

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 02
(IB)-1012(PB)/2020

IN THE MATTER OF:

Rajiv Garg

... Applicant/Petitioner

Vs

Tulsaini Constructions and Developers Pvt Ltd.

...

Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016.

Order delivered on 07.10.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)


PRESENT:

For the Applicant : Mr. Anurag Kishor Ms. Gunjan Mittal, Advs.
For Respondent : Mr. Simran Jyot Singh, Advocates

ORDER

PER - ORAL ORDER: RAMLINGAM SUDHAKAR, PRESIDENT

1. The present company petition 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 **Rajiv Garg** (*hereinafter referred as the Financial Creditor*), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the **Tulsaini Constructions and Developers Pvt. Ltd.** (*hereinafter referred as the Corporate Debtor*).
2. The petitioner (Mr. Rajiv Garg) had entered into articles of agreement dated 06.12.2012 (Page-29 Annexure-3) wherein as Financial Creditor he extended a sum of Rs.




1,00,00,000/- (Rupees One Crore Only) to the Corporate Debtor who has engaged in the development of integrated Township/ Housing Complexes/ Multistoreyed Buildings, etc. in various sites in India.

3. This agreement was in the nature of an investment by the Petitioner in the Group Housing Project "Tulsiani Golf view Apartment" and in view of the investment, the first Party namely Corporate Debtor agreed to allot to the second party i.e. Financial Creditor herein, two flats in view of the Rs. 1,00,00,000/- (Rupees One crore Only) made as an investment. The details of which are found in the agreement.
4. It is also evident from clause VI of the agreement that there is a buyback of the allotted flats on or before 06.12.2014 at a pre-settled and determined amount of Rs. 1,30,00,000/- (Rupees One crores Thirty Lakhs Only). To doubly confirm the refund of the investment, post-dated cheques as found in Para - 6 on Page-31 of the type set have been already issued, less the TDS.
5. The said loan was reconstituted on 06.05.2015 (Page-33 Annexure-IV). The loan was further reconstituted on 06.12.2015 (Page-34 Annexure-V) and 09.12.2016 (Page-44 Annexure-VI).
6. Despite several opportunities being granted, the Corporate Debtor failed to keep up the commitment forcing the Financial Creditor to approach this Tribunal vide CP.

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(IB)239/ND/2018. On 23.04.2018, this Tribunal heard the argument and reserved for orders.

7. In the meanwhile on 25.04.2018, a Settlement Agreement annexed at Page-55 Annexure-VII was arrived at between the petitioner (Financial Creditor) as the first Party and the Corporate Debtor as the second party. The terms of the settlement are at Para 57 and 58.

“1. That the total liability acknowledged by the SECOND PARTY as on 06.03.2018 is Rs. 1,10,00,000/- which includes the litigation costs incurred by the FIRST PARTY.

2. That out of the acknowledged debt , Rs. 25,00,000/- has been paid to the FIRST PARTY vide Banker's Cheque dated 23.04.2018 drawn on Kotak Mahindra Bank, which has been handed over to the FIRST PARTY on 24.04.2018.

3. That a further sum of Rs.10,00,000/- shall be handed over to the FIRST PARTY in two instalments of Rs. 5,00,000/- each payable on 30.04.2018 and 07.05.2018.


4, That the remaining sum of Rs.75,00,000/- shall be payable by the SECOND PARTY to the FIRST PARTY with an appreciation amount @ 30% per annum in the year 2019 as follows:

i. That the liability of the SECOND PARTY shall become Rs.97,50,000/- as on 06.03.2019 after factoring for interest @30% p.a.

ii. The said amount shall be paid in four equal quarterly instalments of Rs.24,37,500/- each due

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[Signature]



and payable on 06.06.2019, 06.09.2019, 06.12.2019 and 06.03.2020.


iii. The said sum of Rs.97,50,000/- will however be considered as the principal amount as on 06.03.2019 and because the said sum will not be repaid on 06.03,2019 itself and has been agreed to be paid on deferred dates, the said sum of Rs.97,50,000/- shall carry interest @ 30% per annum calculated up to the dates on which the part payments has been agreed to be paid under the present settlement agreement.”

