IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.389/MB-IV/2022
Under Section 7 of the I&B Code, 2016

In the matter of:

Aurum Commercials LLP
[LLPIN: AAA-5372]
…Financial Creditor/Applicant

V/s

Spenta Enclave Private Limited
[CIN: U45209MH2013PTC249304]
...Corporate Debtor/Respondent

Order Dated: 24.03.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Nausher Kohli a/w Ms. Prakruti Joshi i/b Mr. Dhruva Liladhar, Advocates.
For the Respondent(s)	:	Mr. Jamsheed Master a/w Mr. Declan Fernandez i/b Mr. Purazar Fouzdar, Advocates.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 389/MB/C-IV/2022 filed by Aurum Commercials LLP, the Financial Creditor/Applicant, under

section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Spenta Enclave Private Limited, Corporate Debtor.

1.1. The Application is filed by Mr. Ganesh Dungarshi Gala, Partner of the Financial Creditor duly authorised vide its Resolution dated 18.01.2022 passed by the Board of Trustees, claiming total default of Rs.5,92,48,512/- (Rupees five crore ninety-two lakh forty-eight thousand five hundred twelve only).

1.2. The Date of Default is stated to be 22.12.2021 in the Petition. The Petition is filed on 04.02.2022 which is within the period of three years from the Date of Default.

2. The case of the Financial Creditor is that:

2.1. The Financial Creditor has paid an aggregate sum of Rs.2,55,22,500/- to the Corporate Debtor by way of advance towards the purchase of several units in a proposed real estate project being developed by the Corporate Debtor.

2.2. In 2016, parties decided not to go ahead with the purchase of the Units and it was agreed that Corporate Debtor would forthwith refund the Advance with interest. The Financial Creditor made repeated request to the Corporate Debtor for repayment of the advance along with the interest accrued thereon.

2.3. The Corporate Debtor has acknowledged its liability to repay by way of balance confirmation in the Audited Financial Statements as ‘Unsecured Loans’.

2.4. The Financial Creditor has issued Notice dated 15.12.2021 through its Advocate to call upon Corporate Debtor an aggregate amount of Rs.5,74,85,620/- along with interest @ 12% p.a. payable within 7 days from the receipt of this Notice.

2.5. The Financial Creditor has filed Bank Certificate dated 01.02.2022 issued by ICICI Bank. The Financial Creditor has also filed Confirmation of Accounts for period from 01.04.2014 to 31.03.2019 and for period from 01.04.2020 to 31.03.2021. The Financial Creditor has filed Balance confirmation for FY 2017-18 send by the Corporate Debtor to the Financial Creditor.

3. The Corporate Debtor has filed its Affidavit-in-reply dated 05.09.2022 and submits that:

3.1. The Financial Creditor has filed four separate claims under Section 7 of the Code for a single transaction for the purchase of area in Corporate Debtor's projects under the name of four entities all owned operated by one Mr. Sunil Gala, namely Nemi Landmarks Pvt. Ltd., Gala Landmarks Pvt. Ltd., Aurum Commercials LLP and Aria Commercials LLP. The present Petition ought to be clubbed together with CP (IB)-392(MB)/2022 (Nemi Landmarks Pvt. Ltd), CP (IB)-391(MB)/2022 (Gala Landmarks Pvt. Ltd), CP (IB)-390(MB)/2022 (Aria Commercials LLP) and heard together as the facts, circumstances, transaction and the parties are all the same.

3.2. The monies forwarded through Financial Creditor, Nemi Landmarks Pvt. Ltd, Gala Landmarks Pvt. Ltd and Aria Commercials LLP were for purchase of flats in two projects of the

Corporate Debtor namely 'Altavista' and 'Suman Nagar'. Since the Financial Creditor was not able to finalize the flats to be allotted, the Corporate Debtor told to cancel the booking till the time the flats are finalized.

3.3. Later, Mr. Sunil Gala requested to send revised list of flats and accordingly a fresh email with available flats to be allotted were shared to the Financial Creditor vide E-mail dated 28.11.2016 for confirmation. 58 flats were presented to the Financial Creditor in the said list as far back in 2016.

3.4. Post several meetings, the Financial Creditor circulated a term sheet to the Corporate Debtor vide an E-mail dated 17.08.2021 which was replete with several fabrications and financial irregularities that would arise in a situation where the Financial Creditor would be able to siphon off funds into the private account of the Financial Creditor. The Corporate Debtor refused to sign the Term Sheet and no Agreements were executed to that effects.

3.5. The Corporate Debtor submitted that the present Petition is barred by Limitation as the said claim of the Financial Creditor pertains in 2014-15. The Financial Creditor has not filed any Financial Contract/Agreement executed between the parties which sets outs the terms of the Financial Debt along with tenure of debt, interest and repayment.

3.6. It was mutual understanding between the parties that the said funds which were invested by the Financial Creditor and its related entities were all to be treated as consideration for purchasing flats in the project of the Corporate Debtor.

3.7. In fact, the amount paid by the four different companies towards purchase of a particular area in the residential projects of the Corporate Debtor.

3.8. The Financial Creditor did not accept the allotment of flats nor demand for interest from March 2019 till December 2021.

4. The Financial Creditor has filed its Affidavit-in-Rejoinder dated 04.11.2022 refuting all the contentions of the Corporate Debtor made in Reply.

Findings/Observations:

5. We have heard the arguments of the Learned Counsel for both the parties and perused the records.

5.1. The Financial Creditor has paid an aggregate sum of Rs.2,55,22,500/- to the Corporate Debtor and this amount is shown as Short Term Borrowing in the Financial Statement for F.Y. 31.03.2020 which was confirmed by the Corporate Debtor vide its E-mail dated 23.07.2021 providing abstract of Short-Term Borrowings appearing in such Financial Statement. This amount is stated as inter corporate deposits which are repayable on demand and non-interest bearing.

5.2. It is the admitted position of the Corporate Debtor that it owes a debt of Rs.2,55,22,500/- to the Financial Creditor. We do not find any merit in the contention of Corporate Debtor that the present application is barred by Limitation in view of fact that Corporate Debtor has failed to bring material on record that the default occurred on a date other than stated in Part IV of the Application.

5.3. The debt is said to be in default, when it is due for repayment. In the present case, the amount was repayable on demand, as is admitted by the Corporate Debtor also in its financial statements and such loan was re-called vide legal notice dated 15.12.2021. Hence, the default occurs upon expiry of period stated in such notice only.

5.4. We further do not find any merit in the contention of the Corporate Debtor that the said amount was received towards booking of flats in view of the fact the Corporate Debtor has not filed any document evidencing such contention, except an E-mail from the Applicant wherein details of some flats is alleged to be given. However, we noticed that said E-mail referred to one Term Sheet also which proposes issuance of Non-Convertible Debentures and Mortgage of certain area in both the Projects as collateral securities.

5.5. We find that the Corporate Debtor has defaulted in payment debt due to the Financial Creditor when it was called upon to pay within a period of 7 days vide legal notice dated 15.12.2021.

6. After perusal of the material on record, this Bench is of considered view that the there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.

7. 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.

8. The Applicant has proposed the name of Mr. Pranav J. Damania, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00079/2017-18/10164] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 389/MB/C-IV/2022 filed under Section 7 of I&B Code, 2016, filed by Aurum Commercials LLP, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Spenta Enclave 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. Pranav J. Damania, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00079/2017-18/10164], 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/-	Sd/-
Prabhat Kumar Member (Technical)	Kishore Vemulapalli Member (Judicial)

24.03.2023