

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 442/MB/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Peridot Buildcon Private Limited, Having Registered Office at: - New Era Business Park, Plot No. B-61, Road No.33, Waghle Industrial Area, Opp. Kamgar Hospital, Thane West, Thane, Maharashtra-400604.

**..... Applicant/ Financial
Creditor**

Versus

Waterfront Buildcon LLP

Having registered office at: - 07th Floor, Sun Plaza, Hari Om Nagar, Off. Eastern Express Highway, Mulund (East), Mumbai-400081.

..... Corporate Debtor

Order Delivered on :- 02.01.2024.

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances (Hearing in Physical Mode):

For the Financial Creditor: Advocate Rohit K. Gupta.

For the Corporate Debtor: None.

ORDER

Per: - Shri. Anil Raj Chellan, Member (Technical).

1. This Company Petition is filed by **Peridot Buildcon Private Limited** (hereinafter referred to as "Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s. Waterfront Buildcon LLP** (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a **default** in repayment of outstanding debt of **INR 4,80,41,201/-** (Rupees Four Crores, Eighty Lakhs, Fourty-One Thousand, Two Hundred and One Only), out of which the principal debt outstanding is INR 3,61,51,420/- and interest due thereon is INR 1,18,89,781/-

Facts of the Case as pleaded by the Financial Creditor in its Application u/s 7 are briefly stated hereunder:

2. The Corporate Debtor approached the Financial Creditor for availing a financial facility of an amount of Rs. INR 12,00,00,000/-. On the

basis of assurances, representation and warranties given by the Corporate Debtor, Financial Creditor agreed to extend a financial assistance and accordingly an "Investment Agreement", dated 29.08.2019 was executed between Financial Creditor and Corporate Debtor.

3. As per Schedule of said Agreement, the financial facility amount was to be disbursed in three (3) tranches i.e. 1.50 crore, 2.00 Crore and 8.50 Crore. The said loan was secured by Corporate Debtor by way of creation of charge/mortgage on the built-up area of Unit No. 303, 401, 403, 701, 803 and 1201 of Tropical Panache Project. The purpose of the loan facility was for making payment to authorities towards demands for obtaining approvals, permissions and licenses and for general development purpose of the project known as "Tropical Panache" situated on all the piece and parcel of land lying at Vadavali village of Thane district within the limits of Thane Municipal Corporation.
4. The tenor of loan repayment is as under: -
 - a. Rs. 1.50 crores along with interest as on 28.02.2020;
 - b. Rs. 2.00 crores along with interest as on 31.03.2021;
 - c. Rs. 8.50 crores along with interest as on 31.03.2021.
5. Mr. Suhail Mubarak Noorani, Designated Partner of Corporate Debtor, sent a complaint/letter dated 28.10.2020 to Thane Municipal Corporation (TMC), informing of some internal discord between the partners of Corporate Debtor and also of one Deed of settlement executed between partners of Corporate Debtor. On account of the

inter-se disputes amongst the partners of Corporate Debtor, Mr. Suhail Mubarak Noorani, filed certain objections before the TMC. The TMC, upon receipt of aforementioned letter and taking cognizance of the fact that the Corporate Debtor has failed to fulfil the pre-requisites/conditions as mentioned foregoing, cancelled the Commencement Certificate dated 29.07.2020, vide its letter dated 15.12.2020.

6. It is further submitted that upon anticipating that the Corporate Debtor would not be able to keep its commitments and abide by the terms and conditions of the said Agreement due to stalling of construction of project, deterioration of credit worthiness of Corporate Debtor, non-repayment of instalments in set timeline, the Financial Creditor was constrained to issue Letter-cum-Demand Notice dated 20.01.2021 upon the Corporate Debtor seeking honour of commitments on its part. The Corporate Debtor neither complied with the demands as made out in the said notice nor bothered to reply to the said letter cum demand notice.
7. The Corporate Debtor is liable to refund an amount of Rs. 3,61,51,420/- being the principal amount to the Financial Creditor along with accrued interest of Rs. 1,18,89,781/- thereupon at the rate of 12.25% p.a. upto 31.12.2022, aggregating to an amount of Rs. 4,80,41,201/-.
8. The Financial Creditor has all reasonable apprehension to believe that the Corporate Debtor is no longer a solvent company and thus, on account of the defaults of the Corporate Debtor towards discharging its

liability viz. the financial debt of the Financial Creditor, it is in the interest of the justice that CIRP against the Corporate Debtor may kindly be triggered by this Hon'ble Tribunal.

9. Hence this application.

10. None appeared for the Corporate Debtor despite service of notice. Hence, this Tribunal proceeded ex-parte against the Corporate Debtor on 23.06.2023.

ANALYSIS AND FINDINGS

11. We have heard the learned Counsel for the Petitioner and perused the records.

12. The Ld. Counsel for the Petitioner has relied upon the copy of Investment Agreement dated 29.08.2019 (Annexure 'G') executed between the Financial Creditor and the Corporate Debtor to prove the existence of financial debt. In order to prove the disbursement of loan to the Corporate Debtor, Counsel for the Petitioner has relied upon the copies of Bank Statements and Ledger Account annexed by the Applicant to the Petition to prove the factum of disbursement of loan. The learned Counsel for the Petitioner submits that as per the terms and conditions of loan agreement, the debt has been disbursed directly to the third parties at the behest of the Corporate Debtor. The said third parties include MSEDCL for clearing electricity dues, payments to the Contractors, and to the Service Providers such as architects, consultants, etc. for their professional services, and to the Statutory Authorities such as Thane Municipal Corporation for getting necessary

approvals, licenses and permissions for construction of real estate project.

