

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH-III**

**C.P. No. IB-1404/(ND)/2019**

**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:**

AXIS BANK  
TRISHUL-3<sup>RD</sup> FLOOR,  
OPP. SAMARTHESWAR TEMPLE,  
NEAR LAW GARDEN,  
ELLISBRIDGE,  
AHMEDABAD-380006

... APPLICANT

VERSUS

PRIUS COMMERCIAL PROJECTS PRIVATE LIMITED  
D-3, DISTRICT CENTRE,  
SAKET,  
NEW DELHI- 110017

..CORPORATE DEBTOR/RESPONDNET

**Coram:**

**R.VARADHARAJAN,  
Hon'ble Member (Judicial)**

Counsel for the Applicant: MS. ADITI MITTAL, ADVOCATE FOR  
KRISHNAMURTHY & CO.

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PRIUS COMMERCIAL PROJECTS PVT. LTD

**ORDER**

**Date: 09.08.2019**

1. The instant application has been filed by Axis Bank (for brevity 'the Applicant') under the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016 ("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) of Prius Commercial Projects Private Limited (for brevity 'Corporate Debtor').
2. The financial creditor has represented that a credit facility to the tune of Rs . 424 Crores to the Corporate Debtor was availed, for the purpose of securitization of lease rentals receivables from the property situated at D3, P3B, District Centre, Saket, New Delhi with leasable area of 2,56,641 sq.ft. Since the said facility was assigned to carious third parties, and therefore, the said facility stood reduced to Rs. 99,71,14,625/-. The entire amount was disbursed by the Financial Creditor in two tranches on March 31,2015, namely for an amount of Rs. 4,07,32,57,760/- (Rupees Four Hundred and Seven Crore Thirty – Two Lakhs Fifty- Seven Thousand Seven Hundred and Sixty Only) and

another one for an amount of Rs. 16,67,42,240/- (Rupees Sixteen Crore Sixty – Seven Lakhs Forty Two Thousand Two Hundred and Forty only).

3. It is further represented that, in a separate proceeding being OMP (EFA) (COMM) 6 of 2016 filed by Daiichii Sankyo Company Limited vs Malvinder Mohan Singh & Ors, an order dated November 13,2018 was passed by the Hon'ble Delhi High Court, inter alia, restraining the Corporate Debtor (amongst others) from transferring or creating third party interest in immovable properties owned by the Corporate Debtor. The operation of the said order dated November 13, 2018 created a restraint on the assets of the Corporate Debtor which were the subject matter of the security created in favour of the Financial Creditor. The said order constituted an event of default under the Financial Documents. Thus, the financial Creditor issued a letter dated January 4, 2019, inter alia, thereby advising the Corporate Debtor to take appropriate steps to cure the said event of default, within the agreed time period (30 days) in compliance with the requirements of the Financing Documents.
  
4. The Financial Creditor thereafter vide its letter dated March 25, 2019 called upon the Corporate Debtor to pay the outstanding amount of Rs. 97, 66,96,537.43 (Rupees Ninety Seven Crores Sixty Six Lacs Ninety Six Thousand Five Hundred and Thirty Seven and Forty Three Paise only) being the aggregate of principal outstanding and applicable

interest as on the date of the said letter. However the Corporate Debtor has failed and neglected to pay the amount.

5. In the above circumstances, the total outstanding as on April 30,2019 to the Financial Creditor by the Corporate Debtor is Rs. 97, 33,36,525.62 (Rupees Ninety Seven Crores Thirty Three Lacs Thirty Six Thousand Five Hundred and Twenty Five and Sixty Two Paise only).

6. The financial creditor has placed on record,

- a. the Sanction Letter dated 28.03.2015
- b. the Facility Agreement dated 30.03.2015
- c. the copy of Amendment and Assignment Agreement dated 29.06.2015.
- d. the copy of Novation and Transfer Notice dated 23.07.2015, 31.03.2016 and 09.09.2016;
- e. An order dated November 13,2018 passed by the Hon'ble Delhi High Court in OMP (EFA) (COMM) 6 of 2016 filed by Daiichii Sankyo Company Limited vs Malvinder Mohan Singh & Ors;
- f. Letter dated 25.03.2019 issued by the Financial Creditor;
- g. Letter dated 01.04.2019 issued by the Financial Creditor;
- h. letter of Acknowledgement of debt dated April, 29, 2019 issued by the Corporate Debtor;

