

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**



ITEM No.301  
C.P. (IB)/71(AHM)/2023

**Order under Section 7 IBC**

**IN THE MATTER OF:**

AVB Global Ventures Pvt. Ltd.  
Vs.  
Rainbow Infrabuild Pvt. Ltd.

....Applicant

....Respondent

**Order delivered on: 09/11/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT NO. I**

**CP(IB)/71/AHM/2023**

*(Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

***In the matter of:***

**M/s. AVB Global Ventures Pvt. Ltd.**

(CIN: U29235DL2010PTC204457)

Having registered office at:

A-5/4, Shop No.2, Krishna Nagar,  
Delhi – 1100051.

..... Applicant/Financial Creditor

**VERSUS**

**M/s. Rainbow Infrabuild Pvt. Ltd.**

(CIN: U21098GJ2010PTC063364)

Having registered office at:

1022, 10<sup>th</sup> Floor, Sakar-9,  
Ashram Road,  
Ahmedabad – 380009.

..... Respondent/Corporate Debtor

**Order pronounced on 09.11.2023**

**CORAM:**

**SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)  
SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

For the Applicant : Mr. Pratik Thakkar, Advocate

For the Respondent : Ex-Parte



## ORDER

**Per: BENCH**

1. The Present Application is filed on 17.03.2023 by the Applicant **M/s. AVB Global Ventures Pvt. Ltd.** (hereinafter referred to as “the Applicant/Financial Creditor”) against the Respondent **M/s. Rainbow Infrabuild Pvt. Ltd.** (hereinafter referred to as “the Respondent/Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues of Rs.2,38,95,357/- which includes the principle amount of Rs.1,91,11,250/- and interest Rs.47,87,107/-. The date of default is as stated to be 30.06.2022.
2. A perusal of Part-I of Form-I reveals that this application is filed through one Mr. Ankit Dashrath Panchal, as authorised signatory who has been authorised by Board Resolution dated 10.02.2023 which is annexed as **Annexure-A**.
3. On perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Debtor is one M/s. Rainbow Infrabuild Pvt. Ltd. having CIN No.



U21098GJ2010PTC063364. The Respondent/Corporate Debtor was incorporated on 23.12.2010 and having registered office at 1022, 10th Floor, Sakar-9, Ashram Road, Ahmedabad, Gujarat, PIN-380009.

4. Part-III of the Form-1 reveals that the Applicant/Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) Mr. Janak Jagjivan Shah, having registration No. IBBI/IPA-001/IP-P-02626/2022-2023/14085. He has filed his written communication annexed with the Application as **Annexure-F** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.
5. Part-IV of the Form-1 reveals that total dues as claimed by the Applicant/Financial Creditor is Rs. 2,38,98,357/- consisting of Rs. 1,91,11,250/- being principle and amount of Rs. 47,87,107/- as interest up-to 04.01.2023.
6. The Applicant/Financial Creditor submitted that the Respondent/Corporate Debtor approached for financial assistance of Rs. 2.00 Crores and entered into a Memorandum of Understanding (MoU) dated 25.05.2020. In terms of said MoU, the Respondent/Corporate Debtor agreed



to repay the amount along with interest @ 9% p.a. from the date of payment, which was to be repaid by 30.06.2022. Further, as per the said MoU, in-case, the Respondent/Corporate Debtor fails to pay the amount due as principle or interest on the date required under the said MoU shall constitute a default by the Respondent/Corporate Debtor and the Applicant/Financial Creditor may take appropriate legal course of action to recover the amount of loan together with interest, the same is attached as annexure B.

7. Thereafter, the Applicant/Financial Creditor disbursed the loan amount in 08 tranches with effect from 27.05.2020 to 21.07.2020 as reflected from the account statement of Applicant/Financial Creditor maintained with ICICI Bank which was filed by way of an additional affidavit on 19.10.2023. The details of disbursement as per the chart as below:

<b>Sr.No.</b>	<b>Date</b>	<b>Amount Disbursed</b>
1	27.05.2020	15,96,000/-
2	28.05.2020	21,00,000/-
3	28.05.2020	15,94,500/-
4	29.05.2020	60,80,000/-
5	30.05.2020	20,60,000/-
6	08.06.2020	19,98,250/-
7	12.06.2020	12,98,500/-
8	21.07.2020	23,84,000/-
<b>Total</b>		<b>1,91,11,250/-</b>



