



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.61/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

SMALL INDUSTRIES DEVELOPMENT

BANK OF INDIA

[AABCS3480N]

...Financial Creditor

v/s.

M/S. VIOLA RESORTS PRIVATE
LIMITED

[CIN: U74900MH2010PTC201806]

...Corporate Debtor

Order Delivered on: 06.06.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Financial Creditor:

Mr. Prasad Sarvankar, Ld. Counsel.

For the Corporate Debtor:

Mr. Saurabh Gandhi, Ld. Counsel.



ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the case of M/S. VIOLA RESORTS PRIVATE LIMITED, the Corporate Debtor.

1.1. The Company Petition is filed on 19.01.2023 claiming an amount of Rs. 15,50,34,961 /- (plus future interest till realization) in default. The Part IV of Form 1 specify the date of default as 11.05.2021.

2. The Corporate Debtor is in the business of hotels and hospitality. The Corporate Debtor has undertaken a project to develop a Resort at Lonavala, Dist. Pune, Maharashtra and to complete the same, the Corporate Debtor needed financial assistance. Therefore, the Corporate Debtor approached the Financial Creditor for a facility of Term Loan/Financial Assistance. The Financial Creditor after verifying the credentials of the Corporate Debtor sanctioned a loan facility of Rs. 12,30,00,000/- (Twelve Crore Thirty Lakhs only) and accordingly issued a Letter of Intent dated 30th April, 2015 containing the terms and conditions of the said Term loan. The said Letter of Intent contains various terms and conditions with regards to the sanction of the said term loan, interest rate and repayment.

2.1. The Financial Creditor states that the said Letter of Intent dated 30th April, 2015 was modified from time-to-time to incorporate changes. In fact, the said Letter of Intent was modified on 4th June, 2015, 13th August, 2015, 12th January, 2016, 26th February, 2016, 26th August, 2020 and 31 August, 2020 and various clauses and terms of the Original Letter of Intent dated



30th April,2015 came to be modified. The significant modification was carried out by modification letter dated 12th January, 2016 wherein the quantum of loan of Rs. 12,30,00,000/- (Rupees Twelve Crore Thirty Lakhs only) was modified to Rs. 10,75,00,000/- (Rupees Ten Crore Seventy-Five Lakhs) and Further modifications were carried out wherein the rate of interest, the guarantees of the promoters were incorporated.

2.2. The Financial Creditor states that, in pursuance to the Letter of Intent dated 30th April,2015, the Financial Creditor also executed a Loan Agreement with the Corporate Debtor dated 25th June,2016 wherein the terms and conditions as mentioned in the LOI were reaffirmed. Further, the Financial Creditor by a modification letter dated 18th March,2016 modified the amortization schedule of repayment and accordingly a fresh amortization schedule was replaced in place of schedule 3 of the said Loan Agreement wherein the repayment schedule of the said loan is fixed. The instalments of repayments were supposed to begin from 10th April,2017 and the last instalment was due on 10th August,2026. The Corporate Debtor was required to repay the said loan amount accordingly.

2.3. The Financial Creditor states that to secure the said loan amount various securities and collaterals were given in favor of the Financial Creditor.

2.4. The Financial Creditor states that in addition to the earlier sanctioned loan of Rs. 10,75,00,000/-, the Corporate Debtor was in need of a further Financial Assistance for working capital requirements. Accordingly, by sanction letter dated 26th August,2020 a further loan of Rs. 2,07,15,000/- was granted to the Corporate Debtor under Emergency Credit Line Guarantee Scheme of the Financial Creditor along with Rs. 64,73,306/- and Rs. 56,52,791/- under direct credit scheme from time to time.



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- 2.5. The Financial Creditor states that, for some time the Corporate Debtor duly repaid instalments towards principal outstanding and interest. However, in the year 2021, the Corporate debtor began to default on the monthly instalments from 11/05/2021 and thereafter no overdue amount is being paid by the corporate debtor. The Financial Creditor states that the details of amount due and paid towards principal and interest are duly recorded and maintained by the Financial Creditor as per the loan account statements.
- 2.6. The Financial Creditor states that the Corporate Debtor also issued Balance Confirmations in favor of the Financial Creditor for the year ending 31/03/2021 as well as 31/03/2022, wherein, the Financial Creditor has duly acknowledged and confirmed the outstanding balance payable to the Applicant.
- 2.7. The Financial Creditor states that the Financial Creditor also issued an acknowledgement of debt under section 18 of the Limitation Act towards the said outstanding loan amount.
- 2.8. The Financial Creditor states that the loan facilities extended and granted to the Corporate debtor were duly recorded with the information utility namely National e-governance Service Limited. The said Information Utility has duly authenticated the default with the Corporate Debtor as per the due process, and has accordingly issued a record of default in Form-D wherein the default committed by the Corporate Debtor is clearly established under default status 'Authenticated' and colour of the status 'Green'.



