IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP(IB)No.1469/NCLT/MB/2019
Under Section 7 of the I&B Code, 2016
In the matter of
CFM Asset Reconstruction Company Private Limited

…Financial Creditor/ Applicant
v/s
Bhavya Infrastructure India Private Limited
...Corporate Debtor

Order Dated 17.02.2020

Coram: Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Adv. Jayanta Kumar;
For the Respondent: None Present;

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This is an Application being CP 1469(IB)/MB/2019 filed by **CFM Asset Reconstruction Company Private Limited,** the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Bhavya Infrastructure India Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming ₹8,66,79,284/- (Rupees Eight Crore Sixty Six Lakh Seventy Nine Thousand Two Hundred and Eighty Four only).

2. This Application is filed by Mr. Kalpak Sawangikar, the Chief Manager of the Applicant, duly authorised vide Board Resolution dated 09.10.2018 which is annexed to the Application.

3. The Applicant has filed this Application in capacity of Assignee under the Assignment Agreement dated 18.07.2018 executed by Reliance Home Finance Limited assigning financial assets/debts including loan accounts along with right, title and interest together with underlying securities in favour of the Financial Creditor under the SARFAESI ACT, 2002 in respect of the finance provided to the Corporate Debtor. Copy of the Assignment Deed is annexed to the Application.

4. The Applicant submits that the Financial Creditor, Reliance Home Finance Limited extended financial aid to the Corporate Debtor for development of housing project 'Haji Baug'. The Financial Creditor sanctioned construction finance loan facilities for ₹12,00,00,000/- (Rupees Twelve Crore Only) in favour of Corporate Debtor with terms and conditions laid out in Sanction Letter dated 30.05.2016. Copy of Sanction Letter is annexed to the Application.

5. The Applicant submits that, Loan Agreement in respect of the Loan Facility was executed between the Reliance Home Finance Limited, which is the Financial Creditor on 31.05.2016. The Corporate Debtor issued Demand Promissory Note for a sum of ₹12,00,00,000/- in respect of the Loan facility availed. The Corporate Debtor also executed Indenture of Mortgage Deed dated 03.06.2016 in favour of the Financial Creditor. Copies of the Said Loan Agreement and Demand Promissory Note are annexed to the Application.

6. The Applicant has annexed to the Application, the 'Details of the amounts disbursed' under the loan facility granted being ₹8,00,00,000/- (Rupees Eight Crore Only) at Exhibit D.

7. The Applicant has annexed Commercial ACE Report issued by CRIF High Mark showing the Corporate Debtor's account as Non-Performing Asset.

8. The Applicant submits that the Corporate Debtor was declared Non-Performing Asset on 19.05.2018 after successive defaults committed by the Corporate Debtor, the date of first default being 02.11.2016 and the date of last payment being 25.05.2018. The Applicant has annexed working for computation of the amount claimed to be in default.

9. The Applicant issued Loan Recall Notice dated 29.10.2018 demanding ₹8,01,37,162/- (Rupees Eight Crore One Lakh Thirty Seven Thousand One Hundred and Sixty Two Only).

10. The Applicant has filed Affidavit of Service dated 06.09.2019 showing service of copy of Application to the Corporate Debtor, however, the said copy has been returned with an endorsement

"Refused". The Applicant has carried paper publication intimating the next date of hearing to the Corporate Debtor and an Affidavit of service dated 26.09.2019 along with copy of paper publication carried out by the Applicant is produced before this Bench. It is imperative to mention that the sufficient opportunity has been provided to the Corporate Debtor to file Reply however, the Corporate Debtor has chosen not to file its Reply.

11. We have heard the Applicant and perused the documents on record.

12. On perusal of the sanction letter dated 30.05.2016, the Loan Agreement dated 03.05.2016, the Indenture of Mortgage Deed dated 03.06.2016, the Demand Promissory Note establish the fact that it is a financial debt as per the provisions of the I & B Code, 2016.

13. The Recall Notice dated 29.10.2018, the Commercial ACE Report and the statement of account of the Corporate Debtor establish the default committed by the Corporate Debtor. The amount in default being above a sum of ₹1,00,000/- and the application being filed within the period of limitation, the Application deserves to be admitted.

14. It is established that the Corporate Debtor owes financial debt above a sum of ₹1,00,000/- and the default is established on perusal of the Commercial Credit Information Report of the Corporate Debtor and the Balance Sheet.

15. The amount of default being above a sum of Rupees One Lakh only, and the Application having filed on proper form, this Application deserves to be admitted.

16. The Applicant has proposed the name of **Mr. Laxman Digambar Pawar** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-003/IP-N00015/2017-18/10104]** as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code 2016, along with his declaration in Form 2, that no disciplinary proceedings are pending against him.

17. The Application filed under Section 7 of I&B Code, 2016 is complete. The existence of financial debt of more than Rupees One Lakh against the Corporate Debtor and its default is also proved. Accordingly, the application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor deserves to be admitted.

ORDER

This Application filed under Section 7 of I&B Code, 2016, filed by **CFM Asset Reconstruction Company Private Limited**, Financial Creditor /Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Bhavya Infrastructure India Private Limited,** Corporate Debtor for initiating corporate insolvency resolution process 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. Laxman Digambar Pawar** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-003/IP-N00015/2017-18/10104]** 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.

18. 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 WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today**

Sd/-	**Sd/-**
RAJESH SHARMA	**BHASKARA PANTULA MOHAN**
Member (Technical)	Member (Judicial)

17.02.2020