IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(IB)/875(PB)/2020

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of

M/s. Dhankalash Distributors Private Limited

---Financial Creditor

Vs.

M/s. Arena Superstructures Private Limited

---Corporate Debtor

Order delivered on: 29.10.2020

CORAM:

SHRI B.S.V PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT
SHRI HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

For the Financial Creditor/Applicant: Mr. Rajnish Sinha & Mr. Nikhil Jain, Advocates

For the Corporate Debtor/Respondent: Mr. Saket Gogia, Advocate

ORDER

Per: B. S.V. PRAKASH KUMAR, ACTING PRESIDENT

Order Pronounced on: 29.10.2020

It is an Insolvency and Bankruptcy Application filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") by the Financial Creditor namely M/s. Dhankalash Distributors Private Limited for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor namely, M/s. Arena Superstructures Private Limited on the ground the Corporate Debtor defaulted in repaying Principal amount of ₹1,50,00,000 together with interest of ₹14,19,667, aggregating to ₹1,64,19,667 as on 24.03.2020.

2. Looking at the Company Application, it appears that this Applicant/Financial Creditor and the Corporate Debtor had entered into a Inter Corporate Loan Agreement dated 28.11.2019 in pursuance of which an amount of ₹1,00,00,000 and ₹50,00,000 was disbursed by Financial Creditor to Corporate Debtor on 05.12.2019 and 10.12.2019 respectively, which was obligated the corporate debtor to repay on or before 31.01.2020, along with interest at the rate of 18% per annum and an additional interest at the rate 2% per month for the period of default, as per the terms stipulated in the Agreement.

3. In addition to this ***Inter Corporate Loan Agreement*** dated 28.11.2019, this Financial Creditor had issued ***notice(s) of demand*** to Corporate Debtor on 05.02.2020 and 10.03.2020 demanding the payment of outstanding dues which have been duly acknowledged

by the Corporate Debtor. This Applicant/Financial Creditor has also filed ***Copies of entries in banker's book*** of the Financial Creditor's Bank. In addition to these documents, the Financial Creditor has also filed ***Confirmation of Accounts by the Corporate Debtor to Financial Creditor*** dated 01.04.2020 and 06.07.2020, respectively. The Applicant has separately filed the ***Record of Financial Information – Form-C*** from National E-Governance Services Limited stating the amount outstanding as on 14.07.2020 is ₹1,83,08,683.

4. In response to this, the corporate debtor has filed reply and raised two preliminary objections and as such sought for dismissal of the present application. The preliminary objections raised by the Corporate Debtor are that the Application has been filed without proper Certificate from the Information Utility and Financial Creditor has suppressed material facts. However, the said objection raised by the Corporate Debtor is not sustainable in view of the fact that debt and default on the part of the Corporate Debtor need not be proved only by way of furnishing the Certificate from Information Utility.

5. On having seen the loan disbursement and documents supporting agreement between the parties conferring obligation upon the Corporate Debtor to repay the Loan amount including interest, we are of the considered view that this Financial Creditor has proved existence of debt and default. Further, the Date of default as mentioned in Part – IV of the Application is stated to be 31.01.2020 and since the default has arisen much prior to 25.03.2020, Section 10A of IBC, 2016 will not come to the aid of the Corporate Debtor in the present case. Under the said circumstances, since the debt and default on the part of the Corporate Debtor is being proved and also by looking at the consent given by the Insolvency Professional, we hereby admit this application by appointing Mr. Pawan Kumar Singal as IRP with directions as follows:

I. That Moratorium is hereby declared prohibiting all of the following actions, 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;

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.

II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from 29.10.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Mr. Pawan Kumar Singal, having Registration Number [IBBI/IPA-001/IP-P01172/2018-19/12229], MP-114, Pitampura, Delhi- 110034, E-Mail:pawansingal50@gmail.com, Mobile No: 9560508482 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

6. Accordingly, this Petition is **admitted.**

7. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

—Sd—

(BSV PRAKASH KUMAR)
ACTNG PRESIDENT

—Sd—

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

29.10.2020

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