IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

CP (IB) 712/MB/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

SREI Equipment Finance Limited,
Through Administrator Rajneesh Sharma,
Having registered office at: - 'Vishwakarma', 86C, Topsia Road, Kolkata, West Bengal, PIN Code– 700046.

….. Applicant/ Financial Creditor

Versus

Avarsekar Realty Private Limited,
Having registered office at: - Plot No. 695/ 697, 64C, Shitladevi Temple Road, Mahim, Mumbai-400016.

….. Corporate Debtor

Order Delivered on :- 09.11.2023

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances (in physical mode):

For the Financial Creditor: Advocate Rohan Agarwal a/w Adv. Darshit Dave and Advocate Ativ Patel.

For the Corporate Debtor: Adv. Priyank.

ORDER

Per: - Coram.

1. The present Petition is being preferred under Section 7 of the Insolvency Bankruptcy Code, 2016 (hereinafter referred to as "IBC") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by SREI Equipment Finance Limited (hereinafter called as "Financial Creditor") praying for initiation of Corporate Insolvency Resolution Process (CIRP) against the Avarsekar Realty Private Limited. (hereinafter called as "Corporate Debtor") on the ground that the Corporate Debtor committed a default of INR 616,37,08,329/- (Rupees Six Hundred and Sixteen Crores, Thirty Seven Lakhs, Eight Thousand, Three Hundred and Twenty Nine Only) in repaying to the Financial Creditor as on 31.07.2023.

The averments made by the Financial Creditor are summarised as under:

2. The Financial Creditor is a Non-Banking Financial Institution. On an application filed by the Reserve Bank of India, the Financial Creditor is directed to undergo Corporate Insolvency Resolution Process pursuant to the order dated 08th October, 2021 passed by the Adjudicating Authority, that is

the National Company Law Tribunal, Kolkata Bench in Petition No. 294 of 2021. By the aforesaid order, Mr. Rajneesh Sharma is appointed as the administrator of the Financial Creditor. The Administrator in exercise of its powers vested upon him, has executed a Power of Attorney in favour of Mr. Pallab Bose, inter-alia, to initiate recovery actions against the borrower. The Corporate Debtor is in the business of Real Estate Development.

3. The Petitioner had sanctioned a Loan of Rs. 200 Crores to the Corporate Debtor bearing Loan Agreement No. 149328 dated 22nd December, 2017. The tenure of the loan was for 36 Months with 6 months moratorium from initial disbursement date. The Interest rate charged to the Corporate Debtor was 0.01 % per annum with Yield to Maturity at 11 %. The Corporate Debtor was to make payments of Rs. 25,000/- per month from 7th Month and Bullet payment at the end of Loan Tenure. The Petitioner and Corporate Debtor entered into a Supplementary Loan Agreement dated 31st December 2019, wherein, the Security provided by the Corporate Debtor was modified. The Corporate Debtor failed to make payments under the Loan Agreement. On a request made by the Corporate Debtor, the Petitioner provided extension of repayment schedule under the aegis of the Reserve Bank of India, Covid Regulatory Package.

4. Since the Corporate Debtor defaulted in making payments, the Petitioner vide its Demand Notices dated 07th April 2022 and 14th April 2022, the Petitioner has called upon the Corporate Debtor to implement the Trust and Retention Account (TRA) Mechanism under the Loan Agreement to monitor the project cash flows but despite the Notices, the Corporate Debtor failed to implement TRA. Further, the Petitioner by its Notice dated 02nd November, 2022 had called upon the Corporate Debtor to make payment towards the outstanding dues under the Loan Agreement. However, the Corporate Debtor again failed to make payments. Thereafter, due to continuous

defaults, the Petitioner, terminated the Loan Agreement dated 22nd December 2017 and recalled the entire Credit facility granted to the Corporate Debtor by its termination letter dated 14th March 2023. The Petitioner states that the Administrator has preferred an Application before the Adjudicating Authority, Kolkata u/s 66 in the CIRP of the Petitioner on a report prepared by the Transaction Auditor flagging the aforesaid Loan Transaction as fraudulent. The Petitioner submits that the Corporate Debtor has acknowledged the outstanding debt and default in its Balance Sheet for the year Ending 31st March 2021. The Audited Balance sheet clearly states that an amount of Rs. 197.57 crores are outstanding.

