IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.344/MB-IV/2020

Under Section 7 of the IBC, 2016

In the matter of

GAJENDRA INVESTMENT PRIVATE LIMITED

[CIN: U65990MH1987PLC045488]

…Financial Creditor

v/s.

VR2 LAND DEVELOPMENT PRIVATE LIMITED

[CIN: U70102MH2007PTC170645]

…Corporate Debtor

Order Delivered on: 06.06.2023

Coram:

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

Appearances (via videoconferencing):

For the Financial Creditor:	Mr. Pulkit Sharma a/w Ms. Prachi Wazalwar, Ms. Princi Jaiswal and Ms. Monica Mayenkar, Ld. Counsel.
For the Corporate Debtor:	Mr. Nausher Kohli, Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by GAJENDRA INVESTMENT PRIVATE LIMITED ("the Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of VR2 LAND DEVELOPMENT PRIVATE LIMITED, the Corporate Debtor.

2. The Company Petition is filed on 09.01.2020 claiming an amount of Rs.3,27,04,517/- (comprising of principal amount and interest) in default. The Part IV of Form 1 specify the date of default as 20.01.2020.

2.1 The Corporate Debtor approached the Financial Creditor with a request to avail an amount of Rs.1,56,00,000/- as loan and the said amount was paid on 28.01.2015 to the Corporate Debtor by way of RTGS.

2.2 The Corporate Debtor on 18.05.2015, 09.07.2017 and 24.01.2019 deposited an amount of Rs. 32,321/-, Rs. 1,87,200/-, 2,10,908/-, 1,75,265/- to the Income tax department being the TDS.

2.3 The Corporate Debtor through email correspondences dated 06.08.2018, 25.09.2018 and 09.10.2018 asked the Financial Creditor to make the delayed payment of TDS alongwith the interest to comply the Income tax provision as the Corporate Debtor was facing the Liquidity difficulty.

2.4 The Financial Creditor issued two demand notices dated 19.06.2019 and dated 31.05.2019 to repay the outstanding debt the Corporate Debtor did not replied to the said notices.

3. The Corporate Debtor in its reply has stated that the company petition is barred by the limitation; there is non-existence of a Financial Contract; there is no document and/or instrument executed by and between the Financial Creditor and Corporate Debtor setting out the tenure of debt, interest payable and the date on which the purported amounts would be repayable; there is no consideration for the time value of money; the debt is Barred by the provision of the Maharashtra Money-Lending (Regulation) Act, 2014, and due to non-compliance with the provisions of Section 186 of the Companies Act 2013; the date of default is incorrectly stated. Apart from this, the corporate debtor has alleged suppression of facts; Discrepancies' in interest rates; no record of default from NeSL; and no amounts being due and payable by the Corporate Debtor.

4. The Financial Creditor filed rejoinder dated 09.07.2021 in which he specifically submitted that all the statement allegations and contentions raised in reply by the Corporate Debtor have been denied by the Financial Creditor; further stated that the Corporate Debtor vide confirmation of accounts dated 01.04.2016 and 01.04.2017 has admitted that there is an outstanding which is due and payable to the Financial Creditor; the larger settlement between the parties failed previously and this is recorded in the order dated 03.08.2020 passed in Cp No 1632/2019.

Findings:

5. We have heard both the parties and perused the material on record.

5.1 This bench finds that the Corporate Debtor has admitted the debt by signing balance confirmation for the year ended 31.03.2017 and 31.03.2016. Further, the audited financial statement for the year ended 31.03.2019 also confirms the existence of loan from the Financial Creditor as payable as on 31.03.2019. Accordingly, this bench is of the view that the present petition having being filed on 27.01.2020 is within limitation period.

5.2 This bench further finds that the larger settlement between Satara Group (of which corporate debtor is part of) and MJ Shah group (of which the applicant is part of) failed and it was held by Bench -I of this tribunal in MA No 180/2020 and CP (IB) No 1632/MB/2019 that, the larger understanding was revoked vide letter date 01.11.2018, and therefore the earlier liability of payment of the outstanding dues were never subsumed in the overall settlement thereby not discharging the Corporate Debtor, as claimed by it. In view of this, this bench feels that the claim of the Corporate Debtor that loan stands settled on account of agreed understanding recorded in minutes of meeting dated 31.01.2018 between Satara Group, IIFL Group and MJS Group is not tenable.

5.3 Further, this Bench feels that non-compliance to provisions of section 186 of the Companies Act, 2013 is merely a procedural violation and does not prejudice the claim of applicant financial creditor. Further, the provisions of Maharashtra Money-Lending (Regulation) Act, 2014 does not come in way of present proceeding, as the said act regulates Money Lending Transactions and any transaction undertaken in contravention of the said act invites penal consequence but does not debar the recovery of such debt.

6. As per the material on record, this bench is of the considered view that, there is unequivocal admission of liability on the part of the Corporate Debtor. Further, existence of default can be proved by documents other than NeSL certificate also.

7. Although from the petition, pleadings made and arguments extended by the Counsel of both the sides, it is abundantly clear that there is a debt of Rs. 3,27,04,517/- (comprising of principal amount and interest) is the total amount in default and payable by the Corporate Debtor to the Financial Creditor.

8. On perusal of the documents submitted by the Applicant, it is clear that Financial Debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount.

9. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated against the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, this bench is of the view, that the present case deserves to be **allowed** under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

10. The petition bearing CP (IB) No.344/MB-IV/2020 filed by, GAJENDRA INVESTMENT PRIVATE LIMITED Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against VR2 LAND DEVELOPMENT PRIVATE LIMITED is **admitted.**

a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

i. 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;

ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

v. 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;

iv. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) The bench hereby appoints Mr. Debi Prasanna Sarangi, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-002/IP-N00158/2017-18/10405 and email- debi.sarangi@judilegalcombine.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-	Sd/-
PRABHAT KUMAR MEMBER (TECHNICAL) 06.06.2023.	KISHORE VEMULAPALLI MEMBER (JUDICIAL)