IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP(IB)No.1897/NCLT/MB/2019
Under Section 7 of the I&B Code, 2016
In the matter of

Prafulla Shah
…Financial Creditor/ Petitioner
v/s

Sunshine Technobuild Private Limited
...Corporate Debtor

Order Dated 17.02.2020

Coram:

Member (Judicial) : Mr.Bhaskara Pantula Mohan
Member (Technical): Mr. Rajesh Sharma

For the Applicant: Advocate Ankit Lohia, Advocate Chetan R. Shah and Advocate Abhishek Nikharge;
For the Respondent: Advocate Gauraj Shah, Advocate Bhavik Salia and PCS Siddharth Doshi

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This is an application being C.P. (IB) No. 1897/NCLT/MB/2019 filed by **Mrs. Prafulla Shah,** the Applicant, and wife of Late. Prakash G. Shah, the Financial Creditor, against **Sunshine Technobuild Pvt.Ltd,** Corporate Debtor, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) for initiating Corporate Insolvency Resolution Process (**CIRP**). This application is filed claiming a total default of ₹39,28,109/- (Rupees Thirty-Nine Lakh Twenty-Eight Thousand One Hundred and Nine Only) inclusive of interest @ 1% per month.

2. The counsel for the Applicant submits that this application is filed by Mrs. Prafulla Shah, wife of late Prakash G. Shah, the original financial Creditor. The original financial creditor died on 08.08.2017. Copy of Death Certificate is annexed to the Application.

3. The Financial Creditor granted a loan of ₹ 30,00,000/- (Rupees Thirty Lakh Only) to the Corporate Debtor as requested by the director Mr. Atul Bharani, of the Corporate Debtor. The Financial Creditor granted the said loan from Joint Account held jointly by the late Financial Creditor and his Wife, Mrs. Prafulla P. Shah, the Applicant herein, in State Bank of India, Sion Branch, bearing No.52090761938. The loan amount was disbursed

on 31.10.2014 to the Corporate Debtor. Demand Promissory Note dated 30.01.2014 for ₹30,00,000/- payable on demand to Mr. Prakash G. Shah or his survivor was issued by the Corporate Debtor against the loan received. Copies of the Bank Statement of joint account of the deceased Financial Creditor and the Applicant along with the Demand Promissory Note issued by the Corporate Debtor in favour of the Financial Creditor are annexed to the Application.

4. After the death of the financial creditor, his wife has filed this application being authorised by his Will dated 02.02.2017. The said financial Creditor in his Will dated 02.02.2017 has nominated his wife to recover the loans which have been given by the deceased to a number of parties including Sunshine Technobuild Private Limited.

5. The Applicant submitted that the Corporate Debtor has paid interest for the financial year 2013-2014, 2014-2015, 2015-2016 and in the year 2016-2017. The Corporate Debtor paid interest for the period, 01.04.2016 to 30.09.2016. The Corporate Debtor expressed its inability to repay the interest on 01.10.2016 and thereafter has not made any payments. The Applicant issued letter dated 10.10.2018 to the Corporate Debtor intimating that the letter demanding a sum of ₹37,39,000/- (Rupees Thirty-Seven Lakh Thirty-Nine Thousand Only) has been issued to the Corporate Debtor by the Applicant herein that as wife and legal heir of the deceased Financial Creditor. Copy of the letter dated 10.10.2018 along with postal acknowledgement is annexed hereto.

6. The Corporate Debtor submits in its Reply dated 06.01.2020 that the fact of an application under Section 7 of I & B Code, 2016 being filed by the Applicant came to its notice only after notice through publication was issued in the Free Press Journal on 07.12.2019. The Corporate Debtor has taken a contention that the Applicant has no valid Probate and thus does not have the right to Institute insolvency proceedings.

7. The Corporate Debtor further contends that the Applicant is required to submit details of Succession Certificate, or Probate of a Will, or Letter of Administration, or Court Decree under the Indian Succession Act, 1925. The Applicant has stated that the same is in process of applying. It is submitted by the Corporate Debtor that the Applicant has filed for Probate in August, 2019, i.e. after the present application has been filed. The

Corporate Debtor claims that the Applicant has falsely mentioned in her application that she is in the stage of filing for Probate.

