

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 411/I&BC/NCLT/MB/MAH/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Reliance Home Finance Private LimitedApplicant/Financial Creditor

V/s

Zaveri Constructions Private LimitedRespondent/Corporate Debtor

Heard on: 24.09.2019

Pronounced on: 26.09.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

For the Petitioner :

Advocate Mr. Jayanti/b Advocate Waquar Ahmad.

For the Respondent :

Advocate Mr. Sudeep Banerjee.

Per: M.K. Shrawat, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'Reliance Home Finance Private Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "**Financial Creditor**" on 29.01.2019 by invoking the provisions of **Section 7 of the Insolvency and Bankruptcy Code** (hereinafter as **Code**) against '**Zaveri Constructions Private Limited**' (hereinafter as '**Corporate Debtor**'). The registered address of the Corporate Debtor is stated to be Shop No. 11, Majithia Apartment, S.V.Road, IRLA, Vile Parle (West), Mumbai-400056.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount claimed to be in default is stated to be ₹ **6,38,77,686/-** (Rupees Six Crores Thirty-eight Lakhs Seventy-seven Thousand Six Hundred Eighty-six only) as on 31.10.2017. **The date of NPA as per Form I is mentioned to be 31.10.2017.**

A) Facts of the Case :

3. On 26.02.2009 M/s Upakram Co-Operative Housing Society Limited entered into a Development Agreement with the Corporate Debtor for developing and constructing the Project called "Upakram" lying and situated at Municipal Ward No. P-4163 (Chawl) 7/45 Mamlatdar Wadi and P-4164 (C.I.Shed) – 7/45-AB Mamlatdar Wadi

bearing Plot No. 98-99, CTS No. 88, 88/1, to 21, Village Malad (South), Taluka Borivali, District – Mumbai.

a) On 26.12.2009 M/s Upakram Co-Operative Society Limited executed a Irrevocable Power of Attorney in favour of the Corporate Debtor authorizing and empowering the Corporate Debtor to develop and construct the Project.

b) In August 2016 the 'Corporate Debtor' approached the 'Financial Creditor' for a **Construction Finance Loan** facility for a sum of Rs. 10,00,00,000/- (Rupees Ten Crores only) for meeting the development cost of a residential house building project called “Upakram” and the construction cost of the project and all such other costs involved in developing the project.

c) On 20.09.2016 Corporate Debtor signed and executed the Application Form for availing the loan facility.

d) On 21.10.2016 Financial Creditor sanctioned the construction finance loan facilities of Rs. 10,00,00,000/- (Rupees Ten Crores only) in favour of Corporate Debtor with certain terms and conditions for sanction of the Loan facility.

e) On 24.10.2016 Demand Promissory Note was executed by the Corporate Debtor for the sum of Rs. 10,00,00,000/- (Rupees Ten Crores only) was duly signed and executed by and between the 'Financial Creditor' and 'Corporate Debtor'. A **Demand Promissory Note** was also executed by the Corporate Debtor for the said sum. A **Deed of Hypothecation Agreement** was duly signed and executed by and between the Financial Creditor and the Corporate Debtor.

f) On 25.10.2016 an Indenture of Mortgage Deed was registered with Sub-Registrar, Borivali stated to be executed by the Corporate Debtor in favour of the Financial Creditor for the Project called “Upakram” encumbering all that piece and parcel of land admeasuring 1633 square meters along with structure thereon bearing Municipal Ward No. P-4163 (Chawl) 7/45 Mamlatdar Wadi and P-4164 (C.I. Shed) – 7/45-AB Mamlatdar Wadi bearing Plot No. 98-99, CTS No. 88, 88/1, to 21, Village Malad (South), Taluka Borivali, District – Mumbai Suburban situate at Plot No. 98-99, Liberty Garden, 1, Malad(West), Mumbai-400 064. The Project consists of Two Wings of Stlit plus 15th upper floors consisting 71 residential units in which the Corporate Debtor has share of 30 unsold and booked units having a total area of 27,856 square feet.

