IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

IB-230(PB)/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

M/s. KALIBER ASSOCIATES PVT LTD.
Through its Liquidator,
Mohan Lal Jain
B-1/12, 2nd Floor, Safdarjung Enclave
New Delhi-110029

.... Financial Creditor/Applicant

Vs

M/s. HPT Constructions Pvt. Ltd.
E-210, 2nd Floor, Chattarpur Extension, Chattarpur,
New Delhi-110074

.... Corporate Debtor

Order delivered on: 01.04.2022

Coram:

JUSTICE RAMALINGAM SUDHAKAR,

HON'BLE PRESIDENT

SHRI HEMANT KUMAR SARANGI,

HON'BLE MEMBER (TECHNICAL)

Appearance

For the Applicant: Mr. Aniban Bhattacharya,
Mr. Sandeep Rajat,

Mr. Rajeev Chowdhary,
Mr. Dhruv Sachdeva, Advocates.

For the Respondent: None

ORDER

Per: Shri Hemant Kumar Sarangi Hon'ble Member (Technical)

1. This is an application, filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules),for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Process (IRP), against the Corporate Debtor viz., M/s. HPT Constructions Pvt. Ltd. (Corporate Debtor), for default in repayment of Rs. 6,03,00,000 (Rupees Six Crores and Three Lakhs Only).

2. The application is filed by the applicant viz., M/s. Kaliber Associates Pvt. Ltd. (Financial Creditor), through the Liquidator viz., Mr. Mohan Lal Jain (Liquidator), in terms of proviso to Section 33(5) r/w Section 35 (1)(k) of IBC, 2016, as the Liquidator was allowed by this Authority vide Order dated 01.12.2020, to institute any suit or legal proceedings on behalf of the Financial Creditor against the defaulting borrowers.

3. The Original CIRP proceedings were initiated by One M/s. Relan Buildwell Pvt. Ltd., against the M/s. Kaliber Associates Pvt. Ltd., which was admitted by this Authority vide Order dated 18.01.2019 in CP (IB) No-228/2018 and Mr. Vinay Talwar was

Liquidation Order was passed on 02.01.2020, in the application filed by the Resolution Professional, bearing number CA No.-1524/2019, thereby appointing Mr. Mohan Lal Jain as the Liquidator, who is the Applicant/Petitioner here, as the Liquidator has inherited the dues of the original Company M/s. Kaliber Associates Pvt. Ltd, against the present Corporate Debtor M/s. HPT Constructions Pvt. Ltd.

4. The stand taken by the Applicant is as follows: -

A. The notice of the application was Ordered on 26.04.2021 and in compliance of the Order, the applicant has filed an affidavit of service dated 14.07.2021. The applicant has not received any reply to the notice, sent on the email Id of the Corporate Debtor, nor has he received the email bounced report. The Email Id is reflected in the Master Data, available on the website of Ministry of Corporate Affairs.

B. The Liquidator/Applicant submitted that the ex-directors of the Financial Creditor, being aggrieved by the violation of the agreed and settled terms of repayment, issued the first demand notice on 19.04.2018 demanding repayment of Rs. 6,03,00,000 (Rupees Six Crores and Three Lakhs Only). The Corporate Debtor replied on 11.05.2018 (ANNEXURE A-12, Pg 322-323) and stated that "*the ex-Director Mr. Lalit Modi of the Corporate Debtor had approached and represented that he had purchased bulk plots in Brahma City, Sector 62, 65, Gurugram and was in the process of development and construction of the same so that he could sell it at huge profit. At his request, we had agreed, undertaken to and* *accepted to the development and design of these bulk plots. The Ex-Director was fully aware that this money is non refundable and that they would have to make further payments that they now adopted and concocted a novel story of advancing money to my client company for repayment of loan, which is a utter lie even to the knowledge of your client."*

C. The Interim Resolution Professional after taking over the management, issued a demand notice dated 31.01.2019 and 10.05.2019. Subsequently, after Liquidation Order, the Liquidator, Mr. Mohan Lal Jain, issued a legal notice on 20.07.2020, calling upon the Corporate Debtor, to pay the amount of Rs. 6,03,00,000 (Rupees Six Crores and Three Lakhs Only). The Corporate Debtor despite receipt of the demand notice, failed to repay the outstanding dues. Despite sending several demand notices, as stated above, there was no response. Therefore, the Liquidator submitted the details of default on 24.12.2020, to the Information Utility namely, National E-Governance Services Limited (NeSL). The process of authentication of default was completed by the NeSL on 10.01.2021 and copy of the Record of the Default is annexed with the application as ANNEXURE-8 (Pg. 362-368).

