



IN THE NATIONAL COMPANY LAW TRIBUNAL,

COURT-V, MUMBAI BENCH

C.P.(IB) 712/MB/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of **DMI Finance Private Limited** having its head office at Express Building, 3rd Floor,9-10, Bahadur Shah Zafar Marg, New Delhi - 110002. [CIN: U65929DL2008PTC182749]

.....Financial Creditor/Petitioner

V/s

Kandivli Balaji Investment Private Limited, having its registered office at Gajalaxmi Apartments Babhai Naka Borivali (W), Mumbai: 400067. Maharashtra. [CIN: U65990MH199PTC076481]

.....Corporate Debtor/Respondent

Order Reserved On: 04.10.2022

Order Pronounced On: 10.11.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)



Appearances (via video conferencing)

For the Petitioner: Mr. Nithish Bangera, Advocate

For the Respondent: Mr. Dhruv Parmar.

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. The above Company Petition is filed by DMI Finance Private Limited, (hereinafter called as “**Petitioner**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Kandivli Balaji Investment Private Limited, (hereinafter called as “**Corporate Debtor**”) by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code (hereinafter called “**Code**” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved financial debt of Rs. 92,59,42,855/-.
2. A Loan Agreement dated 29.06.2017, was executed amongst Corporate Debtor in the capacity of “**Borrower**” and Prasanti Land Developer Private Limited in the capacity of “**Corporate Guarantor**” and each of the Persons and Entities as per Schedule 1 of the Loan Agreement, in the capacity of “**Personal Guarantors**” and the Petitioner in the capacity of “**Lender**” (hereinafter collectively referred as “**Parties**”).
3. The Corporate Debtor had approached the Petitioner for availing fund based financial services for General Corporate Purpose as mentioned in the Schedule 2 of the Loan Agreement.



4. **Submissions of the Petitioner:**

- i. The Petitioner states that, as per Clause 2.1 of the Loan Agreement, the Petitioner had agreed to grant term loan facility of Rs. 40,00,00,000/- as per the terms and conditions of the Loan Agreement. Accordingly, the financial debt was disbursed by the Petitioner to the Corporate Debtor in various tranches, from 12.07.2017 till 15.05.2018, pursuant to the notice of the drawal issued by the Corporate Debtor.
- ii. The Petitioner further stated that, in order to secure the obligation of the Corporate Debtor, as per the Loan Agreement, the below-mentioned agreements were entered between the Petitioner and other Parties, as follows:
 - a. Deed of Personal Guarantee dated 7.07.2017, between Narendra D. Shah as 'Guarantor' in favour of Petitioner.
 - b. Deed of Personal Guarantee dated 07.07.2017, between Himanshu N. Shah as 'Guarantor' in favour of Petitioner.
 - c. Demand promissory note dated 6.07.2017 issued by Mr. Himanshu Shah.
 - d. Deed of corporate guarantee dated 07.07.2017, between Prashanti Land Developer Private Limited as 'Corporate Guarantor' in favour of Petitioner.
 - e. Deed of Pledge amongst the persons set out in First Schedule of the said Deed in the capacity of 'Pledgors',



Prashanti Land Developer Private Limited and the
Petitioner as 'Lendor'.

- f. Unattested Memorandum of Hypothecation dated 07.07.2017, entered by Prashanti Land Developer Private Limited in favour of Petitioner.
- g. Unattested Memorandum of Hypothecation dated 07.07.2017, by Vijay Victor Realtors in favour of Petitioner.
- iii. Thereafter, an Escrow Agreement dated 19.06.2018, was entered amongst Prashanti Land Developers Pvt Ltd., HDFC Bank as "Escrow Agent" and the Petitioner.
- iv. The Petitioner further enclosed the following details of documents, records and evidence of default as follows :
 - a. A copy of Loan and Interest calculation sheet.
 - b. A Copy of Form CHG-1
 - c. A copy of the Commercial Credit Report Information Report dated 30.04.2021
 - d. A Certified True copy of Ledger Statement of account of Corporate Debtor in books of Petitioner.
- v. The Petitioner states that, the Corporate Debtor became irregular in its payments and further stopped paying the instalments as per the terms of the Loan Agreement.



