

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - 1

CP (IB)-**4172**/MB/2019

U/s **7** of the I&B Code, 2016

In the matter of

Rangbarshi Projects Pvt Ltd,

14, Ganesh Chandra Ave, Kolkata-13

.... Financial Creditor

Vs.

Bhattad Brothers Realty Pvt Ltd,

104, Bajaj Bhavan, Nariman Pt, Mumbai-

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.... Corporate Debtor

Order delivered on: 15.12.2021

Coram:

Hon'ble Justice Shri Pradeep Narhari Deshmukh, Member (J)

Hon'ble Shri Kapal Kumar Vohra, Member (T)

For the Financial Creditor: Mr Rohit Sharma, Practising Company Secretary

For the Respondent: Mr Mrunal Surana, Advocate

**ORDER**

*Per:* Justice Shri Pradeep Narhari Deshmukh, Member (J)

1. Rangbarshi Projects Pvt Ltd (hereinafter called 'Financial Creditor') has sought the Corporate Insolvency Resolution Process (CIRP) of Bhattad Brothers Realty Pvt Ltd (hereinafter called 'Corporate Debtor') on the ground, that the Corporate Debtor (CD) committed default on 19.03.2019 to the extent of Rs 1,55,24,575 with interest of Rs 6,89,036 up to 08.08.2019, totalling to Rs 1,62,13,611 (page 19 of petition) U/s 7 of Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that the Financial Creditor (FC) filed the said petition in view of a breach in honouring the agreed consent terms by the CD.

3. A prior petition i.e. CP (IB)/2809/MB/2018 for initiating CIRP was filed on 24.07.2018, before this Bench against the CD. On 15.02.2019, the FC and the CD entered into a Settlement Agreement wherein the CD acknowledged its liability in respect of the financial debt and undertook to make full and final payment of the outstanding principal amount and interest amounting to Rs 1,95,24,575 to the FC in 20 instalments from 15.02.2019 to 27.09.2019. Thereafter, the petition was withdrawn on 14.03.2019 by filing withdrawal memo and consent terms, with liberty to file a fresh petition in case of breach of consent terms.

4. The CD failed to make timely payments of the entire agreed and settlement amounts after making some payments. Hence, the FC filed this fresh petition.

5. The FC has attached the following copies of documents proving that there is a debt which the CD is liable to pay:

- a. Bank statement of FC evidencing disbursement of debt to the CD (page 35 to 40 of petition).
- b. Money receipts and subsequent demand promissory notes (DPN) of same date issued by CD are as under (pg 42-59):

Date	Amount
07.10.2016	50,00,000
07.10.2016	80,00,000
07.10.2016	50,00,000
18.10.2016	30,00,000
24.10.2016	30,00,000
02.11.2016	50,00,000

There were some repayments later and outstanding amount claimed by FC in this petition is Rs 1,62,13,611.

- c. Cheques of Bank of India payable to the FC bearing numbers 103837, 103825, 103630, 103832 and 103833 respectively (pg 60-64).
- d. Bank Statements of FC from 01.12.2016 to 04.06.2018 establishing dishonour of the cheques issued by the CD to the FC (pg 65-92).
- e. Ledger Account from 01.04.2018 to 08.08.2019 of the CD in the books of the FC (pg 93-96).

- f. Auditor's Certificate establishing amount due along with interest from CD as on 20.07.2019 (pg 97).
  - g. Order of this Tribunal dated 14.03.2019 for withdrawal (pg 98).
  - h. Settlement Agreement executed between the FC and the CD (99-103).
6. As per the order passed by this Bench on 07.01.2021, the CD was directed to file its reply to the petition on or before 14.01.2021. The CD has failed to file only reply; hence the CD's right of filing reply stands forfeited.
7. During the hearing of this matter on 02.12.2021, the Counsel representing the CD, Adv Mrunal Surana, accepted the debt as well as default to the tune of Rs 1.35 crores (against Rs 1.62 cr claimed by FC). As the debt confirmed by CD is above the threshold level, the petition is liable to be admitted.
8. The above facts clearly reveal that the CD is liable to pay the FC and defaulted in making the payment to the FC.
9. In view of the above facts, the present petition is **admitted** to initiate CIRP on the CD, with immediate effect.
10. The FC has proposed the name of IRP; therefore, we appoint Raj Kumar Dad (Registration No. IBBI/IPA-001/IP-P00537/2017-18/10962, email: (rajkdad@gmail.com) who has given consent in Form 2. IRP has declared that there is no disciplinary proceeding pending against him with IBBI and that he is qualified to practice as Insolvency Professional. He shall take such further steps as are required under the statute, more specifically in terms of Section 15 of IBC and file his report within 30 days of insolvency commencement date.
11. We also declare a moratorium in terms of Section 14 of IBC. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of IBC. Thus, the following prohibitions, among others, are imposed:

- a) *the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD 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 the possession of the CD.*

12. The supply of the essential goods or services to CD as specified, are not to be terminated or suspended or interrupted during the moratorium period [Sec 14(2) of IBC].

13. The IRP shall perform all his functions contemplated, inter-alia, under Sections 17, 18 and 21 of IBC and conduct proceedings with utmost dedication, honesty and strictly in accordance with the provisions of IBC, Rules, Regulations and shall file reports before the Adjudicating Authority. It is further made clear that all the personnel connected with CD, its promoters or any other persons associated with the Management of CD are under legal obligation as per Section 19 of IBC to extend assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of CD. The IRP shall be under duty to protect and preserve the value of the property of CD as a part of its obligation imposed by Section 20 of IBC and perform all his functions strictly in accordance with the provisions of IBC.

14. Registry is directed to communicate a copy of the Order to FC, CD, the IRP and the Registrar of Companies, Mumbai.

SD/-

Kapal Kumar Vohra  
Member (T)

SD/-

Justice Pradeep Narhari Deshmukh  
Member (J)