

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.262/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

SATRA PROPERTIES (INDIA) LIMITED.

through Resolution Professional

Ms. Vaishali Arun Patrikar

[CIN: L65910MH1983PLC030083]

...Financial Creditor

v/s.

C. Bhansali Developers Private Limited.

[CIN: U47200MH2005PTC157864]

...Corporate Debtor

Order Delivered on: 06.10.2023.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Pulkit Sharma i/b Adv. Amit Tungare,
Ld. Counsel.

For the Corporate Debtor:

Mr. Nausher Kohli a/w Ms. Sakshi Dube,
Ms. Kaushika Udeshi, Mr. Rishabh

Dhanuka i/b Agarwal &Dhanuka, Ld.
Counsel.

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

- This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Satra Properties (India) Limited (“Financial Creditor”) through Resolution Professional Ms. Vaishali Arun Patrikar, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of C. Bhansali Developers Private Limited., the Corporate Debtor.
 - The petition is filed on 01/12/2022 and the total outstanding amount of debt granted is Rs. 33,83,45,635/- in default (which includes Rs. 8,98,28,323/- being an amount of Inter Corporate Deposits (ICDs) alongwith interest @ 12 % thereon till 30.10.2022 being Rs. 24,45,17,242/- and on 27.06.2008 Rs. 40,00,000/- being an amount of advance). The date of default as Specified in Part IV of the petition is 31.03.2022.

Submissions of the Financial Creditor:

- The Corporate Insolvency Resolution Process ("CIRP") was initiated against M/s. Satra Properties (India) Limited (hereinafter referred to as the "Corporate Debtor") by virtue of order dated 03.08.2020 as passed by this Tribunal and Mr. Devarajan Raman was appointed as the Interim Resolution Professional of the Corporate Debtor. Further, by virtue of order dated 22.09.2022 as passed by this tribunal, Ms. Vaishali Arun Patrikar was appointed as the Resolution Professional of the Corporate Debtor.

- The Inter Corporate Deposit and advance for Property was originally given by M/s. OM Housing Private Limited and after amalgamation of OM Housing Private Limited with M/s. Satra Properties (India) Limited dated 24.08.2007, all the loans and advance were transferred to Satra Properties (India) Limited.
- In the year 2021, on perusal of the books of accounts and records of the Corporate Debtor, Petitioner have noticed that Inter Corporate Deposit and advance for Property, total amounting to Rs. 9,38,28,323/- (Rupees Nine Crore Thirty-Eight Lakhs Twenty-Eight Thousand Three Hundred and Twenty-Three Only) along with interest thereon is due and payable by the Corporate Debtor.
- In view of the failure on part of Corporate Debtor to make payments even after email correspondences dated 07.05.2021, 01.11.2022 sent by the Financial Creditor to the Corporate Debtor of the outstanding dues, the Financial Creditor was constrained to issue a legal notices dated 01.06.2022 (issued by the Erstwhile RP Demanding the repayment) 30.05.2022 (issued by the Legal Representative appointed by the Erstwhile RP) 05.11.2022 (issued by the Legal Representative of the RP demanding the repayment) demanding outstanding payment. However, the Corporate Debtor has not filed any reply to the said notices.

Submissions of the Corporate Debtor:

- The Corporate Debtor vide its Affidavit in reply dated 30.06.2023 stating that, the Petitioner is attempting to give the transaction of an ICD the color of a financial debt for the purposes of the Insolvency and Bankruptcy Code, 2016- ("Code"). It is an

admitted position in the Company Petition that the present amounts were disbursed as an ICD, therefore the same even if transferred to the Petitioner by virtue of a purported amalgamation cannot be now termed as a Loan and/or advance. The Petitioner has failed establish any financial contract which can be taken as proof of a financial debt between parties. The Petitioner failed to produce any agreement/contract between the parties which specify terms of repayment, agreed rate of interest and/or terms of default. The Petitioner has also failed make any demand qua the outstanding amount since 2008.

