



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V**

CP (IB) No.564/MB-V/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

VSJ Investment Private Limited

[CIN: U65910MH1993PTC297964]

...Financial Creditor/Applicant

V/s

**Magic Express Technology Private
Limited**

[CIN: U70100MH2015PTC268544]

...Corporate Debtor/Respondent

Order Dated: 09.06.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Kirti Kalyani, Advocate.

For the Respondent(s) : None.

ORDER

Per: Anuradha Bhatia, Member (Technical)

1. This is an application bearing C.P. (IB) No. 564/MB-V/2022 filed by VSJ Investment Private Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process

(CIRP) against Magic Express Technology Private Limited, Corporate Debtor.

2. Pursuant to the Resolution Plan approved by this Tribunal, vide order dated 07.06.2021, Piramal Capital & Housing Finance Limited had been reverse merged into Diwan Housing Finance Corporation Limited with effect from 30.09.2021. Hence, Piramal Capital & Housing Finance Limited has acquired all the assets and liabilities of Diwan Housing Finance Corporation Limited, including all rights in relation to the loan facilities extended to Chemex Goods Private Limited (“**Borrower**”).
3. The present Petition was originally filed by Piramal Capital & Housing Finance Limited seeking CIRP against the Corporate Debtor. However, on 14.07.2022 the Loan was assigned by Piramal Capital & Housing Finance Limited to the Financial Creditor by way of Assignment Agreement dated 14.07.2022 entered into between the parties. In view of this, the Financial Creditor was substituted in the present Petition, vide order dated 13.01.2023, passed by this Bench in IA No. 135 of 2023.
4. The Application is filed by Mr. Jigar Patel, Authorised Representative of Financial Creditor, vide Board Resolution dated 18.02.2022 claiming total outstanding amount of Rs.311,09,40,163/- (Rupees three hundred eleven crore nine lakh forty thousand one hundred sixty-three only) which includes:
 - a) Principal Outstanding of Rs.235,00,00,000/-;
 - b) Interest Outstanding Rs.41,00,35,827/-;
 - c) Additional Interest of Rs.9,19,34,340/-; and



- d) Interest accrued but not due of Rs.25,89,69,996/-
5. **The Date of Default is stated to be 31.03.2021 in Part-IV of the Petition. The Petition is filed on 23.04.2022.**
6. The case of the Financial Creditor is that:
- 6.1 Chemex Goods Private Limited (hereinafter “**Borrower**”) had availed a loan facility of Rs.250,00,00,000/- (Rupees two hundred fifty crore only) from the Financial Creditor vide Sanction Letter dated 16.08.2019. The said loan was used for consolidation and retirement of debt owed by Gaylord Commercial Company Limited with Wilson Holdings Private Limited (earlier known as TruValue Agro Venture Private Limited). The Loan to the Borrower included consolidation of the loans advanced to Gaylord Commercial Company Limited with Wilson Holdings Private Limited amounting to Rs.197,91,00,000/- and Rs.81,39,00,000/- respectively.
- 6.2 Pursuant to the Loan Agreement dated 21.08.2019, out of Rs.250,00,00,000/-, the Financial Creditor disbursed an amount of Rs.235,00,00,000/- (Rupees two hundred thirty-five crore only) to the Borrower on 31.08.2019. The said loan was disbursed in two tranches, by way of two journal voucher/loan balance transfer passed on 31.08.2019 for Rs.185,00,00,000/- and Rs.50,00,00,000/- being the loan outstanding from Gaylord Commercial Company Limited with Wilson Holdings Private Limited respectively, by the Financial Creditor to the Borrower as per the Letter dated 23.08.2019 issued by the Borrower. The repayment of the aforesaid loan, together with the interest, and all other monies payable in respect thereof, was guaranteed in



favour of the Financial Creditor by the Corporate Debtor, **vide Deed of Guarantee dated 21.08.2019.**

