IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB 1678/ND/2018

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

Morgan Asia Ltd.

...APPLICANT/FINANCIAL CREDITOR

VERSUS

Paramount Propbuild Pvt. Ltd.

...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON: 27.08.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

MEMO OF PARTIES

IN THE MATTER OF:

Morgan Asia Ltd.
Having registered office at:
J-4/57A, Khirki Extn., Malviya Nagar
New Delhi – 110017
Phone – 0211-26101331-33
Email Id: svramana@morganaisaltd.com

...APPLICANT/FINANCIAL CREDITOR

VERSUS

Paramount Propbuild Private Ltd.
Having registered office at:
208, Second Floor, Sikka Mansion,
LSC, Savita Vihar, New Delhi – 110092

Corporate Office:
H-123, Sector63, Noida-201301, U.P
Phone No: 09958576111
Email Id: cs1@paramountgroup.co.in

...RESPONDENT/ CORPORATE DEBTOR

FOR THE APPLICANT **:**Mr. J.M.Kalia, Adv.
Ms. Sudha Sachdev, Adv.

FOR THE RESPONDENT **:** Mr. Giriraj Subramanium,Adv.
Ms. Aiswary Murali, Adv.
Mr. Pramod Sharma, Adv.

ORDER

Per-Dr. Deepti Mukesh, Member (J)

1. The present application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Morgan Asia Ltd. (for brevity 'Applicant') through its Authorized representative, Mr. Viswanathan Balasubramanian , authorized vide board resolution dated 17.11.2018with a prayer to trigger Corporate Insolvency Resolution Process against Paramount Propbuild Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Applicant, Morgan Asia Limited, is a Public limited company incorporated on 18.09.1981 under the companies Act, 1956 bearing CIN NO. U51909DL1921PLC012346 having its head office at J-4/57A, Khirki Extn., Malviya Nagar, New Delhi – 110017.It is classified as Non-government Company and is registered at Registrar of Companies, Delhi. Its authorized share capital is Rs. 10,000,000 and its paid-up capital is Rs. 4,900,000/-. The applicant is involved in the business of wholesale including specialized wholesale variety of goods.

3. The corporate debtor is a company incorporated on 21.09.2004, under the provisions of Companies Act 1956, bearing CIN No.

U45201DL2004PTC129286 and having its registered office at 208, Second Floor, Sikka Mansion, LSC, Sarita Vihar, Delhi-110092. The authorized share capital of the company is Rs. 2,00,000/- and the Paid-up share capital is Rs.1,80,000/-.The corporate debtor is a developer engaged in the business of real estate development and allied activities.

4. The applicant states that the corporate debtor vide Memorandum of Understanding dated 31.03.2014, took a loan of Rs. 6,00,00,000/- (Rupees Six Crore) from the applicant against the collateral security of 13 Apartments having total build up area of 17830/- sq. ft in project “Floraville” at GH-06, Sector 137, Noida, Uttar Pradesh. According to the applicant the apartments were worth Rs.6,00,00,000/-. The applicant vide allotment letter dated 01.04.2014 was allotted apartments under an arrangement with an assured return of 24% p.a. with monthly payments and penal interest of 6% p.a. in case of default. The MOU was signed for a period of 18 months commencing from 31.03.2014 and ending on 30.09.2015 and containing the clause of buy back after 18 months after due payment of the principal amount of Rs 6,00,00,000 and assured return at the rate of 24%. A copy of the MOU dated 31.03.2014 is annexed with the application.

5. The applicant submits that the corporate debtor regularly paid assured returns as per terms of MOU dated 31.03.2014, which was amended on

01.10.2015, thereby called as Addendum to MOU. As per the Addendum the corporate debtor paid assured return vide cheques only upto 2017. The corporate debtor subsequently after June 2017 irregularly and partially paid interest up to 2018.

6. The applicant submits that after 2018, several meetings were held with directors of the corporate debtor, wherein various cheques of assured return were issued by the corporate debtor which were dishonored on being presented to the bank. The applicant further submits that despite several reminders and meetings the corporate debtor failed to fulfill their commitments.