8. The Corporate Debtor denies the debts which are owed by him to the Applicant and further submits that the Application is barred by the period of limitation as the default has occurred in March 2016. The Corporate Debtor challenges the maintainability of the application under The Bombay Money Lenders Act 1946. However, the said contention has not been substantiated.

9. The Applicant has filed Additional Affidavit on 04.10.2019 annexing copy of Testamentary Petition (L) No. 2590 of 2019 filed by the Applicant before the Hon'ble High Court of Judicature at Bombay, to obtain Probate.

10. We have heard the parties and perused the records.

11. On perusal of the Bank Statement of the Financial Creditor and the Demand Promissory Note dated 30.01.2014, it is established that the Corporate Debtor has received the loan amount from the Financial Creditor.

12. On perusal of the Death Certificate of the Financial Creditor, the Will dated 02.02.2017, and Testamentary Petition (L) No. 2590 of 2019 filed by the Applicant before the Hon'ble High Court of Judicature at Bombay, it is established that the Applicant being Wife and joint account holder of Financial Creditor and also the executor of the Will, is entitled to file this Application.

13. The Corporate Debtor failed to repay the interest from 01.10.2016 onwards which is seen from the statement of accounts. The date of default is within the period of limitation.

14. The Corporate Debtor in its Reply does not deny having received the loan amounts and default in repayment of amounts. It contends that the Applicant is not entitled to file this application as the Applicant has not obtained Probate from the relevant Court as per section 213 of the Indian Succession Act, 1925.

15. It is relevant to examine the contention of the Corporate Debtor. The relevant provision of Indian Succession Act, 1925 is produced herein below for the sake of convenience.

    <u>*Section 213:*</u>

    "(1) *No right as executor or legatee can be established in any Court of Justice unless a Court of competent jurisdiction in [1][India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.*

    (2) This section shall not apply in the case of Wills made by Muhammadans [3][or Indian Christians], and shall only apply—

    (i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

    (ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the [4][ordinary-original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immovable property situate within those limits."

16. It is seen from a bare reading of this section that, the provisions in this section apply to rights of executor or legatee, being Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57 of the Act. It is imperative to lay attention on section 57 of the Act. For the sake of convenience, the same is extracted herein below:

    *[**57. Application of certain provisions of Part to a class of Wills made by Hindus, etc**.--The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply--*

    (a) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such Wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits, [2][and

(c) to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):]

Provided that marriage shall not revoke any such Will or codicil.]

17. A bare reading of the section extracted herein above, makes it crystal clear that it applies to all such Wills and codicils made in relation to immoveable property situated within the limits of ordinary original civil jurisdiction.

18. It is imperative to mention here that the instant transaction of loan granted to the Corporate Debtor does not involve any immoveable property. The involvement of immoveable property being a condition precedent for the applicability of the said provision, the same is not applicable to this loan transaction granted by the Financial Creditor to the Corporate Debtor. The argument of the Corporate Debtor that there is no probate does not sustain. The Probate only confirms the title and does not confer title.

19. The Applicant being the wife and joint account holder of the Financial Creditor is capable of filing the instant application.

20. The financial debt and its default have already been established. It is imperative to mention here that the Hon'ble Supreme Court in the case of *"Innoventive Industries Ltd. Vs. ICICI Bank and Anr. – (2018) 1 SCC 407",* held that "*the moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted*". In view of the facts and circumstances of the instant application and the abovementioned decision of the Hon'ble Supreme Court, this application deserves to be admitted.

21. The Applicant has proposed the name of **Mrs. Nayana Premji Savala**, a registered Insolvency Resolution Professional having Registration Number **[IBBI/IPA-003/IP-N00051/2017-18/10491]** as Interim Resolution Professional, to carry out the functions as mentioned under

I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him. 12. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existence of financial debt of more than Rupees One Lakh is due and payable against the corporate debtor and its default is also proved. Application is within the limitation. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This application filed under Section 7 of I&B Code, 2016, presented by **Prafulla Shah,** Financial Creditor / Applicant against **Sunshine Technobuild Private 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 **Mrs. Nayana Premji Savala,** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-003/IP-N00051/2017-2018/10491]** 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.

22. 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/-
RAJESH SHARMA
Member (Technical)

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)

17.02.2020