



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1- **CP(IB)/23(MP)2023**
&
IA/341/(MP)2024

Proceedings under Section 7 IBC

IN THE MATTER OF:

Fortune Land Holdings LLP
V/s
SPG Macrocosm Ltd

.....Applicant

.....Respondent

Order delivered on 20/08/2024

Coram:

Chitra Ram Hankare, 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 the order.

The order is pronounced in open Court *vide* separate sheet.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra Tomar /Stenographer

-sd-

CHITRA RAM HANKARE
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB)/23/MP/2023

with

IA/341/MP/2024

(Application under section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Fortune Land Holdings LLP

Registered address:
No. 383, 9th Cross, 2nd Block,
R T Nagar, Bangalore,
Karnataka- 560032

.....Applicant/Financial Creditor

Versus

SPG Macrocosm Limited

Registered Address:
408, Anish Heritage,
Flat No. 203, Indrapuri Colony,
Bhwarkuan, Indore,
Madhya Pradesh- 452001

.....Respondent/Corporate Debtor

Order pronounced on: 20.08.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

**MR. KAUSHALENDRA KUMAR SINGH
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For Petitioner : Ld. Adv. Mr. Abhishek Naik

For Respondent : Ld. Adv. Mr. Abhishek Arora



JUDGMENT

1. This application has been filed on 17.02.2023, by Mr. Hansraj Rathore, Authorized Representative of M/s Fortune Land Holdings LLP (Financial Creditor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s SPG Macrocosm Limited (Corporate Debtor). The default amount stated by the financial creditor is Rs 1,14,62,500/- (Principle amount Rs 70,00,000/- and interest amount Rs 44,62,500/-). The date of default stated by the financial creditor is 01.10.2021.

2. This Adjudicating Authority vide order dated 29.02.2024 had dismissed the present petition on the ground that the petition filed on the basis of an invalid and unenforceable instrument is not maintainable. However, Petitioner had preferred an appeal i.e. Company Appeal (AT) (Insolvency) No. 621 of 2024 before Hon'ble NCLAT against the order dated 29.02.2024. Whereby Hon'ble NCLAT, Principal Bench, New Delhi had allowed the said appeal and has given following directions:
 - (i) The impugned Order dated 29.02.2024 passed by the Adjudicating Authority is set aside.
 - (ii) The application filed by the Appellant under section 7 of the IBC deserves to be admitted.
 - (iii) The matter be taken up within 10 days by the Adjudicating Authority for initiating the CIRP as per the IBC provisions and to pass consequential orders.

3. In view of the order passed and the directions given by Hon'ble NCLAT vide order dated 03.07.2024, the petitioner has filed an application i.e., IA/341/MP/2024, under Rule 11 of the NCLT Rules, 2016, seeking directions to pass order for commencement of CIRP of the corporate debtor.



4. We have heard the learned counsels for the parties and perused the record.
5. Hon'ble NCLAT vide order dated 03.07.2024 in Company Appeal (AT) (Insolvency) No. 621 of 2024, while setting aside the order dated 29.02.2024, observed that:

38. It is evident that, the debt and default are clearly established by the material on record in the form of the Loan Agreement, the Audit Report and also Record of Default (Form D) from the Information Utility (NeSL) taken together, as was examined in earlier part of the Appraisal.

39. For the reason stated above, this Appellate Tribunal finds that the Adjudicating Authority erred in dismissing the application under section 7 of the IBC. The existence of debt and default has been clearly established, and the procedural requirements have been met by the Appellant. The issue of stamping does not outweigh the substantive evidence of debt and default.

6. Hence, we pass the following order:

ORDER

- (i) The application CP(IB)/23/MP/2023 and IA/341/MP/2024 is allowed.
- (ii) Corporate Debtor M/s SPG Macrocosm Limited is admitted in the Corporate Insolvency Resolution Process under section 7 of the Code.
- (iii) The moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the Code.
 - 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;*
 - 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.*
- (iv) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
- (v) As proposed by the financial creditor, we appoint Mr. Manish Shah having registration No. IBBI/IPA-001/IP-P00094/2017-18/10194, having address at: A/502, Krishna Palace, Thakur Complex, Kandivali (East), Mumbai, Maharashtra- 400101, Email: mdshah0211@gmail.com, to act as an Interim Resolution Professional (IRP) under section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of the Code r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by section 13(1) (b) of the Code.



- (vii) 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 the assets and management of the corporate debtor.
- (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 Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the Code extending every assistance and co-operation 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 duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the Insolvency & Bankruptcy Code, 2016.
- (x) The Financial Creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.
- (xi) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of



Companies, within seven working days and upload the same on website immediately after pronouncement of the order.

- (xii) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employee's associations so that they are informed of the initiating of CIRP against the Corporate Debtor timely.
- (xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

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CHITRA RAM HANKARE
MEMBER (JUDICIAL)

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