7. That the applicant filed an application under Section 7 of the I&B code, 2016 and as per Form I 'Part IV the total amount in default is Rs. 5,09,29,367/- which includes Rs. 4,00,00,000/- as the principal amount with assured returns and penal interest of Rs. 1,09,29,367/- calculated up to 1st November 2018, which is due and payable by the corporate debtor.

8. The corporate debtor filed reply to the application under Section 7 of the I&B Code 2016 and raised the following objections:
   a) The corporate debtor submits that on 01.01.2019, both the parties entered into a MOU, as recorded vide order dated 19.02.2019. The copy of MOU dated 01.01.2019 has been annexed.

The MOU dated 01.01.2019 contains interalia the following clause:

"*Clause 1:*

It is mutually agreed between the parties that the first party owes an amount of Rs 5,00,00,000/- as a final amount to settle all the liabilities in relation to the principal MOU and renewable thereafter."

The corporate debtor further submits that till date an amount of Rs. 8,11,75,000/- has been paid to the applicant hence, as per the MOU dated 01.09.2019, the applicant is in excess of Rs. 3,11,75,000/-, which is being claimed as refund by the corporate debtor. Accordingly, the corporate debtor submits that no amount is due and payable.

b) That the present application is not maintainable as the MOU dated 31.03.2014 on the basis of which the applicant has been filed stands novated, upon execution of MOU dated 01.01.2019, hence the liability of the corporate debtor has already been dispensed with in terms of the MOU dated 01.01.2019.

c) That Corporate debtor submits that several payments were made to the applicant in respect of the assured return. The Corporate debtor submits that the said payments are duly acknowledged and are uncontested by the applicant. The payments made to the applicant are as follows:

- That an amount of Rs. 5,61,75,000/- paid as assured return,

- The principal amount returned of Rs 1,00,00,000/-, Rs.1,00,00,000/- and 50,00,000/- paid on 21.07.2018, 31.10.2018,04.02.2019 respectively. Therefore, a total of Rs. 2,50,00,000/- of the principal amount has been returned.

9. That the applicant filed an interlocutory application No. CA/118/ND/2019 seeking leave to amend the present application filed under Section 7 of the I& B code 2016.The corporate debtor filed reply to the application and opposed the amendment on grounds that application filed by the applicant herein shall completely change the nature and basic structure, thus giving it complexity of fresh petition and has grossly violated the mandatory provision and requisites condition as enumerated in Rule 10 of the I & B Rules 2016. The applicant filed rejoinder to the reply of amendment application filed by the applicant, wherein the applicant has denied all the contentions of the corporate debtor. The applicant further denied that amount of Rs.3,11,75,000/- is refundable. The applicant further clarifies that as against Rs 6 crore principal amount paid by the applicant to the corporate debtor as financial assistance, the corporate debtor only refunded Rs 2 crore till the date of filling of the application and Rs 50 Lakh thereafter at the time of entering into a settlement agreement dated 01.01.2019. Additionally, a sum of Rs.5,61,75,000/- paid by the corporate debtor was as against interest/assured returns for using the principal amount of Rs 6 Crores,

with regards to which there is no dispute. Subsequently, the said application for amendment was withdrawn by the applicant.

10. The applicant filed rejoinder to the reply filed by the corporate debtor and submitted the following contentions:

a) That during the pendency of the present insolvency application, the corporate debtor with a view to settle the dispute offered a total lump sum amount of Rs. 5 Crore as against all liabilities arising out of the MOU dated 31.03.2014 read with addendum dated 01.10.2015, according to which the applicant was entitled to a sum of Rs.5,09,29,367/- i.e. Rs. 4,00,00,000/- as the principal amount and Rs.1,09,29,367/- as part of agreed assured return @ 21.5% with penal interest @ further 6% i.e. total 27.05% on the principal amount as on date of filing of the application under Section 7 of I & B Code 2016, i.e. 29.11.2018, till final payment. Thereafter, a settlement agreement dated 01.01.2019, was signed between the parties. Wherein the said terms were duly accepted by both parties and corporate debtor offered a sum of Rs. 50 Lakhs as consideration for execution of agreement and the balance of Rs. 4.5 Crores was required to be paid by the corporate debtor on or before 25.02.2019.Thereafter, the corporate debtor failed to comply with the settlement dated 01.01.2019 and committed breach of settlement.

