IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP/IB/29/CHE/2023

(filed under section 7 of the Insolvency and Bankruptcy Code,2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016)

In the matter of ***Premier Jet Services Limited***

NIWAS RESIDENTIAL & COMMERCIAL PROPERTIES PRIVATE LIMITED
Shop No.9, Ground Floor,
Door Old No. 95, New No.160,
Sindur Tower Building,
Lux Church Road,
Mylapore, Chennai - 600 004

...Applicant/Financial Creditor

-Vs-

PREMIER JET SERVICES LIMITED
No.31/4A, College Road,
The Bajaj Manor, 3rd 'C' Thousand Lights,
Chennai - 600 006

...Respondent/Corporate Debtor

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant	:	*Dweep Joshi, Advocate* *Tanmay Kelkar, Advocate*
For Respondent	:	*Sankalp Shrivatsav, Advocate* *Vidit Divya Kumar, Advocate*

Order Pronounced on ***22nd November 2023***

ORDER

(Heard through video conferencing mode)

This is an Application filed by **NIWAS RESIDNETIAL & COMMERCIAL PROPERTIES PRIVATE LIMITED** (hereinafter the "Financial Creditor") against **PREMIER JET SERVICES LIMITED** (hereinafter the "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code,2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor herein.

2. In Part-I of the Application, it is stated that the Financial Creditor is a Private Limited company incorporated under the provisions of Companies Act, 1956 on 28.01.1983 with CIN: U93090TN1983PTC019552. In Part – II of the Application, it is stated that the Corporate Debtor was incorporated under the provisions of the Companies Act, 1956 on 01.12.2011 with CIN: U62200TN2011PLC083370 and the Registered office of the Corporate Debtor is situated at No.31/14A, College Road, The Bajaj Manor, 3rd 'C' Thousand Lights, Chennai - 600 006.

3. In Part III of the application, the Financial Creditor has proposed one Mr. Prajakta Avil Menezes with Registration No: IBBI/IPA-001/IP-P01349/2018-2019/12016 as the "Interim Resolution Professional" of the

Corporate Debtor. The Written Consent of the IRP is appended at Page Nos. 30-33 of the Application.

4. In Part-IV of the Application, a total sum of Rs.3,82,93,769/- (Rupees Three Crores Eighty Two Lakhs Ninety Three Thousand Seven Hundred and Sixty Nine only) as on 30.11.2022 has been claimed by the Financial Creditor as the Financial debt, due and payable by the Corporate Debtor. The date of default mentioned in the application is 26.07.2022.

5. It is stated that the Corporate Debtor had requested loan from the Financial Creditor. Upon requisition, financial creditor sanctioned the loan amounting to Rs. 6.0 Crores and disbursed the loan amounting to Rs. 3,54,50,000/- (Rupees Three Crores Fifty Four Lakhs Fifty Thousand Only) at an interest rate of 12% p.a. in order to meet the working capital needs of the Corporate Debtor.

6. It is stated that the Corporate Debtor is liable to pay a sum of Rs. 3,82,93,769/- (Rupees Three Crores Eighty-Two Lakhs Ninty Three Thousand Seven Hundred and Sixty-Nine Only) consisting of principal amount of Rs. 3,54,50,000 (Rupees) Three Crores Fifty Four Lakhs Fifty

Thousand Only) and interest amount of Rs. 28.43.769/- (Rupees Twenty-Eight Lakhs Forty- Three Thousand Seven Hundred and Sixty-Nine Only) charged at rate of 12% pa (compounded annually) as on 30.11.2022.

7. It is stated that Corporate Debtor made part payment to the Financial Creditor on 10.06.2022 of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only). Due to the default of the balance amount the Corporate Debtor sent the loan recall notice dated 16.07.2022. It is stated that the Corporate Debtor defaulted in making payment of the Principal amount as well as the Interest amount of the secured loan granted by Financial Creditor.

8. Despite repeated reminders, the Corporate Debtor has failed to remit the outstanding dues of Rs. 3,82,93,769/- (Rupees Three Crores Eighty-Two Lakhs Ninety Three Thousand Seven Hundred and Sixty-Nine Only).

9. It is stated that Financial Creditor vide loan recall notice dated 16.07.2022 notified the Corporate Debtor to pay the entire outstanding sum of Rs. 3,66,15,479 (Three Crores Sixty-Six Lakhs Fifteen Thousand Four Hundred Seventy Nine Only) together with interest accrued thereon

within a period of 10 days. However, the Corporate Debtor miserably failed to repay the loan.

10. It is stated that non-payment of Rs. 3,82,93,769/- (Rupees Three Crores Eighty-Two Lakhs Ninty Three Thousand Seven Hundred and Sixty-Nine Only) is causing grave hardship. Further, the Corporate Debtor caused continuous acts of defaults of the debt owed to the financial creditor, even though the same was duly accepted and acknowledged in the Balance Sheet of the Corporate Debtor.

11. The applicant has also filed an affidavit vide S.R.No.2741 dated 04.07.2023 attaching the copy of bank statement of the Financial Creditor.

