



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT III**

Company Petition No. IB-1482(ND)/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Mr. Mekaster Finlase Limited

...Applicant/Petitioner

Versus

M/s. Saha Buildestates Private Limited

...Corporate Debtor

Order delivered on: 15.02.2023

Coram:

**SHRI BACHU VENKAT BALARAM DAS
Hon'ble MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Kartikeya Singh, Advocate.

For the Respondent : *Ex parte.*

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (J)

1. The present petition i.e., CP (IB)-1482(ND)/2019 has been filed under Section 7 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s. Saha Buildestates Private Limited*, declare Moratorium and appoint Interim Resolution Professional.



2. It is submitted by the Learned Counsel appearing for the Financial Creditor that an agreement was entered into between the Financial Creditor and the Corporate Debtor on 08.06.2018 for advancing an amount of Rs. 3,48,00,000/- to the Corporate Debtor who is a Real Estate Developer with an interest @ 9% per annum. The Petitioner has placed on record the Bank Statement of IDBI and SBI to show that the amount in question has been disbursed to the Corporate Debtor account.

3. The Corporate Debtor has been set ex parte vide order dated 18.11.2021.

4. Learned Counsel appearing for the Financial Creditor has submitted that the parties entered into a settlement and on 18.09.2019, this Tribunal permitted the Financial Creditor to withdraw the petition on the basis of the settlement arrived at between the parties. Since, there was a failure on the part of the Corporate Debtor to honour the settlement, the present petition was revived vide order dated 27.02.2020.

5. We have heard the submissions made by Mr. Kartikeya Singh, Learned Counsel appearing for the Financial Creditor and perused the records.

6. We have perused the account statement of IDBI Bank and noticed that on 23.07.2015 a sum of Rs. 2,00,00,000/- was transferred to M/s. Saha Build Estates Pvt Ltd (Corporate Debtor) by RTGS/IBKLR92015072300032666. Further, on 23.07.2015, a sum of Rs. 75,00,000/- was transferred to M/s. Saha Build Estates Pvt Ltd (Corporate Debtor) by RTGS/IBKLR92015072300035246. Further, on 24.07.2015, a sum of Rs. 25,00,000/- was transferred to M/s. Saha Build Estates Pvt Ltd (Corporate Debtor) by RTGS/IBKLR92015072400040047. We have also perused the account



statement of SBI Bank and found that on 21.05.2018, a sum of Rs. 48,00,059/- was transferred to M/s. Saha Build Estates Pvt Ltd (Corporate Debtor) by RTGS UTR NO: SBINR5201 8052100037375. Thus, it makes very clear that the amount in question was disbursed to the account of the Corporate Debtor and that there is nothing on record to show that the Corporate Debtor has paid the said amount.

7. We are of the considered view that the present debt falls within the meaning of “Financial Debt” under Section 5(8) of IBC, 2016 and that the Financial Creditor is able to establish the said amount was disbursed to the Corporate Debtor and default has occurred, since, the Corporate Debtor has failed to repay the amount. We, therefore, admit the present petition i.e., IB-1482/ND/2019 and initiate the CIR Process against the Corporate Debtor.

8. The Financial Creditor has not proposed the name of the Resolution Professional for appointment as Interim Resolution Professional (IRP), therefore, **Mr. Devendra Umrao, having Registration No. IBBI/IPA-003/IP-N00223/2019-2020/12640, email ID devumraoibc@gmail.com**, is hereby appointed as IRP from the IBBI list. The IRP is directed to take charge of the Corporate Debtor’s management immediately including Bank accounts. The IRP is directed to cause public announcement as prescribed under Section 15 of IBC, 2016 within three days from the date the copy of this order is received and call for submissions of claim by the Creditors in the manner as prescribed.

9. 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 of 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 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 (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 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”.

10. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium



period. The provisions of Sub- section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

11. We hereby direct the Financial Creditor to pay a sum of Rs. 2, 00,000/- to the IRP, as required under the provisions of the Code to meet out the initial expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.

13. The Learned Counsel for the Financial Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016. On receiving the order, the IRP is directed to communicate this Order to the Financial Creditor, the Corporate Debtor, and the concerned RoC.

14. The CP/IB-1482(ND)/2019 is **admitted**.

15. The Order is dictated and pronounced in open court in the presence of Learned Counsel for the Financial Creditor.

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**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

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