



**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

*(Exercising powers of Adjudicating Authority under
The Insolvency & Bankruptcy Code, 2016)
[Through Physical hearing/ VC Mode (Hybrid)]*

C.P (IB) No. 150/BB/2023

**Under Section 7 of the Insolvency and Bankruptcy Code, 2016
Read with Rule 4 of Insolvency and
Bankruptcy (AAA) Rules, 2016**

In the matter of

SHRIRAM FINANCE LIMITED

Sri Towers, Plot No.14A, South Phase,
Industrial Estate, Guindy
Chennai- 600032

Financial Creditor/Petitioner

Versus

EXCEL DWELLINGS INDIA PRIVATE LIMITED,

Survey No.9/25, Mottanahalli Village,
Gudigattanahalli Village,
Sarjapuri Hobli, Anekal Taluk,
Bengaluru

Corporate Debtor/ Respondent

Order delivered on: 08th August, 2024

Coram:

1. Hon'ble Shri K. Biswal Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Vineeth Reddy
For the Respondent : None

O R D E R

Per: K. Biswal Member (Judicial)

1. The present Petition has been filed on 09.06.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC/ Code**'), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **Shriram Finance Limited** (for brevity 'Financial Creditor/Petitioner') *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Excel Dwellings India Private Limited** (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that



the Corporate Debtor has committed a default for a total outstanding amount of Rs.6,42,08,364/- (Rupees Six Crores Forty-Two Lakhs Eight Thousand Three Hundred and Sixty Four only) as on 09.12.2022. Further, in Item No.2 of Part-IV of Form No.1 filed with the application, it is stated that *“the Corporate is liable to pay to the Financial Creditor a total sum of Rs.6,42,08,364/- (Rupees Six Crores Forty-Two Lakhs Eight Thousand Three Hundred and Sixty-Four only). Further after paying the instalment amount for the first 9 months, the Respondent/Corporate Debtor committed default in payment of the instalment amount which fell due on 15.07.2015.”*

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner as follows:
 - (a) The Corporate Debtor have entered into a Loan agreement with the Shriram City Union Finance Limited (herein after referred to as Lender). During subsistence of the Agreement, Shriram City Union Finance Limited merged with M/s. Shriram Transport Finance Company Limited vide order dated 09.11.2022 approved by the NCLT, Chennai Bench. By virtue of the Scheme of Amalgamation, Shriram Transport Finance Company Limited is legally entitled to proceed with all the proceeding pending before the appropriate Forum/Tribunal/Court. Subsequently, the name of the Shriram Transport Finance Company Limited changed to Shriram Finance Limited.
 - (b) The Financial Creditor is engaged in the business of providing finance to a wide range of customers including small and medium enterprises. The Corporate Debtor approached the Financial Creditor with a request for obtaining finance loan amounting to INR 1,75,00,000/- bearing interest rate of 17.50% per annum and agreed to repay it in 60 EMI's. Vide Loan Agreement dated 10.09.2014; the loan of Rs.1.75 crores was granted. The Corporate Debtor had agreed to pay the instalment amount of Rs.5,46,875/- every month as per schedule to a Loan agreement. Further, in relation to this, the Corporate Debtor also mortgaged its property at Gudigattanahally village, Anekal Taluk, Bengaluru Urban District through a simple Mortgage Deed dated 12.09.2014.



(c) It is stated that after paying the instalment amount for the first 9 (nine) months, the Corporate Debtor committed default in payment of the instalment amount which fell due on 15.07.2015. Subsequently, the Petitioner had initiated an arbitration proceedings and an award dated 25.03.2017 was passed directing the Corporate Debtor to pay a sum of Rs. 3,04,46,260/- together with interest @ 10% p.a. on the award amount, from 28.07.2016 till 25.03.2017 and 18% p.a. from 26.03.2017 till its realisation in full together with arbitrators fee Rs.10,965/-. Therefore, as on 07.01.2023 a sum of Rs.6,42,08,364/- was due and payable towards the amount in arrears. The Petitioner issued a demand notice to call upon the Corporate Debtor for repayment of entire outstanding loan amounting to a sum of Rs.6,42,08,364/-. However, the Corporate Debtor failed to repay the outstanding loan amount within 7 (seven) days. Hence the petition.