- 6.3 Subsequently, the Borrower defaulted on payments of the interest on 31.03.2021, as per the terms of the Loan documents. Accordingly, the Financial Creditor issued a Recall Notice dated 13.08.2021, recalling the entire loan amount of Rs.280,27,65,871/- along with the interest accrued, penal interest, etc. payable within 15 days from the receipt of the said Recall Notice. The Financial Creditor also invoked the Deed of Guarantee vide the said Recall Notice dated 13.08.2021 and called upon the Corporate Debtor to repay the aforesaid amounts. However, no payment has been received till date.
7. The Financial Creditor has filed the Statement of Accounts of the Borrower maintained by the Financial Creditor. The Financial Creditor has filed the NeSL Report dated 07.03.2022 wherein the amount of Rs.48,96,69,328/- is reflecting as the total outstanding amount. The Financial Creditor has also filed the CIBIL Report dated 18.0.1.2022.
8. The Corporate Debtor did not file reply in the matter.

Findings/Observations:

9. We have heard the arguments of the Learned Counsel for Financial Creditor and perused the records.
- 9.1 It is observed that that the Financial Creditor has provided the loan facility of Rs.250,00,00,000/- to Chemex Goods Private Limited i.e. the Borrower and out of the said amount, the Financial Creditor had disbursed an amount of Rs.235,00,00,000/- to the Borrower on 31.08.2019. The Corporate Debtor had



executed the Corporate Guarantee dated 21.08.2019 thereby giving an unconditional and irrevocable guarantee to repay the said loan along with the interest thereon.

- 9.2 As per the Schedule in the Loan Agreement dated 21.08.2019, the interest was payable annually at rate of 11.02% and additional interest @ 18% p.a. was to be charged on the overdue amount interest. The Borrower defaulted in the payment of interest and hence the Financial Creditor recalled the entire loan facility and invoked the Guarantee against the Corporate Debtor.
- 9.3 It is observed by this Bench that the Corporate Debtor did not file its reply in the matter. Vide order dated 09.05.2022 Court Notice was ordered against the Corporate Debtor to appear and filed its reply in the matter. Thereafter, the matter was listed on 12.07.2022, Ld. Counsel Mr. Birrul Mohamedi i/b Bellator Legal Services LLP, appeared on behalf of the Corporate Debtor and undertaken to file its reply in the matter. Again, the matter was listed on 12.09.2022, Ld. Counsel Mr. Himanshu Agarwal, for the Corporate Debtor appeared but did not file its reply in the matter and hence, on 12.09.2022 right to file reply of the Corporate Debtor was stands forfeited.
- 9.4 Thereafter, when the matter was reserved for orders, the Corporate Debtor filed its written submissions and admitted that the Corporate Debtor stood as a Guarantor to the Loan Facility provided to the Borrower. The Corporate Debtor further contended that the loan was assigned to another entity called VSJ Investment Private Limited (Financial Creditor) and the claim of Rs.311,09,40,163/- is unsustainable and not maintainable, hence,

Piramal Capital & Housing Finance Limited (Original Financial Creditor) is no longer a Creditor. It is to be noted that, this Bench vide order dated 13.01.2023 in IA No. 135 of 2023, allowed the substitution of the Financial Creditor from Piramal Capital & Housing Finance Limited to VSJ Investment Private Limited as the loan was assigned by way of an Assignment Agreement dated 14.07.2022. Hence, the contentions raised by the Corporate Debtor has no merit and the same cannot be considered.

- 9.5 After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form and this Bench is inclined to admit the Petition filed by the Financial Creditor.
10. The Applicant has proposed the name of Mr. Arun Kapoor, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.

ORDER

- a. The Application bearing C.P. (IB) No. 564/MB-V/2022 filed by **VSJ Investment Private Limited**, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against **Magic Express Technology Private Limited**, Corporate Debtor, is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against **Magic Express Technology Private Limited**.



- b. This Bench hereby appoints **Mr. Arun Kapoor**, Insolvency Professional, Registration No: IBBI/IPA-003/IP-N00030/2017-2018/10230 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakh 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.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



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- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)