b) The applicant submits that the respondent failed to perform the terms of the settlement deed 01.01.2019, by the due date, thus frustrating settlement deed dated 01.01.2019. The corporate debtor failed to fulfill the terms of settlement deed dated 01.01.2019 and filed a reply to the application under Section 7 of I & B code. The corporate debtor subsequently issued legal notice dated 31.03.2019, claiming amount in counter. The said notice was replied by the applicant vide letter dated 15.04.2019.

c) The applicant has denied that the corporate has paid any excess amount and that the applicant has to refund any sum of Rs 3, 11,75,000/-.

d) The applicant denied the contention of the corporate debtor that upon the execution of MOU dated 01.01.2019, the MOU dated 31.03.2019 stands novated. The applicant submits that the corporate debtor was required to pay the sum of Rs 5,00,00,000/- on or before 25.02.2019 as per the agreement dated 01.01.2019 and the corporate debtor failed to fulfill the said obligation. Hence, present application is maintainable.

11. Considering the documents on records and submissions of counsels it manifests that the corporate debtor has tried to create a confusion by asserting that no dues exists as per the settlement agreement dated 01.01.2019 signed between the parties. Though the corporate debtor has

also claimed that the present application is not maintainable as the agreement dated 31.03.2014 stands novated due to signing of the settlement agreement dated 01.01.2019, but has not provided any documentary evidence to show that the settlement agreement dated 01.01.2019 has been complied and payments are made to the applicant and hence nothing is due. The corporate debtor has tried to create an impression of paying excess amount by claiming the refund. Considering the settlement agreement dated 01.01.2019 and the records and documents of payment made by the corporate debtor thereafter, there is no evidence that the remaining amount of Rs. 4.50 Crores has been paid on or before 25.02.2019, as agreed by the parties in Clause IV (9) of the settlement agreement 01.01.2019. There is no document with respect to payment of Rs.4.50 Crore, by the corporate debtor to the applicant as agreed and admitted by the parties vide settlement agreement dated 01.01.2019. Hence, the applicant is entitled to claim the admitted amount which is still outstanding and has remained unpaid till date. In view of the above, the debt is due and default has occurred. Hence the present applicant is admitted.

12. It is evident from the record that the application has been filed on the Performa prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of

IBC. This Tribunal is satisfied that a default has occurred and the application under Section 7 is complete.

13. The default has occurred on 01.11.2018 and the present application is filed on 29.11.2018.Thereafter the parties again entered in the MOU dated 01.01.2019. Wherein, the corporate debtor agreed to pay Rs. 5 Crore, in view of the settlement of final amount payable but has failed to comply the terms and make payment, hence further default has occurred. Hence, the application is within in the period and is not barred by limitation.

14. The registered office of the Corporate Debtor is situated at Delhi and therefore this tribunal has jurisdiction to entertain and try this application.

15. As a sequel to the above discussion, this application is admitted. Initially the applicant had named Mr. Suresh Kumar Goyal having registration number IBBI/IPA–001/IP–P00948/2017-18/11568 as an IRP, who has filed withdrawal application. The applicant has then filed certificate of registration and consent in form -2 of Mr. Sandeep Jain, having address SSPJ Company, Charted Accountants, C/5-/527, Milan Vihar Apartments, 72, I.P. extension, Patparganj, New Delhi – 110092 having registration No. IBBI/IPA–001/IP–P01740/2019-20/12622, who is being hereby appointed as the Interim Resolution Professional of the corporate debtor. The IRP above named has annexed the certificate of registration and has filed

consent in Form-2 of the Insolvency & Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016.

16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per 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.

17. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Sandeep Jain to meet out the expense 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 for the date of receipt of this order by the applicant. The amount however is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the applicant.

18. In terms of above order, the application stands admitted in terms of Section 7 of IBC, 2016. A copy of the order shall be communicated to the applicant as well as to the Corporate Debtor above named by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of the order shall also be forwarded to IBBI for its records and to ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
DR. DEEPTI MUKESH

MEMBER (J)