5. The Corporate Debtor appeared through his counsel but failed to file reply despite ample opportunity afforded. Eventually, the right to file reply was forfeited.

FINDINGS

6. We have heard the counsel for the parties and have gone through the record.

7. During the course of arguments, the counsel for the Petitioner has argued that the factum of existence of financial debt and its default has been proved on record. The counsel for the Financial Creditor has referred to the loan agreement dated 22.12.2017 as well as the supplementary loan agreement dated 31.12.2019 executed between the parties the counsel for the Financial Creditor has further referred to the schedule attached with the agreement dated 22.12.2017 which sets out the interest payable by the Corporate Debtor. The repayment schedule annexed with the said agreement further shows that the installments of interest were to commence from 22.06.2018 and a sum of

Rs.200 Crores was to be paid on 22.11.2020. The counsel for the Financial Creditor further referred to demand notices dated 07.04.2022, 04.04.2022, 02.11.2022 and 14.03.2023 which were issued to the Corporate Debtor and despite having received the notices, the Corporate Debtor has failed to pay back the outstanding amount. The counsel for the Petitioner has further referred to the audited balance sheet of the Corporate Debtor for the year ending 31.03.2021 wherein the Corporate Debtor has confirmed a balance amount of Rs.197.57 Crores. According to the counsel for the Petitioner, in the light of the aforementioned documents, the petition deserves to be admitted.

8. On the other hand, the counsel for the Corporate Debtor has simply stated that due to pandemic the business of the Corporate Debtor suffered tremendously due to which it could not pay off its liabilities. The counsel for the Corporate Debtor further requested that some time may be granted to the Corporate Debtor to enable it to make the payment and the Corporate Debtor may not be pushed into insolvency.

9. Having considered the contentions raised by the Counsel for the parties, we are of the considered view that there is no dispute so far as the facts of the case are concerned. The Corporate Debtor has not disputed its liability. Rather in the audited balance sheet of the year ending March 2021, the outstanding dues of Rs. 197.57 Crores has been admitted and confirmed. Therefore, the existence of the financial debt stand proved on records. The Financial Creditor has also placed on record a copy of NeSL report (EX-Q) which shows the date of default as 15.05.2021. The loan was advanced vide loan agreement dated 22.12.2017 and 31.12.2019 and in the light of the acknowledgement made in the audited balance sheet for year ending

31.03.2021, the present petition is deemed to have been filed within the period of limitation.

10. No substantive defence has been raised on behalf of the Corporate Debtor nor any reply has been filed. The counsel for the Corporate Debtor simply sought some more time for making payment to the Financial Creditor. However, in our considered view, any such request cannot be allowed in a petition under Section 7 of the Code especially when it has not been explained as to how and in what time the Corporate Debtor would be able to repay the financial debt.

11. In the light of the forgoing discussion, we find the present petition to be a fit one for admission under Section 7 of the Code. It is ordered accordingly in the following terms:

ORDER

a. **The above Company Petition No. (IB) 712(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **AVARSEKAR REALTY PRIVATE LIMITED.**

b. This Bench hereby **appoints Mr. Pradip Kumar Chakravarty, Registration No: IBBI/IPA-003/IP-4000123/2017-18/11338 as the Interim Resolution Professional residing at B-301, Jasmine, Agarwal & Doshi Complex, Kaul's Heritage City, Bhabola Naka, Vasai West, District-Palghar, Maharashtra, PIN-**

401202, email:- pkc195710@gmail.com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench 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, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. 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.

f. 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.

g. That the order of moratorium shall have effect from the date of pronouncement 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 corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

12. **Accordingly, this Petition is admitted.**

13. The Registry is hereby directed to communicate this order to both the parties and to the IRP immediately.

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**KULDIP KUMAR KAREER**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**