

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**  
**COURT III**

10. - C.P.(IB)-104(MB)/2020-

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)  
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **05.08.2021**

NAME OF THE PARTIES: Deccan Enterprises and Initiatives Pvt. Ltd.

V/s

HBS Seaview Pvt. Ltd.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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**ORDER**

Mr. Harish Shroff, counsel appearing for the petitioner, Mr. Nimay Dave, counsel appearing for the corporate debtor are present through virtual hearing.

The corporate debtor deliberately failed to file reply since January 2020 despite taking so many adjournments under the pretext of settlement. Even otherwise the above company petition is nothing but 3<sup>rd</sup> round of litigation. The corporate debtor breached the consent terms twice in the earlier two company petitions filed by the petitioner in company petition bearing No. 47/2019 and 2229/2019. Therefore, the corporate debtor is not entitled for any say as they have deliberately not filed the reply.

Heard the counsel appearing for the petitioner and perused the record. After hearing the submissions and upon perusing the documents this bench is satisfied that the above company petition deserves to be admitted and accordingly, the same is admitted. Detailed order follows.

Sd/-  
CHANDRA BHAN SINGH  
Member (Technical)

Sd/-  
H.V. SUBBA RAO  
Member (Judicial)

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP (IB) NO. 104 OF 2020**

**APPLICATION BY FINANCIAL CREDITOR(S) TO INITIATE  
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER  
THE CODE.**

*(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**

**DECCAN ENTERPRISES AND  
INITIATIVES PRIVATE LIMITED,**

Formerly Known

as Deccan Fiscaland Leasing

Company Private Limited

2703, Imperial, B.B. Nakashe Marg,

Tardeo, Mumbai – 400034.

.... Operational Creditor

**Versus**

**HBS SEAVIEW PRIVATE LIMITED**

Having its registered office at: 505,

Ceejay House, Dr. A.B. Road, Worli,

Mumbai 400 018

.... Corporate Debtor

**Order dated: 05.08.2021**

**Coram: Hon'ble H.V. Subba Rao, Member (Judicial)  
Hon'ble Chandra Bhan Singh, Member (Technical)**

**Appearance :**

**For the Petitioner :** Adv. Harish Shroff,

**For the respondent :** Adv. Nimay Dave

**Per : Hon'ble H.V. Subba Rao, Member (Judicial)**

**ORDER**

1. The above company petition is filed by M/s Deccan Enterprises And Initiatives Private Limited (hereinafter called as applicant / 'Financial Creditor') U/sec. 7 of the Insolvency and Bankruptcy Code, 2016, against M/s HBS Seaview Private Limited (hereinafter called as respondent 'Corporate Debtor') for initiation of incorporate insolvency resolution process against the corporate debtor for an unresolved debt of 15,16,58,028/-
  
2. **The brief facts of the application are as follows:-**
  - a. The present petition has been filed by the petitioner for claiming amount of above Rs. 15 crores under 4 cancellation agreement.
  - b. In or about February 2013 the petitioner had approached options to buy four flats in the project of the Corporate Debtor situated at HBS Marine View at Charni Road, Mumbai 400004. For this the petitioner had entered into 4 options agreements and paid a total sum of Rs. 6,32,59,562/- As per the said options Agreements if the petitioner chose to cancel the agreement he would be entitled to refund of principle amount with interest at the rate of 18%
  - c. Since the Corporate debtor had not even started the project till 2018 the petitioner cancelled the agreement in with effect from May 2018 by entering into 4 Cancellation Agreements dated 17<sup>th</sup> July 2018. As per the said Cancellation Agreements the amounts payable became due on 31<sup>st</sup> December 2018. However, as the Corporate Debtor failed to pay the amount the petitioner

approached this Hon'ble Tribunal in January 2019. The said petition was disposed by consent terms.

- c. As these terms were not honored by the Corporate Debtor (barring some small percentage of payment), the Petitioner filed a fresh Petition in June 2019. This petition was also disposed by consent terms on 2<sup>nd</sup> September 2019. However, the cheques given under these consent terms have been dishonored on 1<sup>st</sup> January 2019. Hence the present petition.

#### **Findings**

1. The corporate debtor has put up appearance through their counsel Mr. Nimay Dave, but did not chose to file reply since January 2020. Counsel appearing for the corporate debtor also took adjournments by making statement before this bench that the corporate debtor was ready and willing to settle the claim of the petitioner.
2. Finally, the matter was listed on board on 05.08.2021. On 05.08.2021 this bench after hearing the submissions of the counsel appearing for the petitioner and upon perusing the record, noticed that the present company petition is nothing but 3<sup>rd</sup> round of litigation. The petitioner previously filed two company petitions bearing No. 47/2019 and 2229/2019 which were withdrawn by the petitioner on account of entering into consent terms between the parties and also on account of paying upfront amount as per consent terms.
3. As stated above the corporate debtor did not chose to file any reply since January 2020. Thus, there is no dispute with regard to the existence of debt and default and the

debt is also within limitation. The claim of the petitioner remained unchallenged. Since the company petition satisfies all the legal requirements, this bench did not find any grounds warranting the rejection of the above company petition. The petitioner also filed form 2 along with the petition suggesting the name of IRP Mr. Manish M.Jain.

4. Accordingly the above company petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) -104(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s HBS Seaview Private Limited.
- b. This Bench hereby appoints **Mr. Manish M. Jaju** (mmjaju76@gmail.com) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00034/2016-17/10087 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall pay an amount of Rs.2 Lakh 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 or 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

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

Sd/-

**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**