- vi. Thereafter, with no other choice left, the Petitioner was constrained to issue the Demand letter dated 26.04.2019 to the Corporate Debtor, requesting to clear the outstanding dues of Rs. 12,48,93,631/-.
- vii. Further, the Petitioner issued two letters dated 27.04.2019, 08.05.2019 respectively to the Corporate Debtor, requesting to clear the above-mentioned outstanding dues i.e. of Rs. 12,48,93,631/-.
- viii. The Petitioner issued several notices and gave multiple opportunities to the Corporate Debtor. However, the Corporate Debtor failed to clear the outstanding dues to the Loan Facility and was declared as a Non-Performing Asset on 17.05.2019 as per the terms of Reserve Bank of India.
- ix. The Petitioner further states that, on account of 'event of default', in terms of the Loan Agreement, the Petitioner issued a 'Loan Recall Cum Invocation of Guarantee Notice' dated 30.05.2019, to the Corporate Guarantor i.e. Prashanti Land Developers Pvt Ltd, Personal Guarantors i.e. Mr Narendra Shah and Mr. Himanshu Shah and the Corporate Debtor, whereby the corporate guarantee of the Corporate Guarantor in relation to the Loan Agreement was invoked, and it was called upon to make payment of Rs. 47,29,40,085/-, within



seven days from the receipt of the said notice. However, both the Corporate Debtor and Corporate Guarantors failed to make payment within seven days of receipt of the notice.

- x. Thereafter, the Petitioner issued another notice dated 06.01.2020 to Yesha H. Shah and Alpha Vanilal Mehta, who were the directors of Corporate Guarantor. It was stated that the addressee were responsible for the affairs of Corporate Guarantor and thus, shall be responsible to make repayment of the outstanding dues in the capacity of Corporate Guarantor. Thus, the directors were called upon to make the payment of the outstanding dues of Rs. 55,08,14,589/- within seven days from the receipt of the notice. However, no payment was made against the outstanding debts
- xi. Thus, as on date, an amount of Rs. 92,59,42,855/- is due and payable by the Corporate Debtor to the Petitioner as financial debt.

5. The Representative of the Corporate Debtor appeared before this Tribunal on 08.08.2022 and confirmed the receipt of notice from the Petitioner. Further, this Bench vide an Order dated 08.08.2022, directed the Corporate Debtor to file its reply, failing which, their right to file reply shall stand forfeited. Despite the aforementioned Order, no reply was filed by the Corporate Debtor. Thereafter, on 04.10.2022, the Corporate Debtor once again requested time to file reply. However,



in view of the above conditional Order dated 08.08.2022, this Bench rejected the request of the Corporate Debtor.

6. On-going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. Also, no payment has been made towards the financial debt by the Corporate Debtor and no notice has been given by the Corporate Debtor relating to the dispute of the unpaid financial debt. Therefore, there is a clear debt and default of non-payment of monies. Since the Corporate Debtor did not choose to file any reply, the claim of the Financial Creditor remained undisputed. The date of default is 17.05.2019 and the Company Petition being filed on 02.03.2022 is within limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.

7. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**' by passing the following:



ORDER

- a. The above Company Petition No. C.P.(IB) 712/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Kandivli Balaji Investment Private Limited.**
- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Sanjay Gupta** , having E-mail Id: sanjay@sgaindia.in, having address at C-4E/135, Janakpur, New Delhi-110058 and having Registration No. IBBI/IPA-002/IP-N00982C01/2017-2018/10354, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency and Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by COC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate



debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.



IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH

C.P.(IB) 712/MB/2022

- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. (IB) 712/MB/2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)