

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I
KOLKATA**

CP(IB)No.197/KB/2023

Under Section-7 Insolvency and Bankruptcy Code, 2016

In the matter of:

Samskar Financial Services Private Limited

...Applicant/Financial Creditor

Versus

Rythm Infra Properties Private Limited

...Res

Coram:

Bidisha Banerjee, Member (Judicial)

Balraj Joshi, Member (Technical)

Appearances: (via video conferencing/physically)

None

Date of pronouncement: 03.12.2024.

Per:Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode.
2. None appears on behalf of the parties.
3. This petition has been preferred by Samskar Financial Services Private Limited hereinafter referred to as Financial Creditor or the "FC" to initiate Corporate Insolvency Resolution Process (CIRP) against Rythm Infra Properties Private Limited, the Corporate Debtor or the "CD" for default in repayment of Sum of Rs.1,02,32,274/- including principal of amount of 1 crore the balance being interest.
4. **Submissions of the Financial Creditor**
 - 4.1 A credit facility agreement was executed between the Financial Creditor and the Corporate Debtor herein dated April 1, 2023 which is marked as "A".
 - 4.2 The said credit facility was provided for the period April 11, 2023 to April 19, 2023 whereafter loan had to be repaid within two months thereafter. The facility was provided on interest at the

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rate of 12% per annum in support thereof copy of ledger statement in support of the disbursement copy of ledger statement has been marked as Annexure-B.

- 4.3 The amount was repayable on 18th June, 2023 in terms of the agreement and the Corporate Debtor has failed to repay the said amount despite repeated correspondences and requests.
 - 4.4 The Financial Creditor as such was constrained to issue a demand notice on the Corporate Debtor on 22nd June, 2023 demanding repayment of Rs.1,02,32,274/- towards principle and accrued interest as on the date of demand notice, marked as Annexure-C.
 - 4.5 The Corporate Debtor by way of its letter dated 27th June, 2023 has acknowledged and admitted the debt in default and has not raised any dispute. The letter dated dated 27th June, 2023 is marked as Annexure-“D”
 - 4.6 The Financial Creditor has further demanded its dues on 05th July, 2023 vide letter marked as Annexure-“E”. Meanwhile by way of letter dated 27th June, 2023, the Corporate Debtor having admitted its default; sought for 15 days times to repay the debt.
 - 4.7 It is thus the contention of the Financial Creditor that there is (i) existence of debt, (b) quality of service (c) breach of a representation or warranty as defined under Section-5(6) of the Code.
5. The Corporate Debtor has admitted its default in re-payment in the following words:
- i) The Corporate Debtor, in its letter dated 27th June, 2023, while acknowledging the due towards the loan amount along with interest in the most humble manner requested the Financial Creditor for an extension of time in order to enable the Corporate Debtor to procure funds and repay the loan amount.*
 - ii) The Corporate Debtor never had any intentions to commit default in making payments and/or any malafide intention in not fulfilling the obligations*

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under the credit facility agreement dated 1st April, 2023. Situations leading to adverse financial health of the Corporate Debtor are beyond the control of the Corporate Debtor and as such it is humbly prayed that a humane approach is taken in considering the lis due to the financial health of the Corporate Debtor. The Corporate Debtor is making all efforts and endeavour to arrange funds and repay the loan amount but has unfortunately not been able to do so as on date. The Corporate Debtor believes that with time, it will be able to procure fund and discharge the obligations under the credit facility agreement dated 1st April, 2023 but is unable to commit to any particular time as the circumstances and situations affecting the financial health of the Corporate Debtor are beyond its control.

6. None appeared on behalf of the parties at the time of arguments and, therefore, we choose to consider the matter on the basis of pleadings of the parties and records.

7. **Analysis and Findings**

- 7.1 It is evident that the Corporate Debtor in unequivocal terms has admitted its debt and default in re-payment as on 27th June, 2023.
- 7.2 The Credit facility agreement being executed on 1st April, 2023 the petition is not barred by limitation.
- 7.3 However, since the principal sum is said to be barely attaining the threshold of Rs.1 crore, the records were required to be examined scrupulously.
- 7.4 We would note from Page-18 of the petition that the Schedule-I to the agreement executed between the parties mentions a sanction limit of Rs.1crore at the rate of 12% per annum.
- 7.5 The Board resolution of Rythm Infra Properties Private Limited as it appears from Page-20 of the Application, having resorted to and obtained and availed financial assistance/Creditor facility of an amount not exceeding Rs.1 crore from Samskar Financial Services Pvt. Ltd., the Financial Creditor herein, to meet the requirements, on such terms and conditions as specified in the loan agreement dated 01.04.2023. The ledger Account of Rythm Infra Properties Private

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Limited from 01.04.2023 to 30.06.2023. The notice of payment of Rs.1 crore and accrued interest of Rs. 2,32,273.97 as on 22.06.2023.

- 7.6 It is also evident from Annexure-7 at Page No.24 which is a response to the demand notice for loan repayment on behalf of the Rythm Infra Properties Pvt Ltd, (Corporate Debtor), addressed to the Director, Samskar Financial Services Pvt. Ltd., (Financial Creditor) and acknowledgment of the demand and a prayer for grant of reasonable time to procure necessary fund for repayment.
- 7.7 We further note from the reply filed by the Corporate Debtor that they admitted without any ambiguity or ambivalence its debt and default in repayment of an amount as claimed by the Corporate Debtor.

8. In these circumstances, we admit this CP bearing CP (IB)No.197/KB/2023 and order initiation of CIRP against the Corporate Debtor and we, therefore, pass the following orders:-

O R D E R S

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

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- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- 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 (54 of 2002);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Intelligent IP Management Solutions Private Limited** IRP, having Registration No. **IBBI/IPE-0113/IPA-3/2022-23/50030** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs.3,00,000/- (Rupees Three Lakhs Only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

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9. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
10. List the matter on **15.01.2025** for filing of **Progress Report**.
11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 03.12.2024.

BD