



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.301
CP(IB)/37(MP)2022

Proceedings under Section 7 IBC

IN THE MATTER OF:

Kalyan Toll Infrastructure Pvt Ltd
V/s
M/s Premshree Prime Properties Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 17/02/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria / Namit

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DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)



BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

CP(IB)/37/MP/2022

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

In the Matter of:

Kalyan Toll Infrastructure Limited

Having its registered office at:
11-B, Veena Nagar,
Near Bombay Hospital,
Indore,
Madhya Pradesh- 452010

.....Applicant/Financial Creditor

Versus

M/s Premshree Prime Properties Private Limited

Having its registered office at:
P-211-212, Metro Tower,
Vijay Nagar,
Indore,
Madhya Pradesh- 452010

.....Respondent/Corporate Debtor

Order Reserved On: 20.01.2023
Order Pronounced On: 17.02.2023

Coram: Dr. Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For Applicant: Ld. Adv. Mr. Kushagra Singh
For Respondent: Ld. Adv. Mr. Shantanu Chourasia



ORDER

1. This application is filed on 11.05.2022 by Ms. Bharti Vatsa, company secretary of M/s Kalyan Toll Infrastructure Limited (Financial Creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) to initiate Corporate Insolvency Resolution Process (CIRP) against M/s Premshree Prime Properties Private Limited (Corporate Debtor). The default amount stated by the applicant is Rs 2,97,85,027/-.

2. The corporate debtor is a private limited company incorporated under the provisions of the Companies Act, 1956, having CIN No. U45200MP2008PTC020325, its registered address is at P-211-212, Metro Tower, Vijay Nagar, Indore, Madhya Pradesh- 452010. The authorized share capital of the company is Rs 4,00,00,000/-, and paid up capital is of Rs 3,51,93,500/-.

3. The averments made by the financial creditor in its application and presented/argued by the learned counsel for the financial creditor are summarized hereunder:

(i) To augment the development of a multi-story residential building of eight blocks at Palakhedi Village, the corporate debtor approached the financial creditor for financial assistance through an unsecured loan.

(ii) After various discussions and working on the modalities, the financial creditor vide term sheet dated 14.10.2019 agreed to advance a term loan of Rs 2.5 Crores on the following specified understanding:



- (a) The loan term would be thirty-six months and a moratorium period of 18 months. The agreed interest rate of 12% per annum.
- (b) The loan repayment in half-yearly installments with the first installment of Rs 75 Lakh and interest payable on 30.09.2021; the second installment payable Rs 75 Lakh payable on 31.03.2022 and the final installment of Rs 100 Lakh payable on 30.09.2022.
- (iii) The specified understanding of the parties provides that on the occurrence of two consecutive defaults, the financial creditor shall have the option to recall the entire loan amount with interest.
- (iv) On 30.09.2021, the corporate debtor failed to pay the first installment as per the term sheet. Accordingly, the financial creditor issued the demand notice dated 25.10.2021, exhorting the corporate debtor to settle and pay the outstanding dues immediately.
- (v) Again on 31.03.2022, the corporate debtor manifestly failed to pay the second installment. The financial creditor vide demand notice dated 04.04.2022 afforded a final opportunity to pay the outstanding dues, including first and second installments.
- (vi) Following the default in payment of installments, the financial creditor was constrained to issue a recall notice dated 08.04.2022, calling upon the corporate debtor to remit the outstanding dues to the tune of Rs 2,97,85,027/-.
- (vii) Despite acknowledging the financial debt the corporate debtor has defaulted and failed to pay the outstanding dues to date.



4. In reply submissions made by the corporate debtor before this Adjudicating Authority are summarized hereunder:

(i) While the corporate debtor was grappling with the changes in policies of the Government in 2016-2017, which had caused cost escalation, the unfortunate and sudden demise of its director Late Mr. Prashant Jain in late 2017, further led the corporate debtor to a slump like situation, adversely affecting the affairs and the management of the corporate debtor.

(ii) The corporate debtor was undergoing a severe financial crisis and was unable to secure any institutional finances. However, in late 2019 the financial creditor agreed to infuse funds into the corporate debtor, and accordingly, the funds were infused in a structured manner initially, till December 2019. However, after that, the disbursement faltered. A total sum of Rs 2.37 Crores has been received till now by the corporate debtor as part of disbursal.

(iii) The contract was signed in October 2019, with the aim that the funds would be infused within six months i.e., till the first quarter of year 2020. However, after the initial infusion of funds till late 2019, the financial creditor stopped disbursing the agreed amount as against the mutual understanding of the parties. Although the amount is admitted by the corporate debtor but the repayment couldn't be effected for the reason that the non-disbursal by the financial creditor has led to a situation of a complete halt of construction of the project, thereby affecting the flow of funds.

(iv) Despite various verbal and written reminders to the financial creditor to disburse the agreed amount, it was held up making up some or the other excuse against the mutual understanding of the parties. As a consequence of this deadlock neither the admitted



outstanding was repaid nor the work could commence for completion of the project.

(v) The corporate debtor admits the due amount but also states that it cannot repay the loan as the loan amount could have been repaid only after receipt of the entire loan amount agreed.

5. The financial creditor has proposed to appoint Mr. Pankaj Shah having registration no. IBBI/IPA-001/IP-02281/2021-22/13637 as interim resolution professional.

6. We have heard the learned counsels appearing for both sides and perused the material available on record. It is noted that a loan agreement was executed between the corporate debtor and the financial creditor, and a total amount of Rs 2,37,67,000/- was disbursed by the financial creditor to the corporate debtor between the period 16.10.2019 to 06.07.2021, the said amount was admitted by the corporate debtor in its affidavit in reply. Defense is taken by the corporate debtor in its affidavit in reply saying that the financial creditor faltered in the disbursement of the loan amount agreed between the parties after late 2019. However, the bank statement and ledger furnished by the financial creditor reveal that the amount was disbursed between the period of 16.10.2019 to 06.07.2021.

As per the above observations, it is clear that the corporate debtor has defaulted in repayment of the loan taken from the financial creditor. The present petition was filed on 11.05.2022, which is well within the limitation period specified under the Code. The amount stated to be in default meets the threshold limit prescribed under the Code. Accordingly, we allow this petition and order as under:



ORDER

- I. Corporate Debtor M/s Premshree Prime Properties Private Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.
- II. We appoint Mr. Pankaj Shah, having registration no. IBBI/IPA-001/IP-02281/2021-22/13637 under section 13(1) (c) of the IB Code as IRP.
- III. The Moratorium under section 14 of the Code shall come to effect from the date of this order 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 the corporate debtor under Section 33, as the case may be.
- IV. The Adjudicating Authority hereby prohibits 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, and further prohibits Tribunals, Arbitration Panels, or other Authority(s), transferring, encumbering, alienating or disposing of any of the corporate debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 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. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e. section 14 and section 238 of the Insolvency & Bankruptcy Code, 2016.



VI. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the corporate debtor.

VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under section 13 of the Code and by calling for submissions of claim under section 15 of the Code.

VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its Promoter or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016

X. We direct the financial creditor / applicant to pay the IRP a sum of Rs. 1,00,000/- as fees & expenses till the COC decides about his fees /expenses.

XI. The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional



and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

XIII. This Application CP(IB) 37 of 2022 is allowed and disposed of.

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Kaushalendra Kumar Singh
Member (Technical)

Dr. Madan B. Gosavi
Member (Judicial)

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