



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-306/ND/2022

U/S. 7 of the IBC, 2016 Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/s Paramveer Distributors Private Limited

Registered office at:

401, Vatsalya Chambers,

A, Narendra Chandra Dutta Sarani,

Kolkata - 70001

...Financial Creditor

Versus

M/s Pushpa Builders Limited

Regd. Office:

6, D.B Gupta Road, Paharganj

New Delhi-110055

...Corporate Debtor

Delivered on: 20.09.22

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha

Hon'ble Member (Technical)



Appearances:

Financial Creditor : Adv. Avdhesh Bairwa

Corporate Debtor : None

ORDER

Per: Bachu Venkat Balaram Das , Member (Judicial)

1. This instant application bearing IB-306/ND/2022 is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor, M/s Paramveer Distributors Private Limited, is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Pushpa Builders Limited, to declare moratorium and to appoint (Interim Resolution Professional (hereinafter referred as 'IRP')). The Corporate debtor is registered with Roc, Delhi & Haryana and is therefore within the jurisdiction of this Adjudicating Authority.

2. The Financial Creditor/Petitioner has averred as follows: -

- a. It is the case of the Financial Creditors, M/s Paramveer distributors Private limited is registered with the Reserve Bank of India as a non-deposit taking non-banking financial institution. Corporate debtor had approached the Financial creditor for a loan amounting to Rs.



15 crore. Financial Creditor and Corporate debtor entered into a loan agreement dated 31.03.2015. The loan agreement captured the terms under which the credit facility of Rs. 15,00,00,000/- was to be given to the Corporate debtor for business purposes.

- b. It is submitted that the Financial Creditor issued an acceptance letter for sanction of the loan amount. Thereafter, an amount of Rs. 5,58,93,998/- was disbursed by the Financial Creditor in five tranches between 12.01.2015 to 31.03.2015, to the account of Corporate debtor as the part of the credit facility. Thereafter, an amount of Rs. 6,69,81,0151- was disbursed by the Financial Creditor to the Corporate Debtor between 20.04.2015 to 15.01 .2019 pursuant to the Loan Agreement.
- c. It is further submitted that, default in payment was committed by the Corporate debtor therefore, the Financial Creditor issued a notice dated 01.09.2021 which was served on the email address registered with the MCA portal and also sent to the registered office of the Respondent by post. However, no response was given by the Corporate debtor to the above sent notice.
- d. It is averred that thereafter, another loan recall notice dated 13.09.2021 was issued by the Financial Creditor on the Email ID of the directors of the Corporate Debtor. Financial creditor also issued a public notice for repayment of the outstanding amount in 2



national newspapers and 1 vernacular newspaper. All the pleas made by Financial creditor fell on deaf ears. The Corporate debtor has not repaid the amount of default till date even after persistent reminder and notices.

e. It is further averred that the outstanding loan amount is Rs. 12,28,75,0131/- and accrued & unpaid interest @ 24% on loan is Rs. 43,05,00,4391/- and hence the total outstanding balance with interest, i.e., the default amount, is Rs. 55,33,75,4531/-.

3. Notice was issued to the Corporate Debtor on 27.04.2022. Service was duly effected. However there was no appearance and no averments were made by the Corporate Debtor in this matter and on 24.05.2022, the matter was proceeded as *ex parte*. As the Corporate Debtor remained ex-parte, we have to decide this application without the benefit of their assistance.

4. We have heard the arguments advanced by Ld. Counsel for the Financial Creditor and also perused the record.

5. The Financial Creditor's claim is based on the fact that a sum of Rs. 12,28,75,013/- was paid by the Financial Creditor to the Corporate Debtor as an outstanding loan amount. Corporate debtor has committed default on payment on 01.05.2019 from there onwards interest of Rs. 43,05,00,440/- is levied @ 24% per annum on a monthly basis from the date of respective disbursement of the loan amount.



6. We do not have the benefit of assistance from the Corporate Debtor. However, in this matter, before deciding the issue of admission of the Corporate Debtor into CIRP on the basis of the instant Application filed u/s 7 of the Code, we are required to check the following facts and documents annexed by the Financial creditor.

7. The following facts are noted:

- A) The applicant entered into a loan agreement dated 31.03.2015 with the Corporate Debtor.
- B) According to the terms of this agreement, the applicant had to pay a sum of loan amount of Rs. 15,00,00,000 (Rupees Fifteen Crore) in favour of the Corporate Debtor for the purpose of expansion business & investment under the mortgage loan scheme.
- C) It is worth noting that, As per Clause 3 of the Loan Agreement, the Corporate Debtor was under an obligation to repay the Financial Creditor the loan along with the interest on the amount of outstanding from time to time at the rate of 24% per annum on a monthly basis from the date of respective disbursement of the loan amount. Further, Clause 4 of the Loan Agreement provided that in the event of a default in payment as on the due date, the Corporate Debtor was liable to pay penal interest at such rate as the Financial Creditor, in its discretion was to determine on the amount outstanding.