- The parties were ad- idem that the amount disbursed to the Respondent Company by way of an ICD was never repayable, the amount was disbursed towards the purchase of the Properties (more particularly described in the Sale Certificate) situated at Khalapur, Raigad attached to Old Pune-Mumbai Road admeasuring approx. 67.64 Acres ("Property"). It was always agreed between the parties that the said deposits were to be converted such that the petitioner would enjoy benefits of through the property. The Corporate Debtor also issued 2,000 fully paid up shares having a face value of INR 10/- in favour of the Petitioner/Financial Creditor.
- The question of repayment never arose as the said transaction was never a loan but an ICD for purchase of the Property. By very virtue of the interest payment having to be capitalized towards the Property, the actual transaction was towards building the asset i.e. the Property and not a towards a loan.
- The Petitioner has failed to even make out the most basic ingredients of a financial debt for the purposes of the Code. Merely terming the subject ICD as an unsecured loan does not, in itself, render the Petitioner a financial creditor for the purposes of Section 5(7) of the Code. The present transaction is missing the crucial component of interest being disbursed against the consideration for the

time value of money. The petitioner has failed to demonstrate that the ICDs were disbursed the consideration being for time value of money. It is trite law that ICDs that do not carry a payable interest component, cannot be regarded as financial debts for the purposes of the Code. This is particularly since the Code requires a default in repayment of financial debts availed. There is no document produced by the Petitioner on record to specify and/or establish that the amount was borrowed by the Corporate Debtor.

- The captioned Company Petition itself fails to identify a date of default i.e. when the debt became due. The Petitioner has further failed to establish by any record any actual date of default. Therefore, no default has occurred under Section 7 of the IBC.
- An Additional Affidavit has been also filed by the Financial Creditor on 21.04.2023 to bring on record Financial Statements for the Financial Year 2007-2008 to 2021-2022 and other relevant case laws in the present case.
- The Financial Creditor through Affidavit in Rejoinder dated 08.08.2023 has denied the contentions, averment made by Corporate Debtor in its Affidavit in Reply.

Findings:

- This bench has gone through the documents and pleadings available on record and considered the arguments.
 - Though the Corporate Debtor in its pleadings stated the question of repayment never arose as the transaction was never a loan and it was agreed between the parties that the said deposits were to be converted such that the petitioner would enjoy benefits through the property, this bench observed that there is no any

documentary evidence/MOU placed on record by the Corporate Debtor to support its claim.

- The Corporate Debtor has also raised a dispute that, terming the ICD which carried no interest as an unsecured loan and hence a Financial Debt is not correct. However, the bench observes that the balance sheet of the Corporate Debtor clearly classifies the loan amount extended by the Financial Creditor to the Corporate Debtor as an Unsecured Loan. The Hon'ble Supreme Court of India has passed judgement in the case of *M/s. Orator Marketing Pvt. Ltd. v. M/s. Samtex Desinz Pvt. Ltd. in Civil Appeal No 2231 of 2021* and upheld that ***“interest free loans would fall under the definition of ‘Financial Debt’ as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 (‘IBC’)”***. In that view of the matter, this bench is of the considered view that plea raised by the Corporate Debtor has no substance; hence, the said submission cannot be taken into consideration.
- Based on the documents placed on record it is clearly evident, that the Corporate Debtor has time and again acknowledged its liability in respect of dues payable to the Financial Creditor by way of entries in the Balance Sheets for year ending on 31.03.2015, 31.03.2017, 31.03.2018, 31.03.2021 and 31.03.2022. This is settled proposition of law that the entries made in the balance sheet amounts to acknowledgement of the debt by the Corporate Debtor. Section 18 of the Limitation Act, 1963, clearly states that if the debtor acknowledges the debt in writing within the limitation period then a fresh period of limitation computes from the date of such acknowledgement. The provision of Section 18 of the Limitation Act, 1963 is reproduced herein: -

18. Effect of acknowledgment in writing: -

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

- This bench is of the considered view that, the above plea raised by the Financial Creditor clearly states that there is an outstanding debt which is to be paid by the Corporate Debtor to the Financial Creditor and a fresh period of limitation computes from the date of such acknowledgement. The date of default as specified under Part IV of the petition is 31.03.2022, the present petition is filed on 01.12.2022 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor.
- The Tribunal, while adjudicating upon an application for admission into Resolution Process filed by a Financial Creditor, is mandated to ascertain the existence of the debt, and any default in payment of such debt. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and is in default of the amount claimed in the petition.
- Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. 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

- The Petition bearing CP (IB) No.262/MB-IV/2023 filed by Satra Properties (India) Limited (“Financial Creditor”) through Resolution Professional Ms. Vaishali Arun Patrikar, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of C. Bhansali Developers Private Limited., the Corporate Debtor is **Admitted.**

- There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - 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 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;
 - The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

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

- 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;

- 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. NEEHAL MAHAMULAL PATHAN**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P-01561/2018-2019/12406** and email- ca.neehal@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 Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five 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) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (j) 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.
- (k) 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
06.10. 2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)