D. As per record and submissions made, the short-term facility was disbursed to the Corporate Debtor in 21 (twenty-one) tranches/installments. The Corporate Debtor had agreed to repay the loan @ 15% P.A., within 18 (eighteen) months from the date of the last disbursement. The Bank Statements of the account maintained with Union Bank of India in the name of

M/s. Kaliber Associates Pvt Ltd, for the period from 01.04.2013 to 01.06.2019, reflects the amounts disbursed and is annexed as ANNEXURE-9. The extract of the details is as under:

Date as per the Bank Statement	Particulars	Bank Name	Account No.	Cheque No.	Amount (in Rs.)
18.06.2014	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33000700	5,000,000
25.07.2014	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	32195602	5,000,000
03.11.2014	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33013553	5,000,000
01.12.2014	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33013601	4,000,000
05.01.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33038587	3,000,000
04.02.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33038631	3,000,000
04.03.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33038671	3,000,000
07.04.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33038757	3,000,000
05.05.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33038814	2,000,000

18.05.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33038846	1,000,000
05.06.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33064865	2,500,000
13.07.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33064924	3,000,000
05.08.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33064974	3,000,000
06.10.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33083181	3,000,000
30.10.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33083208	3,000,000
18.11.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33088563	3,000,000
05.12.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33088491	2,500,000
10.12.2015	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	33088502	400,000
14.01.2016	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400		2,500,000
19.01.2016	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	32060206	500,000
08.02.2016	HPT Constructions Pvt. Ltd.	Union Bank of India	349401010928400	32060241	2,900,000
TOTAL	Rs. 60,300,000 (Rupees Six Crores and Three Lakhs Only)				

E. It is stated by the Liquidator, in Part IV of the Form 1, that a total amount of Rs 6,03,00,000 (Rupees Six Crores and Three Lakhs Only) was due from the Corporate Debtor and the date of default is 31.01.2019. The amount due and payable by the Corporate Debtor is reflected in the Balance Sheet of the Corporate Debtor as on 31.03.2017, under the head "advances received" (Annexure-10, Pg 403 of the application). The amount is also reflected in the Balance Sheet of the Financial Creditor, under the head "Short term loans and advances" under "Loans and Advances to others", in the Audited Financial Statements as on31.03.2018 (Annexure 11, Pg 433), 18.01.2019 (Annexure 12, Pg. 451).

F. It is stated that in view of the judgment passed by the Hon'ble Supreme Court, in the matter of *Pioneer urban Land and Infrastructure Ltd &Ors. Vs. Union of India &Ors. (*2019) 8 SCC 416, the amount advanced by the Financial Creditor for development and construction of the plots is a 'Financial Debt'. Further, the benefits to be derived was in the form of designed and constructed flats, which could be sold at a higher value and the amounts disbursed by the Financial Creditor to the Corporate Debtor, for the purpose of development and construction of bulk plots, satisfies the condition of 'Time value of Money' and qualifies to be a 'Financial Debt' in terms of Section 5 (8) (f) of the IBC, 2016.

5. Heard the parties and perused the record. Despite valid service, the Corporate Debtor has failed to file any reply in its defense and has also failed to appear before this Authority.

6. We have considered the pleadings, the documentary evidence viz., reply by the Corporate Debtor dated 11.05.2018 to the demand notice dated 20.07.2020, Bank statements for the period 01.04.2013 to 01.06.2019, Audited financial Statements of the Corporate Debtor as on 31.03.2017 and 31.3.2018, Audited and provisional financial statements of the Financial Creditor as on 31.3.2018, 18.01.2019 and Record of Default with NeSL placed on the case file which states that the directors of the Corporate Debtor have acknowledged the amount as due and payable as is reflected in the audited financial statement as on 31.03.2018 (Pg. 416 of the application). The default is deemed to be authenticated by the NeSL, as on 10.01.2021.

7. The directors of the Corporate Debtor have acknowledged the amount due and payable, reflected in the audited financial statement as on 31.03.2018 (Pg. 416 of the application), the default is deemed to be authenticated by the NeSL, as on 10.01.2021, these documents are sufficient to ascertain the existence of a debt and default on the part of the Corporate Debtor. The Financial Creditor has fulfilled all the requirements of law, including the name of the Resolution Professional for appointment as the Interim Resolution Professional (IRP). The Form 2, written communication by Mr. Rajiv Bajaj, in accordance with Rule 9 of the Adjudicating Authority Rules, is annexed at

ANNEXURE-7 (Pg. 359).Accordingly, the application stands **admitted,** and the commencement of the Corporate Insolvency Resolution Process is ordered, which ordinarily shall get completed within 180 days, reckoning from the day this Order is passed.

8. Mr Rajiv Bajaj is **appointed** as the IRP. The details of the IRP are as follows:

Registration No: IBBI/IPA-002/IP-N00276/2017-18/10834
Email Id: rbajajaip@gmail.com
Address: 4/180, Backside, Ground Floor, Subhash Nagar, New Delh-110027.

9. The IRP is directed to file an affidavit stating that there are no disciplinary proceedings pending against him and that he qualifies to practice as insolvency professional. The IRP is directed to take charge of the Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016, within three days from the date the copy of this Order is received and call for submissions of claim in the manner as prescribed.

10. Moratorium is declared under Section 14 of IBC, 2016, which shall have effect from the date of this Order, till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

(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) (54 of 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.

11. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the IBC, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP, as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.

13. The Financial Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of IBC, 2016.

14. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor with immediate effect.

15. The Order is pronounced through Video Conferencing.

-Sd-

RAMALINGAM SUDHAKAR
PRESIDENT

-Sd-

HEMANT KUMAR SARANGI
MEMBER (TECHNICAL)