

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH  
PRAYAGRAJ

CP (IB) NO.207/ALD/2019

In the matter of  
An application under Section 7 of Insolvency & Bankruptcy Code, 2016 read with  
Rule 4 of the Insolvency & Bankruptcy. (Application to Adjudicating Authority  
Rules, 2016)  
And

In the matter of:  
MR. AMITABH SINGH,  
S/o Sri Vijay Bahadur Singh,  
R/o House No.87/3, Balaji Nagar,  
Extension, Bhagwanpur Lanka,  
Varanasi, U.P. 221005

Versus

.... Applicant

M/S VAISHALI REAL ESTATE PRIVATE LIMITED  
Having Registered Office at :  
Plot No.69 Lane No.3 Nandnagar Colony,  
Karaundi, Varanasi, U.P. 221005

..... Respondent

Order reserved on 14.03.2022  
Order pronounced on 30.03.2022

CORAM : SH. RAJASEKHAR V.K., MEMBER (JUDICIAL)  
SH. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

Appearances (via Video Conference):

For Financial Creditor : *Sh. Srijan Mehrotra & Sh. Prashant Sharma, Adv.*  
For Corporate Debtor : *Sh. Bal Krishna Dwivedi, FCS.*

ORDER

Per : *Sh. Virendra Kumar Gupta, Member (Technical)*

1. This application has been filed under 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Mr. Amitabh Singh** R/o House No.87/3, Balaji Nagar, Extension, Bhagwanpur Lanka, Varanasi, U.P. 221005

—Sd—

(hereinafter referred as the Financial Creditor) through its counsel seeking initiation of Corporate Insolvency Resolution Process in respect of the M/S VAISHALI REAL ESTATE PRIVATE LIMITED, CIN U45201UP2005PTC030699, having its Registered office at Plot No.69 Lane No.3 Nandnagar Colony, Karaundi, Varanasi, U.P. 221005 (hereinafter referred as the Corporate Debtor).

**FACTS OF THE CASE**

2. The facts, in brief, are that the Financial Creditor in pursuance of its agreement dated 25.05.2015 gave a sum of Rs.40,00,000/- (Rupees Forty Lakhs) to the Corporate Debtor for sale of certain plots to the Corporate Debtor by specified date i.e. thirty months from the date of signing of said agreement. The agreement also provided that in case the Corporate Debtor fail to provide such sale deed as a sum of Rs.60,00,000/- (Rupees Sixty Lakhs) would be paid by the Corporate Debtor to Financial Creditor on 25.11.2017. The Corporate Debtor failed, hence, as per the Financial Creditor, the default occurred on 25.11.2017 in terms of the aforesaid agreement dated 25.05.2015.
3. The Ld. Counsel on behalf of the Financial Creditor after narrating the above facts submitted that the Corporate Debtor paid back a sum of Rs.20 Lakhs through cheque and Rs.5 Lakhs in cash. Thereafter, no payments were made in spite of several discussions with them which also resulted into filing of FIR by the Financial Creditor on 31.10.2018 as well.
4. The Ld. Counsel further contended that there were allegations against the management of the Corporate Debtor of running the company for their benefit. Our attention was also drawn to the agreement dated 25.05.2015 at page no.37 & 38 so as to show that the transaction fell in the definition of financial debt in terms of provisions of Section 5(8) of IBC, 2016. Accordingly, it was prayed that there was a debt which was outstanding and payable and a default had occurred, hence, the application was liable to be admitted. It was further submitted that the Financial Creditor has also proposed the name of the IRP to conduct CIRP.

**REPLY ON BEHALF OF THE CORPORATE DEBTOR**

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5. In the reply, it was claimed that the Corporate Debtor was a going concern and had also executed sale deed of various plots to other customers, hence this application was a pressure tactic adopted by the Financial Creditor to extract maximum amount from them. It was also claimed that in addition to Rs.25,00,000/- (Rupees Twenty Five Lakhs), another sum of Rs.10,00,000/- (Rupees Ten Lakhs) in cash in different transactions had been paid, which had not been acknowledged by the Financial Creditor.

#### **REJOINDER ON BEHALF OF FINANCIAL CREDITOR**

6. In the rejoinder affidavit, it has specifically been pointed out that the Director of the company made a statement that the amount due from the Corporate Debtor will not be returned. It has also been claimed that the company is not a going concern and no sale deeds claimed to be executed, have been brought on record.

#### **FINDINGS**

7. We have considered the submissions made by both sides and material on record. The fact of disbursement of a sum of Rs.40 Lakhs is not in dispute. It is also not in dispute that a sum of Rs.60 Lakhs had to be paid after thirty months from the date of execution of the agreement between the parties on 25.05.2015, in case the Corporate Debtor failed to discharge its obligations thereunder. It is also noted that the Corporate Debtor has failed to provide the sale deed in terms of said agreement. A sum of Rs.25 Lakhs has been acknowledged by the Financial Creditor to have been returned though the Corporate Debtor has claimed that a sum of Rs.10 Lakhs have been paid back by the Corporate Debtor. However, no proof thereof has been brought on record to substantiate such claim. Be that as it may, even after taking into consideration said sum of Rs.10 Lakhs, the amount claimed to be in default would remain more than Rs.1 Lakh, considering both principal amount of Rs.40 Lakhs given by the Financial Creditor or amount to be returned by the Corporate Debtor which was fixed at Rs.60 Lakhs. Thus, this claim of the Corporate Debtor does not help the cause of the Corporate Debtor in any manner.



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8. In the reply the Corporate Debtor has not disputed the validity of the agreement dated 25.05.2015 and has merely taken pleas which is of commercial solvency of the Corporate Debtor or pressure tactic adopted by the Financial Creditor to extract maximum money, which, in our view are not relevant considerations as an application filed U/s 7 of IBC, 2016 can be admitted once there is a debt which is due and payable and there occurred a default in repayment thereof. These conditions are satisfied in the present case.
9. Further, the name of IRP has been proposed by the Financial Creditor whose consent has been placed on record. There exists no material to show that any disciplinary proceedings are pending against such proposed IRP or such IRP is otherwise not ineligible to be appointed. Hence we appoint **Mr. Rajeev Ranjan Singh being Registration No.IBBI/IPA-002/IPN-00707/2018-2019/12418** and gmail id - [rajeevranjan6476@gmail.com](mailto:rajeevranjan6476@gmail.com) as IRP.
10. The application filed the U/s 7 of the Code, is otherwise complete and meet all other procedural requirements of the Code and Regulations made thereunder. Hence, we admit the same and passed the following order.

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 **M/S VAISHALI REAL ESTATE PRIVATE LIMITED** 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.
- 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.



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- ix) Mr. Rajeev Ranjan Singh having Registration No. IBBI/IPA-002/IPN-00707/2018-2019/12418 be 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.2,00,000/- (Rupees Two Lakh 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.
- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 10<sup>th</sup> May, 2022 for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



—Sd—

Virendra Kumar Gupta  
Member (Technical)

Rajasekhar V K  
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Digitally signed by  
Rajasekhar V K  
Date: 2022.03.30  
16:53:05 +05'30'  
Rajasekhar V.K.  
Member (Judicial)

FREE OF COST

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

Sudama Yadav  
Assistant Registrar  
National Company Law Tribunal  
Allahabad Bench, Prayagraj (U.P.)