12. The Corporate Debtor has filed a Counter vide S.R.No.1000 dated 02.03.2023.

13. It is stated in para 5 of the counter that Corporate Debtor had received a loan from the Financial Creditor viz. Niwas Residential & Commercial Properties Private Limited for business activities and an amount of Rs.3,54,50,000/- (Rupees Three Crores Fifty-Four Lakhs Fifty

Thousand Only) is still due and payable by the Corporate Debtor to the Financial Creditor.

14. It is stated that the Corporate Debtor made part-payment to the Financial Creditor but was not able to regularly repay the loan due to persistent difficult market situations in the aviation industry. Further, the Corporate Debtor is a Going Concern. The management is doing its best to maintain solvency. It is stated that the Corporate Debtor intends to repay the complete loan provided to it by the Financial Creditor.

15. The learned Counsel for the Corporate Debtor placed reliance of the Hon'ble Supreme Court Decision in the matter of ***Vidarbha Industries Power Limited vs Axis Bank [Civil Appeal No.4633 of 2021]*** in which it was held as under:

> *60. There can be no doubt that a Corporate Debtor who is in the red should be resolved expeditiously, following the timelines in the IBC. No extraneous matter should come in the way. However, the viability and overall financial health of the Corporate Debtor are not extraneous matters;*
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> *62. The Adjudicating Authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP...*

77. The fact that Legislature used 'may' in Section 7(5)(a) of the IBC but a different word, that is, 'shall' in the otherwise almost identical provision of Section 9(5) (a) shows that 'may' and 'shall' in the two provisions are intended to convey a different meaning. It is apparent that Legislature intended Section 9(5)(a) of the IBC to be mandatory and Section 7(5)(a) of the IBC to be discretionary....

78. ... In the case of an application by a Financial Creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the Adjudicating Authority might examine the expedience of initiation of CIRP taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority ***may*** *in its discretion not admit the application of a Financial Creditor.*

80. In the case of a financial debt, there is a little more flexibility. The Adjudicating Authority (NCLT) has been Conferred the discretion to admit the application of the Financial Creditor. If facts and circumstances so warrant, the Adjudicating Authority can keep the admission in abeyance or even reject the application. Of course, in case of rejection of an application, the Financial Creditor is not denuded of the right to apply afresh for initiation of CIRP, if its dues continue to remain unpaid.

81. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the Adjudicating Authority (NCLT) to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP.

86. Legislature has, in its wisdom made a distinction between the date of filing an application under Section 7 of the IBC and, the date of admission of such application for the purpose of computation of timelines. CIRP commences on the date of admission of the application for initiation of CIRP and not the date of filing thereof. There is no fixed time limit within which an application under Section 7 of the IBC has to be admitted.

89. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits.

16. Heard the submissions made by the Learned Counsels for both the parties and perused the documents placed on record.

17. The existence of debt of the Corporate Debtor is proved beyond reasonable doubt, by virtue of the acknowledgement of debt dated 12.07.2022 wherein the Corporate Debtor has accepted that an amount of Rs. 3,54,50,000/- (Rupees Three Crore Fifty-Four Lakhs Fifty Thousand Only) at 12% p.a. is outstanding and remains to be paid to the Financial Creditor.

18. It is also evident from para 5 of the Counter that the Corporate Debtor has admitted the amount of debt which is due and payable to the Financial Creditor. Thus, the Corporate Debtor has expressed its inability to pay the amount to the Financial Creditor.

19. The Financial Creditor has also filed the Record of Default vide S.R.No.2982 dated 11.10.2023 in respect of the Corporate Debtor viz. Premier Jet Services Limited. From the Information Utility issued by NeSL, it is seen that the Status of Authentication is shown as **"Deemed to be Authenticated".**

20. Further it has been consistently held by the Hon'ble Supreme Court in **Innoventive Industries Ltd. v. ICICI Bank and another***(2018) 1 SCC 407* as well as in **Mobilox Innovations Pvt. Ltd vs Kirusa Software Pvt. Ltd.***(2018) 1 SCC 353* after going through the Scheme of IBC, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, that in relation to a Section 7 Application where there is an existence of a 'financial debt' and the default in excess of Rs.1,00,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present

case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Crore.

21. Under the said circumstances, we are of the view that the present Application is required to be admitted in terms of Section 7(5)(a) of IBC, 2016. We therefore admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

22. The Financial Creditor has proposed the name of **Prajakta Avil Menezes** with ***Registration Number: IBBI/IPA-001/IP-P01349/2018-2019/12016,*** (email-**prajakta@prmlegal.in**) as the Interim Resolution Professional (IRP) who has also filed consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 07.12.2023. We therefore appointed **Ashok Mittal** as the IRP**.** The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate

Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

23. As a consequence of the Application being **admitted** in terms of Section 7(5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified 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 or a similar grant or right during moratorium period;

24. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

> (b) a surety in a contract of guarantee to a corporate debtor.

25. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code 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:
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> 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.

26. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation

of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd/ -Sd/

VENKATARAMAN SUBRAMANIAM **SANJIV JAIN**
MEMBER (TECHNICAL) MEMBER (JUDICIAL)

Sriram Ananth.V