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- 2.9. The Financial Creditor states that as per the record of default issued by Information Utility, the Corporate Debtor has defaulted in payment of monthly instalments. The default committed by Corporate debtor is on 11/05/2021 and the same is continuing till date of filing application. Against the loan facility of Rs. 10,75,00,000/-, the Corporate Debtor has defaulted in monthly EMIs to the tune of Rs. 1,59,36,917/- as on 2nd November,2022. Further against Loan facility of Rs. 2,07,15,000/-, the Corporate Debtor has defaulted in repayment to the tune of Rs. 1,03,82,852/- as on 2nd November, 2022. Further against FITL granted under Direct Credit Scheme of Rs. 64,73,306, the Corporate Debtor has defaulted to the tune of Rs. 24,51,616 as on 2nd November,2022 and against another FITL granted under the Direct Credit Scheme of Rs. 56,53,000/-, the Corporate Debtor has defaulted in repayment to the tune of Rs. 38,51,665 as on 2nd November, 2022.
- 2.10. The Financial Creditor states that, owing to continued default on the part of the Corporate Debtor, the Financial Creditor was also constrained to issue loan recall letters to the Corporate Debtor vide recall letters dated 05/04/2022. The said loan recall letters have been duly delivered to the Corporate Debtor, however, the Corporate Debtor has failed to pay the outstanding dues owed to the Applicant.
3. The Corporate Debtor in its reply has denied the particulars of the Financial Debt and has also stated that the petition is not clearly verified; neither the information utility placed on record is verified nor IU has any adjudicatory power to adjudge a default; the corporate debtor account may be directed to be restructured to ameliorate the effects of COVID under RBI framework; the sanctioned term loan was reduced drastically without any justification; disbursement were largely delayed; the amount to be brought into the company



by the promoters was increased for which the corporate debtor has to raise finances from other sources, resulting in huge financial burden.

Findings:

4. We have heard both the parties and perused the material on record.
5. From the petition, pleadings made and arguments extended by the Counsel of both the sides, it is abundantly clear that there is a debt of Rs. 15,50,34,961/- (plus future interest till realization), which is due and in default by the Corporate Debtor to the Financial Creditor. The Corporate Debtor has defaulted in repayment of the loans and financial assistance granted by the Financial Creditor from time to time. The Corporate Debtor has not disputed the outstanding debt owed to the Financial Creditor.
6. The Corporate Debtor has submitted that it is on revival path and was eligible for Restructuring framework work 2.0 of RBI and same was denied by the bank. The denial of RBI Framework benefit impacted its affairs adversely. It has pleaded improvement in its gross revenue for the year 2022-2023, which stood at Rs. 3,53,96,006/- as compared to Rs.1,33,43,460/- and Rs.1,90,22,450/- for the year 2020-21 and 2021-22 respectively. It is also alleged that, the applicant reduced the sanctioned term loan to Rs.10.75/- Crores from original sanction of Rs.12.30/- Crores. Apart from this, the Corporate Debtor has pleaded sufficiency of securities available with the applicant to secure its claim. It is further pleaded that the respondent is a MSME unit and act of the applicant/Financial Creditor has prejudiced the functioning of the business. This bench is of the considered view that these factors are irrelevant in a proceeding u/s 7 of the Code which primarily mandates the adjudicating authority to satisfy itself in respect of existence of debt and occurrence of default in payment thereof in excess of specified amount. The default in relation to all



4 credit facilities and continued occurrence of the said defaults indicate that the Corporate Debtor requires resolution.

7. As regards contention of inappropriate verification of the petition, this bench finds that this petition has been verified by Mr. P Ramakrishna who is certified to authorized and empowered by SIDBI in this respect as per certificate dated 27.12.2022 signed by Deputy General Manager of the Applicant Bank. As regards, competence of information utility to certify the default, this bench finds that default is authenticated by the Information Utility after following due process and under notice to a Corporate Debtor, hence this bench finds no merit in this argument.
8. As regards denial RBI Framework benefit this bench is of the considered view that the Code is an alternate mechanism to address the default of the Corporate Debtor for its benefit and interest of all the stakeholders. The denial of framework benefit is not tenable ground in consideration of an application u/s 7 of the Code.
9. On perusal of the documents submitted by the Applicant, it is clear that Financial Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount.
10. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated against the Corporate Debtor. Since, the debt and default exist, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.



ORDER

11. The petition bearing CP (IB) No.61/MB-IV/2023 filed by, SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the case of M/S. VIOLA RESORTS PRIVATE LIMITED against the Corporate Debtor is **admitted**.

a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -



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- (v) 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;
- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints Mr. Anil Kashi Drolia, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P-02327/2020-2021/13482 and email- anildrolia.ip@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

06.06.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)