13. The learned Counsel for the Petitioner has drawn our attention to the Additional Affidavit dated 24th November, 2023 filed on record and the documents annexed thereto to show that the payments were made to the third parties on behalf of the Corporate Debtor thereby proving the disbursement of debt. Counsel for the Petitioner submits that as per the Schedule to the Investment Agreement, the loan was repayable as follows: Rs. 1.50 crores along with interest to be repaid on 28th February 2020, Rs. 2.00 crores and Rs. 8.50 crores, along with interest, to be repaid on 31st March, 2021. However, the Corporate Debtor failed to make repayment as per the schedule agreed to by the parties. This caused the Financial Creditor to serve a Notice of Default cum Demand Letter dated 20.01.2021 calling upon the Corporate Debtor to make good the default, which first occurred on 28th February, 2020, by repaying the outstanding amount of Rs. 1,40,97,391/- comprising of Rs. 1,23,19,210/- towards the principal and Rs. 17,78,181/- towards the interest within 3 days from the date of the aforesaid letter. Counsel for the Petitioner says that the Corporate Debtor neither repaid the loan nor replied to the aforesaid notice and hence, the Application u/s 7 of the Code deserves to be admitted.

14. We have weighed and carefully examined the submissions made on behalf of the Petitioner/Financial Creditor.

15. On perusal of records, we find that the Investment Agreement dated 29.08.2019 was executed between the Financial Creditor and the Corporate Debtor. The Investment Agreement clearly states that the Developer (i.e. the Corporate Debtor) has availed funds for

development of project from the State Bank of India (SBI) but the entire sanctioned loan amounts have not been disbursed by SBI and as such, the Developer was in need of funds to complete the project and had requested the Financial Creditor to make investment in the project by way of a loan. We also notice that the Schedule to the Investment Agreement stipulates the payment of interest payable monthly at the rate of 12.25% p.a. along with the loan amount. The Schedule also mentions the tenor for repayment of loan, which is as follows: Rs. 1.50 crores along with interest to be repaid on 28th February 2020, Rs. 2.00 crores and Rs. 8.50 crores, along with interest, to be repaid on 31st March, 2021. Hence, we are of the opinion that the nature of debt advanced by the Applicant/Petitioner to the Corporate Debtor squarely falls under the definition of “financial debt” as defined u/s 5(8) of the Code as it is money borrowed against the payment of interest.

16. The Bank statements annexed by the Petitioner to the Application u/s 7 of the Code read with the Additional Affidavit dated 24.11.2023 filed on record and the documents annexed thereto show that the debt was disbursed by the Financial Creditor to the Corporate Debtor by directly making the payments to the third parties on behalf of and at the behest of the Corporate Debtor. On perusal of records, we find that the payments have been made by the Financial Creditor to the third-party vendors and concerned authorities under the instructions of the Corporate Debtor in pursuance of the terms of Investment Agreement for timely completion of the real estate project, namely “Tropical Panache” and for obtaining the necessary licenses, plans and approvals for the aforesaid project. Hence, the factum of disbursement of debt by the Financial Creditor to the Corporate Debtor also stands proven on record.

17. We further find that the first loan installment due on 28.02.2020 has not been paid by the Corporate Debtor. Thus, the first date of default is 28.02.2020. According to the Notice of Default cum Demand Letter dated 20.01.2021, the loan amount of Rs. 1,40,97,391/- was due which includes principal amount of Rs. 1,23,19,210/- due as on 28.02.2020 and interest accrued thereon amounting to Rs. 17,78,181/- calculated @ 12.25% p.a. The default by the Corporate Debtor in the instant case is more than rupees one crore, which meets the minimum threshold prescribed u/s 4 of the Code to trigger CIRP against the Corporate Debtor.

18. Though the Demand Notice has been issued on 20.01.2021, but the default took place on 28.02.2020 and subsequent default took place on 31.03.2021 when the debt became due but again remained unpaid. Thus, we are of the opinion that all the defaults, which have been committed by the Corporate Debtor, do not fall within the period covered by section 10A of the Code. Further, we find that other loan installments were due on 31.03.2021 which is again not hit by the period covered u/s 10-A of the Code (i.e. 25.03.2020 to 24.03.2021). Hence, we are of the firm view that the present petition is not barred by Section 10A of the Code.

19. The default by the Corporate Debtor occurred on 28.02.2020. The present petition has been filed on 06.03.2023. The Hon'ble Supreme Court had in M.A. No. 21 of 2022 in Suo Motu Writ Petition (C) No. 03 of 2020 held vide Order dated January 10, 2022 that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Thus, if the period

from 15.03.2020 to 28.02.2022 is excluded, then the Petition must be held to have been filed within limitation.

20.As the existence of financial debt and the factum of its default by the Corporate Debtor stand proven on record, we find the present application to be a fit case for admission u/s 7 of the I&B Code. It has also been established that the petition is within time.

21.As a result of the foregoing discussion, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms.

ORDER

- (a) The petition bearing **CP(IB)-442/MB/2023** filed by **PERIDOT BUILDCON PRIVATE LIMITED**, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor M/s. **WATERFRONT BUILDCON LLP** [LLPIN: AAB-3911] is hereby **admitted**;
- (b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:
- (i) 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;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium-
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the

Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Mr. Shaikh Nafis Anjum**, an Insolvency Professional having registration No. **IBBI/IPA-003/IP-ICAI-N-00211/2018-2019/12363**, (email: sn.anjum123@gmail.com), is hereby appointed as **Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of ₹ **5,00,000/-** (Rupees Five Lakhs only) with the IRP towards the initial **CIRP costs** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two

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COURT-II**

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days from the date of this Order.

- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**