



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

CP (IB) No.1003/MB-V/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

JHP Finvest Private Limited

[CIN: U65999MH2010PTC206203]

...Financial Creditor/Applicant

V/s

**Surya-Landmark Developers Private
Limited**

[CIN: U70102MH2008PTC188635]

...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) : Mr. Rahul Sarada, Advocate.

For the Respondent(s) : Mr. Rubin Vakil, Advocate.

ORDER

Per: Anuradha Sanjay Bhatia, Member (Technical)

1. This is an application bearing C.P. (IB) No. 1003/MB-V/2021 filed by JHP Finvest 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 Surya-Landmark Developers Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Vishal A. Patel, Director of Financial Creditor, vide Board Resolution dated 09.09.2021 claiming total outstanding amount of Rs.3,28,18,669/- (Rupees three crore twenty-eight lakh eighteen thousand six hundred sixty-nine only) as on 01.08.2021.
3. The Date of Default is stated to be 25.05.2018 in Part-IV of the Petition. The Petition is filed on 22.09.2021. The Corporate Debtor vide its letter dated 16.11.2018 issued to the Financial Creditor has admitted the loan amount of Rs.1,50,00,000/- availed by the Financial Creditor. Further, the Corporate Debtor has issued Cheques dated 07.12.2018, 14.12.2018, 21.12.2018, 28.12.2018, 07.01.2019, 14.01.2019 and 12.10.2019 to the Financial Creditor which were returned from the Bank with remark 'fund insufficient'. As the Corporate Debtor has acknowledged its debt through its letter and cheques, and the last Cheques was issued on 12.10.2019, and the Corporate Debtor has also acknowledged the Demand Letters dated 29.01.2019 and 03.01.2020 issued by the Financial Creditor, there is no question of limitation raised and hence the present Petition is well within the period of limitation pursuant to section 18 of the Limitation Act, 1963.
4. The case of the Financial Creditor is that:
 - 4.1 The Financial Creditor has advanced a loan of Rs.1,50,00,000/- to the Corporate Debtor under registered Indenture of Mortgage dated 26.05.2017, for a period of 12 months from the dated

disbursement of the loan amount. Accordingly, the loan was to be repaid by the Corporate Debtor on or before 25.05.2018.

- 4.2 The Corporate Debtor vide its letter dated 20.06.2018 requested for an extension of 6 months for repayment of the loan amount along with accrued interest thereon.
- 4.3 The Financial Creditor vide its letter dated 10.10.2018 called upon the Corporate Debtor to repay the outstanding amount immediately. The said letter was acknowledged by the Corporate Debtor. The Financial Creditor once again vide its letter dated 17.10.2018 called upon the Corporate Debtor and its Personal Guarantors to repay the outstanding amounts within a period of 30 days from the said letter. The said letter was acknowledged by the Corporate Debtor on 26.10.2018. The Corporate Debtor replied to the said letter dated 17.10.2018 vide two letters one is undated and the other is dated 16.11.2018. The Corporate Debtor has provided Cheques to the Financial Creditor for the outstanding dues which were all dishonoured for the reason 'fund insufficient'.
- 4.4 The Financial Creditor vide its letter dated 29.10.2019 once again called upon the Corporate Debtor to repay the entire outstanding amount as on 31.12.2018 within 15 days from the receipt of the said letter. The said letter was acknowledged by the Corporate Debtor on 30.01.2019. However, no payments were made thereafter within the requisite time.
- 4.5 The Corporate Debtor issued a Cheque dated 12.10.2019 for an amount of Rs.1,00,000/- to the Financial Creditor. However, the said Cheque was also dishonoured. The Financial Creditor once

again, by its letter dated 03.01.2020, issued to the Corporate Debtor and its Personal Guarantors, pointed out that the Financial Creditor had time and again extended the time for repayment of the loan amount till end of November 2019. However, the Corporate Debtor has failed to repay the outstanding debt. The said letter was acknowledged by the Corporate Debtor on 14.01.2020. The outstanding loan amount was not repaid till the expiry of the period of 15 days from acknowledgement date thereof, which is on or before 29.01.2020. Accordingly, the default continued to as late as 29.01.2020.

5. The Financial Creditor has filed the Ledger Accounts of the Corporate Debtor for period from 01.05.2017 to 01.08.2021. The Financial Creditor has filed the NeSL Report dated 10.08.2021 wherein the amount of Rs.3,28,18,669/- is reflecting as the total outstanding amount.
6. The Corporate Debtor has filed its Affidavit-in-Reply dated 03.02.2021 denying the liability submitted that the Financial Creditor has charged exorbitant interest, which was never agreed upon by the Corporate Debtor. The Corporate Debtor further submitted that the repayment of loan was extended, and the cause of action also changed thereafter.

Findings/Observations:

7. We have heard the arguments of the Learned Counsel for Financial Creditor and the Corporate Debtor and perused the records.
 - 7.1 It is observed that that the Financial Creditor has advanced a loan of Rs.1,50,00,000/-to the Corporate Debtor under registered Indenture of Mortgage dated 26.05.2017 for a period of 12 months



from the dated disbursement of the loan amount. The repayment period was extended from time to time upon the request of the Corporate Debtor. The loan amount was never disputed between the parties.

- 7.2 The Corporate Debtor contended that the Financial Creditor has charged exorbitant interest on the loan amount. It is observed by the Bench that the Corporate Debtor has not filed even a single document evidencing that the interest has been exorbitantly charged by the Financial Creditor. This Bench is of the opinion that the once there is “debt” and the Corporate Debtor has “defaulted” the outstanding amount, the interest charged by the Financial Creditor is not of paramount consideration. It is the duty of the Insolvency Professional to look after the issues relating to the interest charged by the Financial Creditor. Hence, the above-mentioned contention of the Corporate Debtor is liable to be rejected.
- 7.3 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.
- 7.4 On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to Rs.3,28,18,669/- which is due and payable by the Corporate Debtor to the Financial Creditor. There is default by the Corporate Debtor in payment of debt amount. This Bench does not find any objection on record against the Application filed for initiation of CIRP against the corporate

debtor. Hence, the Application filed by the Financial Creditor deserve to be admitted u/s 7 of the Code.

8. The Applicant has proposed the name of Mr. Prakul Thadi, 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. 1003/MB-V/2022 filed by **JHP Finvest 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 **Surya-Landmark Developers Private Limited**, Corporate Debtor is **admitted**. The Corporate Insolvency Resolution Process (CIRP) is ordered by this Bench against Evenness **Business Excellence Services Private Limited**.
- b. This Bench hereby appoints **Mr. Prakul Thadi**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N01149/2021-2022/13806 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.
- 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)