

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) 2733/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

Mr. Kishor Prakash Lunawat,  
8/2, Shraddha Garden, Opp. Telco  
Chinchwad, Chinchwad- 411033  
... Petitioner

V/s

Ellora Build Spaces Private Limited,  
Ellora Fiesta, Plot No. 8, Sector 11,  
Opp. Jui Nagar Railway Station, Navi  
Mumbai- 400706

... Corporate Debtor

Order delivered on:25.11.2019

Coram:

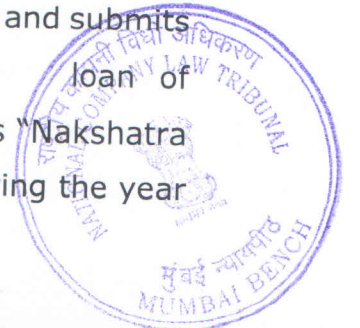
Hon'ble Smt. Suchitra Kanuparthi, Member (J)  
Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: Ms. Geeta Sundwani Adv.  
For the Corporate Debtor: None Present

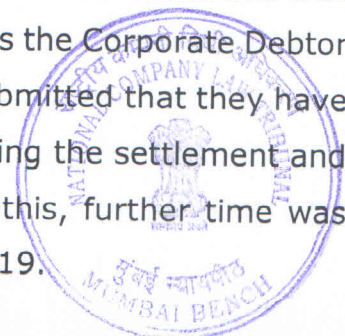
Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. Mr. Kishor Prakash Lunawat (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against Ellora Build Spaces Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed default to the extent of ₹1,50,23,379/-, as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petitioner is one of the Director of the Corporate Debtor and submits that the Corporate Debtor, had availed an unsecured loan of ₹72,94,446/- for their real estate project scheme named as "Nakshatra phase I and II" in Chinchwad, Pune, from the Petitioner during the year 2012-13.

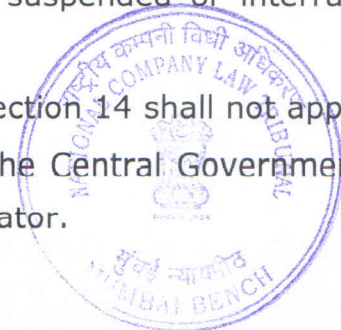


3. In the year 2014-15, the Corporate Debtor has paid the TDS amount of ₹1,09,417/- over the amount as reflected in the Form 26 AS. Thereafter Corporate Debtor failed to return back the outstanding amount and the interest even after demanding the same time and again. In the year 2015 there were meeting held between the Corporate Debtor and the Petitioner and the Petitioner was assured that the amount of ₹84 lakhs will be paid. Further due to the non-compliance of the decision made in the directors meeting held in the year 2015, another meeting was held between the parties in the year 2017-18 and further commitment was given to pay outstanding amount of ₹84,00,000/- along with one shop and a residential flat which was an adjustment towards the interest amount.
4. The Petitioner on 18.09.2018 and 21.01.2019 sent letters to the Directors of the Corporate Debtor and reminded the commitment given to him to pay the outstanding amount about the assurance of giving possession of the shop and the residential flat, but the Corporate Debtor failed to reply to the said letter. The Petitioner further sent a notice on 15.02.2019 (wrongly shown in the letter as 15.02.2018) seeking repayment of ₹84,00,000/- and asking for the possession of the flat and shop and the letter is styled as a notice under the Code, which was received by the Corporate Debtor on 19.02.2019.
5. The petitioner has filed the ledger accounts statement annexed as exhibit G to the petition, confirming the liability of the company and also the financial statements of the Corporate Debtor for the year 2017-18, which captures the name of Petitioner in the list of loans from Directors and relatives, which confirms that an amount of ₹ 82,79,196/- is due and payable to the Petitioner. Thus, the Petitioner is now claiming an amount of ₹1,50,23,379/- towards the principal and interest (principal amount of ₹72,94,446/- plus interest of ₹ 77,28,933/-).
6. When the matter was listed on 23.09.2019 the Petitioner submitted that despite the publication of notice in the newspapers the Corporate Debtor chosen not to appear. However, the Petitioner submitted that they have received a call from the Corporate Debtor regarding the settlement and they are trying to settle the matter. In view of this, further time was granted, and the matter was posted on 11.10.2019.



When the matter was listed on 11.10.2019, the Corporate Debtor failed to appear.

7. On perusal of the above financial statements for the year 2017-18 filed by the Corporate Debtor, it can be said that that the Corporate Debtor listed the name of the Petitioner in the list of the loan from the Directors and relatives, as such the Corporate Debtor is liable to pay the outstanding amount of ₹1,50,23,379/- and has committed the default of payment of the said above amount to the Petitioner. Hence this petition deserves to be admitted.
8. This Adjudicating Authority is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench, hereby admits this Petition prohibiting all of the following of item-I, namely:
  - I. (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
  - (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.
  - II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
  - III. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



- IV. That the order of moratorium shall have effect from 25.11.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, 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 the Code.
- VI. That this Bench hereby appoints, Mr. Hitesh Kothari, having office at 815, BSE Building, Dalal Street, Mumbai, Fort – 400001 having Registration No. IBBI/IPA-002/IP-N00324/2017-2018/10929 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
9. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-  
V. Nallasenapathy  
Member (T)

Sd/-  
Suchitra Kanuparthi  
Member (J)



Certified True Copy  
Copy Issued "free of cost"  
On 03/12/2019  
  
Assistant Registrar  
National Company Law Tribunal Mumbai Bench