

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
PRINCIPAL BENCH

COMPANY PETITION (IB)-635(PB)/2021

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

IN THE MATTER OF:

TECHNOLOGY PARKS LIMITED

Building no. 23,4th Floor,
(Eastern Side), Nehru Place, New Delhi- 110019

.... Applicant/ Financial Creditor

Vs.

Alchemist Infra Realty Limited

1511, Hemkunt Chambers,
89, Nehru Place, New Delhi-110019

.... Corporate Debtor

ORDER DELIVERED ON: 23.03.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR,

HON'BLE PRESIDENT

SHRI HEMANT KUMAR SARANGI,

HON'BLE MEMBER (TECHNICAL)

Appearance

For the FC: Mr. Ravinder Singh, Mr. Raveesh Gupta,
Mr. Sanjeev Kaushik Advocate,

For the CD: Mr. Sanyam Saxena, Advocates.



ORDER

Per: SHRI HEMANT KUMAR SARANGI HON'BLE MEMBER

(TECHNICAL)

1. This is an application filed under Section 7 of Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against Ms/. Alchemist Infra Realty Limited (Corporate Debtor) for initiating Corporate Insolvency Resolution Process, declaring moratorium and appointing of Interim Resolution Professional (IRP).
2. The applicant M/s. Technology Parks Limited (Financial Creditor/Applicant) is a company registered under the provisions of the Companies Act, 1956, had advanced loan and advances to the Corporate Debtor from time to time. The Applicant had advanced loan to the Corporate Debtor from time to time and on 01.08.2016 (Page 28, Annexure P-2 of the Application) had entered in to agreement (Loan Agreement). As per the terms of the Agreement, the tenure of the loan is three years, starting from 30.06.2016. In terms of the Loan Agreement, call option vests with the Applicant and the Clause 13 of the entails the Applicant to not exercise the call option, and to convert the loan into shares as detailed in the Loan Agreement, in lieu of payment of interest.



3. The Board of Directors of the Financial Creditor passed a resolution on 25.06.2018, to not exercise the call option, available under the agreement dated 01.08.2016 executed between Financial Creditor and the Corporate Debtor in which, instead to seek a return of loan, alongwith interest as per the terms and conditions specified in the Loan Agreement. The decision of the Applicant was formally communicated to the Corporate Debtor, vide letter dated 25.06.2018, i.e., within two years from 30.06.2016 Annexed as P-3 at page 31 of this petition.

4. The Corporate Debtor was called upon to return and repay the borrowed amount of Rs. 3,29,05,00,000, (Rupees Three Hundred and Twenty-Nine Crores five lacs only) on or before the expiry of the loan tenure i.e., 30.06.2019, alongwith interest from 01.07.2018 till the date of repayment.

5. The Applicant and the Corporate Debtor executed a Supplementary Agreement dated 31.12.2018, (annexed as P-5, at page 32-33) in continuation to the Loan Agreement, which records that the amount of Rs. 3,15,68,00,000/- (Rupees Three Hundred and Fifteen Crores Sixty-Eight Lacs only), as accounted upto 31.12.2018, will be due as on 30.06.2019 and payable by the Corporate Debtor, with an additional interest @ 12% p.a in case of delay or default.

6. The Applicant issued a notice dated 26.07.2019, (Annexed as P-6 at page 34) demanding to make the repayment of Rs. 3,15,84,24,906, (Rupees Three Hundred and Fifteen crores Eighty Four Lacs, Twenty Four Thousand Nine Hundred and Six Only) with the agreed interest. The Corporate Debtor failed to respond to the previous notice and the repayment, therefore, a demand notice dated 29.02.2020, (Annexed as P-7 at page 35) was issued calling upon the Corporate Debtor to pay the total amount of Rs. 3,59,70,79,836, (Rupees three hundred fifty nine crores seventy lakhs Seventy Nine Thousand Eight Hundred Thirty Six Only) including the interest. The amount claimed in the Part IV of the Form 1, is Rs 4,01,47,37,480/- (Rupees, Four Hundred and One Crore Forty-Seven Lakhs Thirty-Seven Thousand Four Eighty Only) and the date of default is 30.06.2019.

7. The Corporate Debtor has file reply dated 24.11.2021. It is stated that the amount outstanding as on 29.02.2020, is Rs. 3,15,88,12,480/-, (Rupees Three Hundred Fifteen Crores Eighty-Eight Lakhs Twelve Thousand Four Hundred and Eighty Only) as it had borrowed the same from the Applicant. It is stated that efforts are being made to settle the outstanding amounts. It is further stated that the initiation of CIRP is pre-mature as the settlement talks between the parties are still going on. The Loan Agreement is unenforceable as it is, not duly stamped as per the provisions of the

Stamp Act, 1899. It is inadmissible for the purpose of the proceedings.

8. The Debt and default in the case is proved by various documents referred to supra. The reply primarily speaks of settlement. The liability to pay is not in dispute and the default is conceded. In view of the admitted debt & default the petition filed u/s 7(1) has to be admitted.

9. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain the present Petition.

10. The application is complete, which is filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, read with Section 7 of the Code. This bench is satisfied that a default has occurred, and debt has remained unpaid. Thus, the application warrants admission as it is complete in all aspects and is hereby admitted for initiating CIRP as prescribed under the Code, against the Corporate Debtor M/s. Alchemist Infra Realty Limited.

11. The Petitioner has proposed the name of Insolvency Resolution Professional, Mr. Gaurav Misra, having registration No. IBBI/IPA-001/IP-P02123/2021-2022/13709, and bearing email id cagauravmisra@gmail.com. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application



to Adjudicating Authority) Rules, 2016, has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or ICSI. In addition, further necessary disclosures have been made by Mr. Gaurav Misra, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code. Hence, we appoint Mr. Gaurav Misra as the IRP of the Corporate Debtor.

12. In pursuance of Section 13 (2) of the Code, we direct the Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days, as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

13. As a consequence of the application being admitted, in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to prohibiting the corporate debt as per the proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

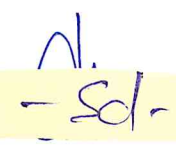
14. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Gaurav Misra, to meet out the



expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Petitioner. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the applicant.

15. The registry is directed to communicate a copy of the order to the Applicant, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest, but not later than (07) seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.


(RAMALINGAM SUDHAKAR)

(PRESIDENT)

(HEMANT KUMAR SARANGI)

MEMBER (TECHNICAL)