IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-429/(ND)/2022

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Achiever Infratech Pvt. Ltd.
Registered Office At:
C-10, C-Block Market,
Vasant Vihar,
New Delhi-110057

...Applicant/Financial Creditor

Versus

M/s. Banyantree Infradevelopers Pvt. Ltd.
(Previously known as S.A. Infradevelopers Pvt. Ltd.)
Registered Office At:
House No. 310, 3rd Floor,
Vardhman Taru Plaza CU Block,
New Delhi-110034

...Respondent/ Corporate Debtor

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Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Petitioner/Financial Creditor: Mr. Palash Singhai
Counsel for Respondent/Corporate Debtor: Mr. Lavish Jain

ORDER

Per P.S.N PRASAD, MEMBER (JUDICIAL)

Date: 21.10.2022

1. This is an application filed by M/s. Achiever Infratech Pvt. Ltd. to initiate corporate insolvency resolution process ("CIRP") against M/s. Banyantree Infradevelopers Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 1,21,68,208/- (Rupees One Crore Twenty-One Lakhs Sixty-Eight Thousand Two Hundred and Eight Only) as on 30.03.2022. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

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- That the Board of Respondent/Corporate Debtor authorised its Director Mr. Pankaj Singh to avail unsecured loan upto maximum amount of Rs. 2,50,00,000/- at a rate of interest not higher than 21% per annum from A.S. Infradevelopers Pvt. Ltd. (Lender).
- That the Lender and the Corporate Debtor executed Memorandum of Understanding wherein the Lender agreed a sanction a loan of Rs. 2,50,00,000/- to the Corporate Debtor with interest of 18% per annum for 18 months from the date of disbursal of loan amount.
- That the Lender disbursed the Loan amount of Rs. 28,50,000/-, Rs. 25,00,000/- and 25,00,000/-, Rs. 1,50,00,000/- to the Corporate Debtor in terms of the MoU. Ramprastha Developers and Properties Private Limited on behalf of Corporate Debtor partially repaid the loan amount of Rs. 29,99,634/- and Rs. 1,02,69,100/- to the Lender and reduced the outstanding liability of the Corporate Debtor.

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- That the Lender assigned the remaining debt due and owed by the Corporate Debtor to the Applicant/Financial Creditor with all its rights arising out of the MoU.
- That the Applicant/Financial Creditor vide its letter intimated the Corporate Debtor regarding the assignment of debt of Rs. 95,81,266 (alongwith interest) with all rights, benefits, obligations by the Lender to the Applicant. Further, the Applicant apprised the Corporate Debtor that the said debt will be due and payable alongwith interest on or before 30.03.2022 as per the terms of MoU and requested the Corporate Debtor to make the necessary changes of the same in its books of accounts.
- The Corporate Debtor changed its name from S.A. Infradevelopers Pvt. Ltd. To Banyantree Infradevelopers Pvt. Ltd. and accordingly submitted the documents before the RoC wherein the RoC issued certificate of Incorporation pursuant to change name.
- That the last instalment of loan amount of Rs. 1,50,00,000/- was disbursed to the Corporate Debtor on

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30.09.2020 by the Lender. Therefore, in terms of the clause 2 of the MoU the same became due and payable on the expiry of 18 months from the date of disbursal which was 30.09.2020. Hence, on 30.03.2022 the Corporate Debtor became liable to repay the outstanding liability arising out of the MoU as well the Assignment Deed, however, the Corporate Debtor defaulted in repayment of the outstanding debt.

- That the Applicant/Financial Creditor upon the expiry of the term of the MoU i.e., 30.03.2022 (18 months from 30.03.2020 last date of disbursement of loan amount) vide its demand notice dated 02.04.2022 as well as 14.04.2022 apprised Corporate Debtor regarding its outstanding liability as per the MoU which became due and payable on 30.03.2022 and called upon the Corporate Debtor to immediately make payment towards its outstanding liability.
- That the Corporate Debtor miserably failed to adhere with the instructions issued vide demand letters dated