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D) It is pertinent to observe here that, As per Clause 5 of the Loan Agreement mentions that, if the Corporate debtor defaulted in making such payment on due date, then the entire amount of the loan, and interest (inclusive of penal interest) would at once become due and payable and on demand being made by the Financial Creditor, the Corporate Debtor was required to repay all moneys or liabilities then outstanding and being owed to the Financial Creditor together with interest (inclusive of penal interest) and all other charges and expenses. The extract of the Loan Agreement is reproduced below:

LOAN AGREEMENT

THIS AGREEMENT made at Delhi day of Day of 2015 BY M/S PUSHPA BUILDERS LIMITED, a company duly incorporated Under the Indian Companies Act 1956, having its registered office at 6, Deshbandhu Gupta Road, Paharganj, Delhi, India Through its Director Mrs. Neelam R Tewari, W/o. Shri R.R.K. Tewari (hereinafter called "the Borrower" IN FAVOUR OF M/S PARAMVEER DISTRIBUTORS PVT. LTD., a company duly incorporated Under the Indian Companies Act 1956, having its registered office at 401 , Vatsalya Chambers, 4A Narendra Dutta Sarani, Kolkata – 700001 (Hereinafter called "the NBFC/Lender" which term unless the context otherwise requires includes its successors and assigns from time to time.

NOW IT IS HEREBY AGREED, DECLARED, RECORDED AND CONFIRMED BY THE BORROWER AS FOLLOWS

IN CONSIDERATION OF the NBFC/Lender having advanced/agreed to advance a loan of Rs.15,00,00,000/- (Rs. Fifteen Crores Only) (hereinafter called "the loan" or "loan account" depending on the context) granted by the Lender to enable the Borrower to carry out the purpose for which the loan is granted the Borrower hereby agrees, records and confirms the terms and conditions upon which the loan is granted as under:

1. The Borrower's application shall constitute the basis of the agreement to grant the loan or loan to be advanced by the Lender and the Borrower hereby confirms the correctness of each and every statement and particulars therein set forth.



3. The Borrower shall repay to the Lender the loan along with the interest on the amount of outstanding from time to time at the rate of **24.00** Percentage per annum on monthly basis from the date of respective disbursement.

Tamam^o



Tamam^o

4. The Borrower further agrees that if default shall be made in payment on due date the Borrower shall pay penal interest at such rate as the Lender in its discretion determine on the amount then outstanding.

5. If default shall be made in payment on due date then the entire amount of the loan, and interest (inclusive of penal interest) shall at once become due and payable and on demand being made by the Lender the Borrower shall repay to the Lender all moneys or liabilities then outstanding and owing to the Lender together with interest (inclusive of penal interest) and all other charges and expenses.

It is advantageous at this juncture to refer Computation table of the amount and days of default arranged in a chronological order marked as Annexure – 3. The extract of the Computation table is reproduced below:



PARAMVEER DISTRIBUTORS PRIVATE LIMITED

Registered Office: 401, Vatsalya Chambers, 4A Narendra Dutta Sarani, Kolkata – 700001
(CIN : U51109WB1995PTC070995) Email-akybipl@yahoo.com Tel.-033-22314295

TO WHOMSOEVER IT MAY CONCERN

This is to confirm that we M/s Paramveer Distributors Private Limited. (PAN: AACPS828P) address 401, Vatsalya Chambers, 4A N.C.Dutta Sarani, Kolkata – 700001, through its corporate office 2/37, Ansari Road, Delhi – 110002 has paid principal amount as loan to M/s Pushpa Builders Limited (PAN: AAGCP0642L) address 6, B.D.Gupta Road, Pahar-ganj, New Delhi – 110055, amounting to Rs. 12,28,75,013 (Rupees.Twelve Crores Twenty Eight Lakhs Seventy Five Thousand and Thirteen Only) as detail below.

The Balance Stood in the books of Account as on 31.03.2019 as a principal amount is Rs.12,28,75,013.