8. In para 5 of the settlement, post-dated cheques were issued in favour of the petitioner. In the Settlement Agreement, Para 12 refers to various criminal complaints against the Corporate Debtor.
9. On the basis of this Settlement Agreement, the matter was taken up by the earlier Bench in CA-234/2018 where under the party stated on 01.05.2018 that the matter being settled. It resulted in withdrawal of the CP. (IB) 239/ND/2018. Since, the final order dated 01.05.2018 closing the main petition was not uploaded, it appears that on 08.06.2018 there was an admission order. Subsequently, the bench called upon the Registry to produce the order dated 01.05.2018, wherein the petition has been dismissed as withdrawn. Subsequently this Tribunal vide order dated 14.06.2018 passed the following order.

“CA 234 of 2018 has been filed stating that on 1st May, 2018 counsel for both the parties had mentioned the matter for withdrawal of the petition, as they have settled their disputes. However, the order regarding withdrawal was neither uploaded nor placed in order sheet file.

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In the meanwhile, the order dated 8th June, 2018 was passed admitting the CIRP. The present application brings to notice in view of the withdrawal on 1 May, 2018, the order dated 8th of June, 2018 was not called for.

The said order dated 1 May, 2018 has now been traced and placed on record by the Bench Officer. The submissions made by learned counsels are found to be correct. Accordingly, the IRP is directed not to take any steps as per order dated 8th June, 2018. CA stands disposed off."

- 10.** From this, it is evident that the Bench had then seen the record of proceeding of 01.05.2018 where under the CP. (IB)239/ND/2018 was dismissed as settled. The Corporate Debtor having undertaken to pay the amounts as per the Settlement Agreement dated 25.04.2018. But the respondent failed to adhere to the terms and conditions of the Settlement Agreement dated 25.04.2018.
- 11.** The legal Notice dated 24.09.2020 (Page-87 Annexure-11) was also sent to the Corporate debtor in which the financial debt is recorded as Rs. 97,50,000/- as mentioned in Para-16, page-91 which is extracted below:

16. However, undersigned in order to accord an opportunity hereby call upon you to clear the defaulted principal financial debt amounting to Rs. 97,50,000/- and interest thereon amounting to Rs. 32,83,919/- calculated as on 06.03.2020 total amounting to Rs. 1,30,33,919/- and further interest @ 30% till the actual date of payment together with Rs. 15,000/- toward the cost of this Legal notice.

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12. Further, the details of the cheques which have not been honoured are also found in Para 8 annexed at page 89. Hence, the Financial Debt including the interest is Rs. 1,30,33,919/- (Rupees One Crore thirty Lakhs Thirty Three Thousand Nine Hundred and Nineteen Only) with further interest @30% and legal cost.
13. According to the petitioner, despite receipt of the legal notice dated 24.09.2020, there is no reply to the notice, thereby the Corporate Debtor admitted the debt and default.
14. The proof of debt and default on the basis of the Bank Statement is annexed at Page-96 to 126 Annexure-XII. This fact is not disputed by the Corporate Debtor or to the legal notice dated 24.09.2020. There is no proof to show that the debt has been discharged, so the default persists. The inevitable conclusion is to admit the present Petition.
15. Thus, this application complies with all requirements of IBC, 2016 and the Regulations made thereunder. Accordingly, we are inclined to admit this application and pass the following orders:-


- i) The application filed by Rajiv Garg, the Financial Creditor under section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor, Tulsiani Construction & Developers Pvt. Ltd. is admitted.

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- ii) There shall be a moratorium under section 14 of the IBC.
- iii) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- iv) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v) **Mr. Rabindra Kumar Mintri [Reg. No. IBBI/IPA-001/IP-P00707/2017-2018/11194]**, having address at JD-18-B, Near Ashiana Chowk, Pitampura, New Delhi, National Capital Territory of Delhi, 110034, having AFA No. AA1/11194/02/270223/103926, to act as the IRP under Section 13(1)(c) of the Code. is hereby appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as

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contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- vi)** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. It is directed that the key managerial personnel of the Corporate Debtor shall coordinate with the Interim Resolution Professional to hand over the documents, and this shall be done without further delay.
- vii)** The IRP/RP shall submit to this Adjudicating Authority quarterly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii)** The Financial Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

16. The Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email.

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17. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, NCT of Delhi & Haryana, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
18. The registry is further directed to send a copy of the order to the IBBI also for their record.
19. A certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

11

(RAMALINGAM SUDHAKAR)
PRESIDENT

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)