to the above, we are of the considered view that the applicant has established that there is a default in making payment of the debt, the application is complete and there is no disciplinary proceedings pending against the proposed Resolution Professional, therefore, we have no option but to admit the application.

7. **Accordingly, we hereby ADMIT the petition**. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying: -

(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;*

(b) *transferring, encumbering, alienating or disposing of by the corporate debt or 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;*

(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.*

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

8. The Financial Creditor has proposed the name of IRP Mr. Praveen Ranka. Accordingly, we appoint, Mr. Praveen Ranka, an Insolvency Professional, Registration No. IBBI/IPA/-002/IP-N00746/2018-2019/12261

email id: unitymgt@rediffmail.com, New Delhi duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

9. The Financial Creditor is directed to deposit a sum of Rupees Two lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

10. Copies of the order be sent to both the parties as well as to the IRP.

Sd/-

Sd/-

(Hemant Kumar Sarangi)
Member (Technical)

(Abni Ranjan Kumar Sinha)
Member (Judicial)