g) On 31.10.2016 Corporate Debtor has committed default in the payment of instalment towards the said credit facilities. Thereafter many such defaults were committed with irregular payments, the last of which was committed on 31.10.2017.

h) By a Notice dated 22.11.2017 the Financial Creditor in exercise of their rights U/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 had issued a Notice to enforce its interest

in the secured assets and also called upon the Corporate Debtor to pay a sum of ₹ 6,38,77,686/- (Rupees Six Crores Thirty-eight Lakhs Seventy-seven Thousand Six Hundred Eighty-six only) as on 22.11.2017 with applicable interest from 23.11.2017.

i) Despite intimation of the outstanding amount due and payable to the Petitioner and declaration of the loan facility as an NPA, no forthcoming payments of instalment were received from the Respondent towards the said credit facility.

Submissions by the Financial Creditor

4. The debt amount as claimed by the Financial Creditor is ₹ 6,38,77,686/- (Rupees Six Crores Thirty-eight Lakhs Seventy-seven Thousand Six Hundred Eighty-six only). The Loan Facility was agreed upon of Rs. 10,00,00,000/- (Rupees Ten Crores only) by way of development cost of a residential house Building Project called 'Upakram'. A mortgage was created by the Corporate Debtor in favour of the Financial Creditor of the immovable property in question. Against the amount sanctioned of Rs. 10,00,00,000/- (Rupees Ten Crores only) **a sum of Rs. 5,65,00,000/- (Rupees Five Crores Sixty-five Thousand only) was disbursed.** The debt amount as per requisite form was arrived at as per the following calculation :-

A	Termination Amount as on 22 nd November, 2018	INR Amount	
	1. Principal amount Outstanding	5,65,00,000	
	2. EMI Amount Outstanding	30,84,375	
	3. Interest for the Month	5,69,712	
	4. Late Payment Charges Cheque Bounce and other	3,85,599	
	5. Charges	33,38,000	
C	Grand Total (1+2+3+4+5)		₹ 6,38,77,686/-

The Loan Agreement dated 24.10.2016 is also on record to establish the terms and conditions for granting of the impugned Loan.

Findings :

5. The Respondent though appeared on several dates, have not filed the Reply. On perusal of the arguments of the Learned Counsel of the Petitioner, the documents and evidences placed on record, this Bench finds that the Petitioner has also taken action under SARFAESI by issuing Notice under section 13(2) dated 22.11.2017. Said Notice was issued because 'Corporate Debtor' had committed default since 31.10.2016 in payment of instalments agreed to be paid against the Credit Facility availed. On 31.10.2017 the Loan Facility was declared 'Non-performing Asset'. Therefore, debt and default are established. The 'Demand Promissory Note' is available on record to establish that the Loan Facility was not only availed by the Corporate Debtor but also acknowledged the loan amount. Therefore, by execution

of the Promissory Note an Undertaking was inbuilt that the Respondent/Debtor had promised to pay the debt on demand. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the 'Financial Creditor' has established that the loan was not only duly sanctioned, but also duly disbursed to the Corporate Debtor, nevertheless, there had been continuous 'Default' in payment of Debt on the part of the Corporate Debtor.

6. Considering the above facts, this Bench is of the view that the nature of Debt is within the definition of "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.
7. As a consequence, keeping the admitted facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities of filing the Application U/s 7 IBC, as prescribed under the Code, have been completed by the Petitioner, thus this Bench is of the view that this Petition deserves '**Admission**'.
8. Further, this Bench has also perused the Form-2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
9. Hence, after perusal of the provisions of the Code, facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is '**Admitted**'.
10. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, **Mr. Pankaj Sham Joshi**, Address – C/O Omega Business Solutions Private Limited, Unit 12, Kakad Industrial Estate, Lady Jamshedji Cross Road No. 3, Mahim (West), Mumbai-400016, having Registration No. IBBI/IPA-002/IP-N00507/2017-2018/11556 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
11. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth, with effect from the date of order. On commencement hereby prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
12. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency

Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

13. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
14. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
15. Ordered Accordingly.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

26.09.2019
Aah

Sd/-

M.K. SHRAWAT
Member (Judicial)