



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT III**

**Company Petition No. IB-84(ND)/2021
&
I.A./3585/2022
in
C.P.(IB)84(ND)/2021**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s Endless Services Private Limited ...Financial Creditor

Versus

M/s. Elly Realcon Private Limited ...Corporate Debtor

Judgment delivered on: 14.03.2023

Coram:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Shaswat Srivastava, Advocate.

For the Respondent : Mr. Rahul Malhotra and Mr. Manas Tripathi,
Advocates.



ORDER

Per: SH. BACHU VENKAT BALARAM DAS, MEMBER (J)

1. The present petition i.e., CP (IB)-84(ND)/2022 has been filed under Section 7 of the IBC, 2016 with the prayer to initiate Corporate Insolvency Resolution Process against the Corporate Debtor viz, M/s. Elly Realcon Private on the ground of default towards payment of interest on the principal loan amount as stipulated under the Loan Agreements dated 25.07.2017 and 25.02.2019. The Financial Creditor issued a demand notice in respect of unpaid financial debt due towards M/s. Endless Services Private Limited in respect of the loan availed vide Loan Agreement dated 25.07.2017 and 25.02.2019 against the Respondent/Corporate Debtor on 10.12.2019.
2. It is submitted by the Financial Creditor that the loan amounting to Rs.3,00,00,000/- at the interest rate of 2.6% p.m. was sanctioned to the Corporate Debtor on 25.07.2017. The copy of the loan agreement dated 25.07.2017 executed between the parties is placed as Annexure I-(E) at page 37- 51 of the application.
3. It is also submitted by the Financial Creditor that the loan amounting to Rs.1,00,00,000/- at the interest rate of 3% p.m. was sanctioned to the Corporate Debtor on 25.02.2019. The loan agreement executed between the parties is placed as Annexure I-(H) at page 64-75 of the application.
4. The Financial Creditor has made several disbursements/payments to the Corporate Debtor. The details of payments/disbursements made by the Financial Creditor to the Corporate Debtor is reproduced below:-



| Sr. No. | Date | Transaction Mode | Amount |
|------------------|------------|------------------------|----------------------|
| 1. | 12.04.2017 | Axis Bank Ltd. | 80,00,000/- |
| 2. | 13.04.2017 | Axis Bank Ltd. | 5,00,000/- |
| 3. | 15.04.2017 | Axis Bank Ltd. | 40,00,000/- |
| 4. | 19.07.2017 | Kotak Mahindra Bank | 70,00,000/- |
| 5. | 24.07.2017 | Kotak Mahindra Bank | 30,00,000/- |
| 6. | 26.07.2017 | Kotak Mahindra Bank | 6,00,000/- |
| 7. | 27.07.2017 | Kotak Mahindra Bank | 69,00,000/- |
| Sub-Total | | | 3,00,00,000/- |
| 1. | 26.02.2019 | Kotak Mahindra Bank | 99,00,000/- |
| 2. | 26.02.2019 | Kotak Mahindra Bank | 1,00,000/- |
| Sub-Total | | | 1,00,00,000/- |

5. It is further submitted by the Financial Creditor that in order to appease the Financial Creditor, the Corporate Debtor issued several post dated cheques in favour of the Financial Creditor. The Corporate Debtor requested to the Financial Creditor not to deposit the said cheques. The Financial Creditor did not deposit the said cheques as the Corporate Debtor assured the Financial Creditor that the due amount will be paid by them at the earliest. However, out of several cheques only two cheques having cheque No. 443251 and 443255 amounting Rs.30,00,000/- each were deposited and the said cheques were bounced. On 14.05.2019, the

3



Financial Creditor intimated to the Corporate Debtor about the bouncing of the said cheques and demanded the payment of the complete debt owed along with applicable interest. On 10.12.2019, the Financial Creditor issued a legal notice on the Corporate Debtor to repay the complete debt due along with applicable interest.

6. We have heard Mr. Shaswat Srivastava, Learned Counsel appearing for the Financial Creditor and Mr. Manas Tripathi, Learned Counsel appearing for the Respondent/Corporate Debtor and perused the records.
7. The Corporate Debtor has not filed any reply affidavit despite sufficient opportunities being granted and the right to file reply stood forfeited by virtue of order dated 04.01.2022. Therefore, the present petition under Section 7 of IBC has to be decided without the benefit of the counter affidavit of the Corporate Debtor.
8. We have perused the Bank statement filed by the Financial Creditor which clearly shows that the amount in question was disbursed to the Corporate Debtor. Therefore, account maintained by the Corporate Debtor reflects the disbursement of Rs.4 crores to the Corporate Debtor in pursuant to the Loan Agreements dated 25.07.2017 and 25.02.2019. The Corporate Debtor had also issued a loan confirmation letter dated 27.07.2017 and issued demand promissory notes to the Financial Creditor. It is further seen that the cheques issued by the Corporate Debtor were bounced and the money was not paid to the Financial Creditor. Further, the Financial Creditor issued a legal notice dated 10.12.2019 to the Corporate Debtor demanding the payment of the outstanding Financial Debt amounting Rs.7,46,00,467 including interest which was duly received by the Corporate Debtor as evident from the tracking report.