- i. Sponsor support Agreement dated 30.03.2015 executed between the Corporate Debtor, Mrs. Shabnam Dhillion and Mr. Yuvraj Narain Gorwaney as Sponsor and the Financial Creditor as the Lenders Agent;
- j. Security Trustee Agreement dated 30.03.2015 executed between the Corporate Debtor, IDBI trusteeship Services Ltd. and the Financial Creditor;
- k. Trust and Retention account agreement dated 30.03.2015 executed between the corporate debtor, security trustee and the financial creditor;
- l. Deed of guarantee dated 30.03.2015 executed by Mr. Shivinder Mohan Singh in favour of the Corporate Debtor read with the undertaking dated 30.03.2015 issued by the Finserve Shared Services Ltd.;
- m. Deed of guarantee dated 07.04.2015 executed by Mr. Malvinder Mohan Singh in favour of the Corporate Debtor read with the Undertaking dated 30.03.2015 issued by Finserve;
- n. Indenture of mortgage dated 29.06.2015 executed between the Corporate Debtor the Security Trustee;
- o. Memorandum of Entry dated 29.06.2015 executed by Mr. Yuvraj Narain Gorwaney read with the Declaration dated 29.06.2015 issued by Mr. Yuvraj Narain Gorwaney;

p. Pledge Agreement dated 31.07.2015 executed between Mrs. Shabnam Dhillion and Mr. Yuvraj Narain Gorwaney as Pledgers, the Corporate Debtor and the Security Trustee;

7. As seen from the Part V of Form 1 filed by the Financial Creditors, the Financial Creditor has submitted a list of details of the security held by it and the documents in relation to the creation of securities and the estimated value of the security with the financial creditor being the immovable property located in Saket, which is of approximately Rs. 637.18 Crores as per the valuation report dated 01.09.2017 prepared by SJA Technical Consultants Pvt. Ltd.
8. It is seen from the records that the Ld. Counsel appearing for the Corporate Debtor has stated that the Corporate Debtor does not have any defense in relation to the claim as made by the Financial Creditor and has admitted the claim. The Tribunal further ordered the Corporate Debtor to pass the necessary board resolution if such be the circumstances, admitting the claim, along with an affidavit of the directors of the Corporate Debtor.
9. The Corporate Debtor in compliance of the order dated 14.05.2019, has filed an affidavit, vide diary no. 0710102091032019/04 dated 03.07.2019, accompanied with a board resolution dated 02.07.2019.

Since it was noticed that the facilities extended to the Corporate Debtor and the documents executed stood in the name of GYS Real Estates Private Limited, clarifications were sought and it is represented by the petitioner that the Corporate Debtor had changed its name from GYS Real Estates Private Limited to the present name on 19.09.2016.

10. The amount which is claimed to be in default by the Financial Creditor is to the extent of Rs. 97, 33,36,525.62 (Rupees Ninety Seven Crores Thirty Three Lacs Thirty Six Thousand Five Hundred and Twenty Five and Sixty Two Paise only). However, considering the documents filed by the Financial Creditor and also taking into consideration, the representation of the Respondent Company / Corporate Debtor it is seen that the Corporate Debtor has also admitted the claim as represented in the affidavit and the board resolution filed by the Corporate Debtor. In the circumstances mentioned above and in fact the Corporate Debtor accepted the liabilities and a default of debt due to the Financial Creditor is also in existence remaining unsatisfied as evident prima facie, and that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled accordingly this Tribunal is of the considered view that this petition requires to be admitted and that CIRP process is required to be initiated against the Corporate Debtor.

11. From the Application filed it is seen that the Applicant has named an interim resolution professional in Part III of its Application whose details are as follows:

MR. MAHENDER KUMAR KHANDELWAL  
Reg. no. IBBI/IPA-001/IP-P00033/2016-2017/10086  
B-2A, SUNNY VALLEY C.G.H.S.,  
DWARKA, SECTOR 12, NEW DLEHI - 110078

12. It is also seen from the Application that the above named IRP has given a written consent in Form 2 wherein he has agreed to accept appointment as an IRP if Application is admitted. Further, it is also evident from the said Form 2 as filed by the IRP signed under his hand that he is not a related party to the Corporate Debtor and that he is eligible to be appointed as an independent director on the Board of the Corporate Debtor. Certificate of registration of the IRP as issued by the Insolvency and Bankruptcy Board of India (IBBI) and self attested has also been enclosed along with the Application by the proposed IRP and taking into consideration all the above, this Tribunal finds that this is a fit case to be admitted in terms of Section 7 of the Code and thereby initiate corporate insolvency resolution process as against the Corporate Debtor with the following consequences:

- a. Mr. Mahender Kumar Khandelwal, having registration no. IBBI/IPA-001/IP-P00100/2017-18/10200, is appointed as the interim resolution professional and he shall strictly act in

accordance with the provisions of the Code and the attendant Rules enjoined upon him;

b. In terms of Section 14, as reproduced hereunder, the Corporate Debtor shall be under moratorium on the following terms:

(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 the possession of the corporate debtor.

c. However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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d. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- e. The Board of Directors of the Corporate Debtor shall stand suspended on and from this day as envisaged under Section 17 of the Code.
- f. In terms of Section 7(7)(a) of the Code the registry of this Tribunal is directed to communicate the order to both the Financial Creditor and the Corporate at the earliest. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

With the above directions, the application stands disposed of.

*sd -*  
*09/08/2019*  
**(R.VARADHARAJAN)**

**MEMBER (JUDICIAL)**

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