8. However, the Respondent/Corporate Debtor failed to repay the principal amount as well as the interest as agreed between them. Therefore, the Applicant/Financial Creditor served a demand notice dated 05.01.2023 by hand upon the Respondent/Corporate Debtor on 09.01.2023 granting 15 days of time which was also not honoured by the Respondent/Corporate Debtor.
9. The Applicant/Financial Creditor, in support of the above averments has relied upon the following documents:

<b>Sr.No.</b>	<b>Document</b>	<b>Page Nos.</b>
1	Copy of BR Authorisation	11
2	Copy of Memorandum of Understanding containing the terms and condition of loan	12-14
3	Copy of Demand Letter sent to Corporate Debtor	15
4	Copy of ledger of the Corporate Debtor in books of applicant	16-17
5	Copy of company master data of Corporate Debtor	18
10	Form No.2 issued by Mr. Janak Shah to act as an IRP	19-22
11	Proof of Service	23-23B
12	Valalatnama	24
13	ICICI Bank Account Statements of the Applicant/Financial Creditor as Proof of Disbursement	22.09.2023
14	NeSL Certificate	30.06.2023

10. The Applicant/Financial Creditor has also relied upon ledger account duly signed and acknowledged by the Respondent/Corporate Debtor which is annexed as Annexure - D.



11. The Applicant/Financial Creditor has also placed on record NeSL Certificate being record of default in the shape of Form D, by way of an additional affidavit on 30.06.2023 in which date of default is also recorded as 30.06.2022 and default is considered deemed to be authenticated.
12. A notice was issued to the Respondent/Corporate Debtor by this Bench inviting objection/reply, if any. However, after due service, neither the Respondent/Corporate Debtor appeared or filed any reply. Hence, the Respondent/Corporate debtor was proceeded as an ex-parte vide this Bench's order dated 16.08.2023.
13. We have heard the counsel for the Applicant/Financial Creditor ex-parte against the Respondent/Corporate Debtor and perused the record.
14. As per the MOU dated 25.05.2020, the Respondent/Corporate Debtor has availed the financial assistance of Rs.1,91,11,250/-. As per the Clause No.4 of the said MoU, the Respondent/Corporate Debtor agreed to pay the interest @9% p.a. from the period, which was to be returned by 30.06.2022 along with an interest @9.00% p.a. from the date of payment.
15. In support of disbursement, the Applicant/Financial has placed on record the financial statements of its accounts which are maintained with the ICICI Bank. The Loan amount was disbursed on various dates and trenches from




27.05.2020 to 21.07.2020 which is reproduced as above. However, the Respondent/Corporate Debtor failed to repay the amount as per the MoU dated 25.05.2020 and committed a default on 30.06.2022 for which a demand notice was raised by the Applicant/Financial Creditor on 05.01.2023. The demand notice was duly received by the Respondent/Corporate Debtor by hand on 09.01.2023 (Annexure C, Page No.50 of the petition).

16. Further, the Applicant/Financial Creditor has also placed on record the copy of NeSL certificate being a record of default in the shape of Form D, in which, the date of default is recorded as 30.06.2022. In view of the above, the date of default is proved.
17. In view of the above, the Applicant/Financial Creditor has successfully proved the disbursement of loan amount to the Respondent/Corporate Debtor, debt as well the default. Further, the present application has been filed within three years of limitation from the date of default and the amount of default is also more than rupees one crore. The date of default is also not covered under the exemption period given under Section 10A of the I.B. Code, 2016.
18. Further, the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited***, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited



to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the



order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

19. Hence, the present application is complete in terms of Section 7(5) of the I.B. Code, 2016. Therefore, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

20. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **M/s Rainbow Infrabuild Private Limited** is **admitted** in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the Code.




(ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- 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 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.*
- e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*




- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.
- (v) As proposed by the Financial Creditor, we appoint **Mr. Janak Jagjivan Shah** having Registration No. IBBI/IPA-001/IP-P-02626/2022-2023/14085, having address: 201, Kamdhenu Complex, Near Toran Dining Hall, Nr. Income Tax, Ashram Road, Ahmedabad – 380009 under section 13(1)(c) of the Code to act as Interim Resolution Professional (**IRP**). As per the data available on IBBI Website, AFA is valid till 14.05.2024. He shall conduct the Corporate Insolvency Process as



per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police



Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after



pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed of the initiation of CIRP against the Corporate Debtor timely.

(xiv) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

21. Accordingly, this Application **CP(IB)/71/AHM/2023** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-Sd-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

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