3. Heard the Learned Counsel for the Petitioner and perused the records available.
4. On 05.12.2023, court notice was issued to the Corporate Debtor/Respondent and the Petitioner was directed to file the affidavit of service along with tracking report. Pursuant to the same, the Petitioner filed an affidavit vide Dy. No.360 dated 18.01.2024 stating that the notice sent to the Corporate Debtor was returned with remark "Insufficient Address" and notice to the Director of the Respondent was delivered. Therefore, on 14.02.2024 this Adjudicating Authority directed the Petitioner to serve the notice through paper publication and file an affidavit of service within one week. In compliance to the same, the Petitioner Counsel has filed affidavit vide Dy.No.1425 dated 04.03.2024 for serving the notice through paper publication. In spite of issuing notice through speed post, email and also through paper publication and even after granting sufficient opportunities, none appeared on behalf of the Respondent nor any reply is filed. Therefore, on 01.04.2024 it was decided to proceed against the Corporate Debtor on Ex-parte basis.



5. On 05.12.2023, the Ld. Counsel for the Petitioner was directed to file an explanation regarding the limitation of the present petition.
6. Pursuant to the same, the Petitioner Counsel filed a Memo vide Dy.No.361 dated 18.06.2024 explaining that the default by the Corporate Debtor in payment fell due on 15.07.2015. Subsequently, the Petitioner had initiated arbitration proceedings and an award dated 25.03.2017 was passed directing the Corporate Debtor to pay a sum of Rs.3,04,46,240/- together with interest @ 10% p.a. on the award amount from 28.07.2016 till 25.03.2018 and 18% p.a. from 26.03.2017 till its realisation in full together with arbitrator's fee Rs.10,965/-. Therefore, as on 07.01.2023 a sum of Rs.6,42,08,364/- is due and payable by the Corporate Debtor. Further, in the Financial Statements/Balance Sheets as on 31.03.2017 and on 31.03.2019, in the Auditor's report it is clearly mentioned that the Corporate Debtor had defaulted in the repayment of loan to Sriram City Union Finance and there were outstanding amounts towards the Financial Creditor. Similar observations were also made in the financial statements, Audit reports in the Annual reports of the Corporate Debtor for the financial year ending 30.03.2020, 31.03.2021 & 31.03.2022, which reflects the outstanding amounts of the debt on the part of the Corporate Debtor.
7. The present petition is filed on 09.06.2023 under Section 7 of the Code to initiate Corporate Insolvency Proceedings against the Corporate Debtor on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs.6,42,08,364/- (Rupees Six Crores Forty-Two Lakhs Eight Thousand Three Hundred and Sixty Four only) as mentioned in Form No.1. Moreover, in the Record of Default (RoD) issued by the NeSL filed at Page-183 of the C.P; the amount in default is stated to be Rs.2,78,84,250/. Therefore, the threshold requirement of Rs.1 Crore at the time of filing the petition is fulfilled.
8. It is observed that in Form-D of NeSL report, the date of default is mentioned as 15.07.2015, however the Petitioner relies upon the Arbitration award dated 25.03.2017 against the Corporate Debtor for the existence of debt and default. Further, as discussed above, the Corporate Debtor every year since



2019 till 2022 through their Financial Statements, Auditors reports and Board reports have acknowledged the existence of the debt. Therefore, the petition is filed within the period of limitation.

9. In view of the above discussion, the existence of the debt and default is established. Therefore, the present petition bearing **C.P (IB) No.150/BB/2023** is **admitted** in respect of the Corporate Debtor **Excel Dwellings India Private Limited** under section 7 of the I & B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (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 the possession of the Corporate Debtor.*
- (e) *It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;*
- (f) *The provisions of Sub- Section 14 (3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;*
- (g) *The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31*

or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;



10. In Part-III of Form No.1, the Financial Creditor has proposed the name of Mr.S.Kangayan, bearing Registration No. IBBI/IPA-002/IP-002/N00866/2019-2020/12770 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Form-2 Written Communication by the IRP has been filed along with the C.P is found at Page 31-33 of the Petition. However, since the Authorisation of Assignment (AFA) shown in Form-B was expired on 08.11.2023, the IRP shall file the copy of renewed AFA within one week from the receipt of this order.
11. In view of the above, we appoint **Mr. S.Kangayan** bearing Registration No. IBBI/IPA-002/IP-002/N00866/2019-2020/12770 having registered address at Plot No.81, 3rd Street, Phase I, Dollars Colony Vengambakkam, Tambaram East, Chennai-600127 Contact No.9677554665, e-mail: kangayan.s@gmail.com as the Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP is directed to take the steps as mandated under Section 15, 17, 18, 20 and 21 of the IBC 2016.
12. 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.
13. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.



- 14.** A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-
(K.BISWAL)
MEMBER (JUDICIAL)