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02.04.2022 and 12.04.2022 and committed a default in repayment of the debt.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- That the Banyantree Infradevelopers Pvt. Ltd. (hereinafter the Corporate Debtor) is a company engaged in business of sand mining under the Companies Act, 2013.
- That in the instant case, on request of Respondent, the A.S Infradevelopers Private Limited ("Original Lender") between July' 2020 to Sep' 2020 had disbursed various credit facilities to the Corporate Debtor on account of MoU entered between the parties dated 22.06.2020.
- That the said MoU entered into by the Respondent and the Original Lender, was primarily done for providing financial assistance for the working capital of the respondent company on account of imposition of nationwide lockdown a huge impact was witnessed in trade and commerce

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throughout the Country and the business of the Respondent.

- That the Original Lender in 4 tranches disbursed an unsecured loan amounting to Rs. 2,28,50,000/- 18% per annum for a period of 18 months. The Respondent meanwhile was engaged in business relations with M/s Ramprastha Promoters & developers Private Limited and therefore, the M/s Ramprastha Promoters & developers Private Limited had partially paid loan amount on behalf of Respondent amounting to Rs. 1,32,68,734/- within a period of one year.
- That meanwhile M/s Ramprastha Promoters & developers Private Limited, A.S Infradevelopers Private Limited (original lender) and Achiever Infratech Limited (applicant) entered into deed of assignment dated 30.09.2021 for assigning loan amount entered by way MoU dated 22.06.2020 thereby assigning all rights in the favour of present Applicant. The Respondent was not made party to the said deed of assignment but the Respondent came to know about such assignment deed by way of letter dated

06.10.2021 issued by Applicant. Thus, the Original Lender had executed a Deed of Assignment dated 30.09.2021 and assigned the account of the Respondent to the Applicant.

- That on account expiry of 18 months on 30.03.2022, the Respondent had issued post-dated cheques to the Applicant amounting to Rs. 21,68,000/- and Rs. 5,00,000/ dated 10.05.2022 but admittedly has committed a default in repaying the outstanding debt of the Financial Creditor and requested time for repayment of loan on account of financial distress due to Covid 19 pandemic.
- That the Respondent has been in business since a very long time and its is vouched here that none of its business loans were ever in default and have always paid against the outstanding dues on time and as well repaid more than 50 percent of the total disbursal amount within a duration of one year.
- That the Covid 19 Pandemic has brought catastrophe into the business of the Corporate Debtor and he himself has

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not been paid by his clients due to the current scenario and slowdown of economy.

- That the Respondent is in such financial distress that the company has no money in the bank account at the time of the filing of this reply to repay his outstanding dues that he owes to the Financial Creditor.

3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 1,21,68,208/- (Rupees One Crore Twenty-One Lakhs Sixty-Eight Thousand Two Hundred and Eight Only) as on 30.03.2022.

4. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.

5. Section 5(7) of IBC, 2016 defines Financial Creditor as "any person to whom a financial debt is owed and includes a person

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to whom such debt has been legally assigned or transferred to."
Vide Deed of Assignment dated 30.09.2021 executed between the lender of the Corporate Debtor and the Applicant in this matter, the financial debt was assigned to the Applicant.

6. Vide daily order dated 22.07.2022, it has been noted that the Counsel for Corporate Debtor, as per the instructions of his client, has admitted the debt and default.

7. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.

8. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

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9. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the Applicant has proposed the name of Mr. Devendra Umrao for appointment as Interim Resolution Professional having registration number IBBI/IPA-003/IP-N-00223/2019-2020/12640. Mr. Devendra Umrao has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 14.05.2022. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

10. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

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11. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Devendra Umrao has submitted the declaration in Form 2 dated 14.05.2022. The proposed Interim Resolution Professional Mr. Devendra Umrao has also submitted an "Authorisation for Assignment" dated 10.12.2021.

12. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default

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before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

13. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

14. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

15. Mr. Devendra Umrao having registration number IBBI/IPA-003/IP-N-00223/2019-2020/12640 is appointed as an Interim Resolution Professional.

16. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to

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admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(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;

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(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.

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

19. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further

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made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

20. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim

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Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

(P.S.N. PRASAD)
MEMBER (JUDICIAL)