IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

ITEM No.153
C.P.(IB)/56(MP)2021

Order under Section 7 IBC

IN THE MATTER OF:

Motel Rahans Pvt Ltd ....**Applicant**
V/s
JSM Devcons Pvt Ltd ....**Respondent**

Order delivered on 17/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B GOSAVI
MEMBER (JUDICIAL)

A. Bhadauria

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
INDORE

CP (IB)/56(MP)2021

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

In the matter of:

Motel Rahans Private Limited
Chatak Arch, F-1
1st Floor, 7 MG Road
Indore, Madhya Pradesh-452001

Applicant/ Financial Creditor

Versus

JSM Devcons Private Limited
306, Orbit Mall
Scheme No.54, A.B. Road
Indore, Madhya Pradesh

Respondent/ Corporate Debtor

Order reserved on: 10th March, 2022
Order pronounced on: 17th March, 2022

Coram: **Madan B. Gosavi, Member (J)**
Kaushalendra Kumar Singh, Member (T)

Appearance:
For the Applicant: Learned Counsel Mr. T N Chandrassekar.
For the Respondent: Learned Counsel Mr. Pranav Khatkul.

ORDER

[Per Bench]

1. This application is filed by the Financial Creditor, Motel Rahans Private Limited through its director under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to

as **"Code"**) to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor, JSM Devcons Private Limited, on the ground that the Corporate Debtor has committed default in paying financial debt of Rs.1,48,67,614/- (Rupees one crore forty eight lakhs sixty seven thousand six hundred fourteen), where, principal amount being Rs.50,00,000/- and balance amount being the return on investment. The present application is filed on 26.10.2021.

2. The Financial Creditor is a Private Limited Company, having its registered office at Chatak Arch, F-1, 1st Floor, 7, MG Road, Indore, Madhya Pradesh-452001.

3. The Corporate Debtor is a Private Limited Company engaged in the business of development of residential and commercial buildings and townships, incorporated on 20/12/2007, having its registered office at 306, Orbit Mall, Scheme No.54, A.B. Road, Indore, Madhya Pradesh. The authorized share capital of the Corporate Debtor is Rs.12,00,00,000/- and the Issued share capital of the Corporate Debtor is Rs.11,59,24,000/-.

4. It is submitted by the Financial Creditor that at the request of the Corporate Debtor, the Financial Creditor agreed to give loan to the Corporate Debtor for a specified period of time against a fixed return to complete the township of the Corporate Debtor, viz. “Pinnacle ‘d’ Dreams” (hereinafter referred to as “Project”).

5. It is submitted by the Financial Creditor that the Corporate Debtor entered into Memorandum of Understanding (MOU) on 02.04.2014 and agreed to repay the Financial Creditor Rs.9,00,000/- during the year 2015-16 and Rs.1,43,95,114/- on or before 02.04.2021, aggregating to Rs.1,52,95,114/- being the principal amount along with return. However, during the financial year 2015-16, the Corporate Debtor repaid only Rs.4,27,500/- instead of Rs.9,00,000/-

6. It is submitted by the Financial Creditor that there was some delay in the construction of the Project of the Corporate Debtor due to the change in its technical management personnel and therefore, the Financial Creditor and the Corporate Debtor after mutual consent entered into a Supplementary MOU on 10.04.2016, wherein the Corporate Debtor agreed to repay Rs. 4,27,500/- being the balance amount (Rs.9,00,000- Rs.4,27,500) and Rs.1,43,95,114/- to the Financial Creditor on or before 02.04.2021.

7. It is submitted by the Financial Creditor that subsequent to 02.04.2021, the Corporate Debtor failed to repay the amount, thereafter, the Financial Creditor time and again requested the Corporate Debtor to make the payment. It is further submitted by the Financial Creditor that the Corporate Debtor admitted the default amount through its reply dated 19.04.2021 to one of the letter of the Financial Creditor and stated that the project Pinnacle 'd' Dreams is a real estate project whose cash flow is based on receipt of regular payments from homebuyers and since the homebuyers are not regularly making the payment there is a liquidity crunch in the project, leading to extremely poor financial condition of the Corporate Debtor and further requested for some more time and cooperation from the Financial Creditor.

8. It is further noted that the Financial Creditor has suggested the name of Mr.Sanjay Kumar Singh, having registration number IBBI/IPA-002/IP-N00188/2017-2018/10505 for appointment as Interim Resolution Professional, against whom no disciplinary proceedings are pending and whose consent affidavit is also placed on record.

9. Heard the Learned Counsel for the Financial Creditor and for the Corporate Debtor and perused the material on record. On this basis it is noted that:

A. The loan was given to the Corporate Debtor by the Financial Creditor for the project of the Corporate Debtor. The Financial Creditor has established bona-fide existence of debt and its default. The debt is admitted by the Corporate Debtor, however, vide order dated 13.01.2022, at the request of the Corporate Debtor, time was given to the Corporate Debtor to file reply within seven days from the date of the order, but no such reply is filed and produced on record.

B. In view of the facts, it is clear that the Corporate Debtor has defaulted in the payment of its debts. On the basis of the facts, the application meets the threshold limit as given under Section 4 of the Code and is otherwise defect free. The present application is filed within the period of limitation. Hence, we admit this application and order as under:

ORDER

I. The Corporate Debtor JSM Devcons Private Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

II. The 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.

III. The order of moratorium shall have 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 Corporate Debtor under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

IV. We hereby appoint Mr.Sanjay Kumar Singh, having registration number IBBI/IPA-002/IP-N00188/2017-2018/10505**,** address: 003, Windsor, Grand Forte, Plot No.76, Sigma-IV, Greater Noida, Uttar Pradesh-201310, singhsk.adv@gmail.com, to act as an Interim Resolution Professional under Section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

V. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

VI. This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

VII. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

VIII. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of **Rs.1,00,000/- (Rupees One Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

IX. The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

X. Accordingly, **CP (IB)/56(MP)2021** stands admitted.

Kaushalendra Kumar Singh
Member (Technical)

Madan B. Gosavi
Member (Judicial)

Swati