9. From the averments made in the application filed by the Financial Creditor and submissions made by the Learned Counsels, it is amply clear that the Corporate Debtor has admitted the Financial Debt. Therefore, we have no option except to admit the present petition under Section 7 and initiate the CIR Process against the Respondent/Corporate Debtor.
10. The applicant had filed an Interlocutory Application I.A./3585/2022 under Rule 11 of National Company Law Tribunal Rules 2016 with prayer(s) to place additional documents on record and to appoint Mr. Amit Agrawal (Insolvency Professional) having Registration No. IBBI/IPA-002/IP-N00185/2017-8/10456 as the Interim Resolution Professional of the Corporate Debtor instead of the earlier proposed IRP, as the earlier proposed IRP has been debarred from accepting any new assignment and his license to act has been suspended.
11. The applicant in the I.A./3585/2022 submitted that on 04.01.2021, Applicant/Financial Creditor and Corporate Debtor has entered into an agreement wherein Corporate Debtor agreed to repay the amount of Rs. 9,46,00,467 (Rupees Nine Crores Forty Six Lacs Four Hundred Sixty Seven Seven) on or before 02.02.2021, which was further extendable for a period of 12 months as per Clause 2.1 of the Agreement with the condition that Corporate Debtor will execute the sale deed of entire Land admeasuring 1189 square meters situated at Khasra No. 1010 and Land admeasuring 2150 square meters situated at Khasra No. 999, village Saddique Nagar, Pargana Loni, Tehsil Ghaziabad, Uttar Pradesh in favor of Applicant/Financial Creditor. The clause 3 of the settlement agreement dated 04.01.2021 is hereby reproduced in verbatim:-



“3. That in case of any default by the FIRST PARTY of the terms of this Agreement, the SECOND PARTY shall be entitled to seek specific performance of the terms of this Agreement or to take any other action as may be permitted in law. In case the entire dues of the. SECOND PARTY are paid by the FIRST PARTY to the SECOND PARTY in terms of this Agreement then the SECOND PARTY shall withdraw the petition filed U/s 7 of the Insolvency & Bankruptcy Code, 2016 against the FIRST PARTY bearing CP (IB) No. 84/2021, before the Hon'ble National Company Law Tribunal.”

12.The Applicant further submitted that on 04.01.2022, the extension given by Applicant/ Financial Creditor came to an end, and Corporate Debtor neither made the payments of the loan amount nor executed the sale deed in favour of Applicant/ Financial Creditor. The Applicant adds that being aggrieved, the Applicant/ Financial Creditor on 25.05.2022 had served a demand notice upon the Corporate Debtor, calling upon to immediately repay the loan amount or to execute the sale deed for the said land in favour of Applicant/ Financial Creditor.

13.From the averments of the applicant and the documents placed on record in, we observe that during the pendency of the present proceeding under Section 7 of the Code, 2016, the parties had entered into settlement agreement dated 04.01.2021, however, the Corporate Debtor had failed to honour the terms of the agreement and therefore again committed a default in repayment of its financial obligations. The Applicant had sent a Demand Notice dated 25.02.2022 to the Corporate Debtor demanding the repayment of its outstanding financial debt.

14.Therefore, on the basis of detailed discussion in the aforesaid paragraphs, we are satisfied that the present petition is complete in all respects and there exists a financial debt and default. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, 2016, the instant



Application stands **admitted** and the CIRP is initiated against the Corporate Debtor viz., M/s. Elly Realcon Private Limited.

15. The Financial Creditor has proposed the name of Resolution Professional viz, Mr. Amit Agarwal, having Registration No: IBBI/IPA-002/IP-N00185/2017-18/10456 Address: H-63, Vijay Chowk, Laxmi Nagar, Delhi – 110092 Email: - amitagcs@gmail.com and Mobile No: 9811272307 in I.A./3585/2022. As per the consent letter, no investigation is pending against the proposed Interim Resolution Professional and he agreed to accept the assignment as Interim Resolution Professional in the matter. Accordingly, **Mr. Amit Agarwal is hereby appointed as IRP in the matter.** The IRP is directed to file valid Authorization for Assignment within a period of 5 (Five) days from the pronouncement of this order.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

(e)The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under*

7



any other law for the time being in force, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

19. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional 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 Financial Creditor. The said



amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules

20. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
21. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders.
22. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
23. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution



Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

24. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing CP/IB-84(ND)/2021 is **admitted** and IA-3585/2022 **stands allowed**.

Sd/-

**(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**