

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

CP (IB) No.1140/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

**Rupa Infotech and Infrastructure Private
Limited**

[CIN: U72100MH2005PTC153858]

...Financial Creditor/Applicant

V/s

Shankeshwar Properties Private Limited

[CIN: U75123MH2005PTC158221]

...Corporate Debtor/Respondent

Order Dated: 03.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Shyam Kapadia a/w
Mr. Aditya Udeshi and
Mr. Darshan Ashar i/b Sanjay
Udeshi & Co., Advocates.

For the Respondent(s) : Mr. Rajeev Carvalho, Advocate.

ORDER

Per: Kishore Vemulapalli, (Member Judicial)

1. This is an application bearing C.P. (IB) No. 1140/MB/C-IV/2020 filed by Rupa Infotech and Infrastructure Private Limited, the

Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Shankeshwar Properties Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Bimal Desai, Authorised Representative of the Financial Creditor duly authorised vide its Board Resolution dated 14.03.2020 passed by the Board of Directors, claiming total default of Rs.4,80,80,000/- (Rupees four crore eighty lakh eighty thousand only), which includes:
 - i. Rs.3,00,00,000/- (Rupees three crore only) as the Principal outstanding; and
 - ii. Rs.1,80,80,000/- (Rupees one crore eighty lakh eighty thousand only) as the Interest @ 18% p.a. till 19.06.2020
3. The Financial Creditor had provided the Inter Corporate Loan of Rs.7,00,00,000/- (Rupees seven crore only) along with 12% p.a. interest (i.e. 1% p.m. interest) to the Corporate Debtor.
4. The loan amount was given vide RTGS transfer in two tranches:
 - i. Rs.6,00,00,000/- (Rupees six crore only) paid on 24.09.2015; and
 - ii. Rs.1,00,00,000/- (Rupees one crore only) paid on 24.09.2015.
5. The said amounts were given on the basis of a Confirmation and Undertaking given by the Corporate Debtor dated 24.09.2015 wherein the Corporate Debtor has undertaken to make repayment of

Rs.7,00,00,000/- (Rupees seven crore only) on demand after a period of 90 days from the date of receipt along with interest @ 12 % p.a. (i.e. 1% p.m.)

6. The Financial Creditor submitted that the Corporate Debtor has made payment of interest until 31.03.2016 and the last payment made by the Corporate Debtor was on 04.07.2017 for an amount of Rs.1,00,00,000/- (Rupees one crore only).
7. The Financial Creditor has filed the NeSL Report dated 24.06.2020 wherein the Date of Default is reflected as 23.12.2015 and the total outstanding is of Rs.4,80,80,000/- (Rupees four crore eighty lakh eighty thousand only).
8. The Corporate Debtor has filed its Affidavit-in-reply dated 17.01.2022 stating that the debt is not a Financial Debt; the Financial Creditor has invested a sum of Rs.7,00,00,000/- (Rupees seven crore only) in the project developed by the Corporate Debtor, however, the Corporate Debtor has paid interest on the debt and deducted tax at source also. The Corporate Debtor has filed the Financial Statement for the year ended 31.03.2020 vide Additional Affidavit dated 16.11.2022. On perusal of the Financial Statement, it is noted that the Financial Creditor has been shown under unsecured loan with the outstanding sum of Rs.3,00,00,000/-. The Corporate Debtor pleaded that though this amount is shown under loan but in fact it is in the nature of investment.
9. The Corporate Debtor further submitted that the “Confirmation & Undertaking” is not a Financial Contract as the same is not in compliance/conformity with the criteria set out under Rule 3(d) of the

Code. The Corporate Debtor submitted that paying interest and deduction of TDS itself cannot be sufficient to justify the investment in the project as a loan to the Corporate Debtor. The Corporate Debtor has relied upon the Judgment of NCLAT in *Company Appeal (AT) (Insolvency) No. 713 of 2019, Prayag Polytech Pvt. Ltd. V. Gem Batteries Pvt. Ltd.*, wherein it was held that:

“Merely pointing out that TDS was deducted would not be sufficient to conclude that there was a Financial Debt. TDS can be deducted for various reasons.”

Findings/Observations:

10. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
11. The Date of Default as per NeSL Report is stated to be 23.12.2015 which is in accordance with confirming and undertaking dated 24.09.2015 duly signed by the Corporate Debtor. In the said undertaking, the amount is due after 90 days on demand. The Financial Creditor vide its letter dated 11.04.2019 asked the Corporate Debtor “to organise the repayment of the along with the interest due to us immediately without further delay”. As per this communication, the Date of Default will be in the month April 2019. The Petition is filed on 26.06.2020, hence this Petition is within limitation period.
12. The existence of amount due from the Corporate Debtor is not disputed by the Corporate Debtor, however, he has pleaded that this amount was investment in Joint Venture Project. We find that this submission is in contradiction to the nature of amount payable to the Financial

Creditor admitted in the Audited Financial Statements placed by the Corporate Debtor. Considering this statement in the Financial Statement and payment of interest by the Corporate Debtor on the amount claimed to be due, we are of considered view that the amount due from Corporate Debtor is a 'Financial Debt'. As this amount has not been paid by the Corporate Debtor after Notice dated 11.04.2019 issued by the Financial Creditor followed by Notice dated 19.06.2019, the Corporate Debtor has committed default in payment of financial debt.

13. 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.
14. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
15. The Applicant has proposed the name of Mr. S. Gopalakrishnan, a registered Insolvency Resolution Professional¹ having Registration Number [IBBI/IPA-002/IP-N00151/2017-18/10398] as Interim Resolution Professional, to carry out the functions as mentioned under

¹ P.5, Part IV of the Petition

I&B Code. The proposed IRP has given the consent along with the declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 1140/NCLT/MB/C-IV/2020 filed under Section 7 of I&B Code, 2016, filed by Rupa Infotech and Infrastructure Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Shankeshwar Properties Private Limited, Corporate Debtor is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
- VI. That this Bench appoints Mr. S. Gopalakrishnan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00151/2017-18/10398], E-mail: gopi63.ip@gmial.com, as Interim Resolution Professional to carry

out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
Prabhat Kumar
Member (Technical)
03.02.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)