Detail Of Principal Amount of Loan paid To Pushpa Builders Limited

DATE	PARTICULARS	DEBIT
12.01.2015	DD IN FAVOR OF KOTAK MAHINDRA BANK LTD.ON BEHALF OF PUSHPA BUILDERS LTD.	50,00,000.00
31.01.2015	DD IN FAVOR OF KOTAK MAHINDRA BANK LTD.ON BEHALF OF PUSHPA BUILDERS LTD.	1,00,00,000.00
12.03.2015	PAID TO PUSHPA BUILDERS LTD.BY RTGS VIDE CHEQUE NO-32044546	1,00,00,000.00
14.03.2015	PAID TO PUSHPA BUILDERS LTD.BY RTGS VIDE CHEQUE NO-32044547	25,00,000.00
31.03.2015	DD IN FAVOR OF KOTAK MAHINDRA BANK LTD.VIDE CHEQUE NO-33083835	2,83,93,998.00
20.04.2015	PAID TO PUSHPA BUILDERS LTD.BY RTGS VIDE CHEQUE NO-33091702	20,00,000.00
27.04.2015	PAID TO PUSHPA BUILDERS LTD.BY RTGS VIDE CHEQUE NO-33091703	38,00,000.00



26.06.2015	PAID TO PUSHPA BUILDERS LTD.VIDE CHEQUE NO-33115521	1,00,00,000.00
26.06.2015	PAID TO PUSHPA BUILDERS LTD.VIDE CHEQUE NO-33115522	6,00,000.00
26.06.2015	PAID TO PUSHPA BUILDERS LTD.VIDE CHEQUE NO-33115525	32,00,000.00
26.06.2015	PAID TO PUSHPA BUILDERS LTD.VIDE CHEQUE NO-33115526	25,00,000.00
27.06.2015	RTGS TO PUSHPA BUILDERS LTD.VIDE CHEQUE NO-33091739	35,00,000.00
29.06.2015	RTGS TO PUSHPA BUILDERS LTD.VIDE CHEQUE NO-33091741	35,00,000.00
		8,49,93,998.00
28.08.2015	PAID TO PUSHPA BUILDERS LTD.BY RTGS VIDE CHEQUE NO-33115523	99,00,000.00
28.08.2015	PAID TO PUSHPA BUILDERS LTD.BY TRF VIDE CHEQUE NO-33115524	1,00,000.00

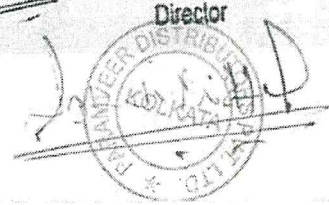
For Pushpa Builders Limited

Tennu
Director

For PARAMVEER DISTRIBUTORS PVT. LTD.

Younis
Director

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31.03.2017	BEING AMOUNT PAID BY DEMAND DRAFT ON BEHALF OF PUSHPA BUILDERS LTD. -[DETAIL ATTACHED ANNEX-1]	1,53,81,015.00
15.01.2019	PAID BY DEMAND DRAFT TO REGISTRAR DELHI HIGH COURT VIDE CHEQUE NO-33422485	1,25,00,000.00
	PRINCIPAL AMOUNT BALANCE AS ON 31.03.2019	12,28,75,013.00

For Paramveer Distributors Private Limited

For PARAMVEER DISTRIBUTORS PVT. LTD.

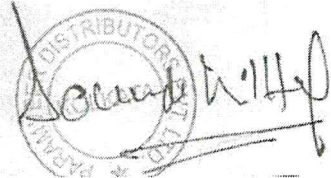
Director

Director

Date: 01.04.2019

For Pushpa Builders Limited

Tennu
Director



Proof



Thus, on the proof of Loan Agreement marked as Annexure - 14 and Computation table marked as Annexure - 3, we are inclined towards the view that Corporate debtor was fully aware about the terms and conditions of the Loan Agreement and principal amount balance as both the annexed documents are duly signed by one Ms. Neelam Rana Tewari, Director of M/s Pushpa Builders Limited i.e., Corporate debtor. In the light of findings of the present petition we consider the submissions of Financial creditor for the claims towards loan amount granted by the Financial creditor is authentic and lawful.

8. Since the Corporate Debtor has chosen not to avail the due and sufficient opportunity of being heard as granted on various dates, the averments of the applicant stating that there is a 'debt' which the corporate debtor was liable to pay but failed to do so, remain unrebutted. Therefore, this Adjudicating Authority has no other option but to admit the Corporate Debtor into CIRP under the provisions of the Code.

9. The Financial Creditor has proposed the name of the IRP. Accordingly, this Adjudicating Authority appoints Mr. Sanjay Mehra having Registration, Number - IBBI/IPA-001/IP-P01818/2019-20/12784 (Email ID sanjay.mehra64@gmail.com) as IRP from IBBI list. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC,



2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

10. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all the following, namely:

- 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's 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 (54 of 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 explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a

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similar grant or right given by the Central Government, State, Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

11. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

12. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

13. The Financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor’s assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

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14. The Financial Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further Financial creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

15. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

16. The order is pronounced by this Adjudicating Authority in virtual Hearing.

— sd —

(Binod Kumar Sinha)
Member (Technical)

— sd —

(Bachu Venkat Balaram Das)
Member (Judicial)