

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-1393/ND/2019

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

IN THE MATTER OF

Diamond Traexim Private Limited

(Formerly Known as A.B. Continental
Commodities Private Limited)

Having its Registered Office at:

House No. 82/9, Naveen Park,
Sahibabad Ghaziabad UP 201005

Having its Office at:

House No.302, Plot-12, Block B-1
Sector-9, Varun Apartment
Rohini, Delhi-110085

...Financial Creditor

Versus

M/S Victory Infraprojects Private Limited

Registered Address
208, Gupta Tower, Azadpur
Commercial Complex
New Delhi-110033

...Corporate Debtor

Coram:

Shri Bachu Venkat Balaram Das **Shri Narender Kumar Bhola**
Hon'ble Member (Judicial) Hon'ble Member (Technical)

Delivered on: 13.12.2021

Appearances:

Financial Creditor : Mr. Abhishek Anand & Mr. Kunal
Godhwani (Advocates)

Corporate Debtor :

ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. This is an application filed by the Financial Creditor namely, M/s Diamond Traexim Private Limited against the corporate debtor namely, Victory Infraprojects Private Limited under section 7 of the IBC, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor
2. The transaction leading to filing of application under consideration is as follows:
 - a. It is submitted that the Corporate Debtor approached the Financial Creditor from time to time with a request to

provide to them loan at the simple rate of interest of 9% per annum with further representations, assurances, promises by the Corporate Debtor that they shall return/refund the said loan in parts/whole to the Applicant as and when required by the Financial Creditor and the corporate debtor shall also settle the payment of the interest at the time of full and final repayment of the said loan to the financial creditor which shall be calculated @9% per annum. The financial creditor from 29.11.2011 till 04.11.2016 granted a net loan of Rs. 15,50,00,000/- to the Corporate Debtor.

- b. It is further submitted that a loan confirmation agreement dated 10.11.2017 was entered between the financial creditor and corporate debtor and Indirapuram Habitat Centre Private Limited. Under Loan Confirmation Agreement Indirapuram Habitat Centre Private Limited had acted as confirming party for the Loan given by the Financial Creditor to Corporate Debtor and further the Corporate Debtor and Confirming party had also confirmed and acknowledged the receipt of the said Net Loan of Rs. 15,50,00,000/- from the Financial Creditor



and same was not disputed by the Corporate Debtor and confirming party.

- c. It is averred that the under loan confirmation agreement, the corporate debtor and confirming party had confirmed that in the books of account of the corporate debtor the aforesaid Net Loan of Rs. 15,50,00,000/- shall be shown under the head loan and advances which is guaranteed by the corporate debtor and confirming party as well as their directors. It is stated that the Corporate Debtor had also issued and handed over to the financial creditor signed undated cheques of various amounts with the further agreement that the financial creditor shall be entitled to fill up the date of on all or any of the said cheques and give 15 days' notice to the Corporate Debtor before the presentation of any/all of the said cheques so that the Corporate Debtor is in a position to arrange the funds in its Bank Account. It is further stated that the Corporate Debtor had also agreed and confirmed to the financial creditor that not only the Corporate Debtor but all the Directors of the Corporate Debtor shall be personally liable and responsible for the repayment of the

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aforesaid net loan of Rs. 15,50,00,000/- along with due interest.

- d. It is further averred that the financial creditor vide letter dated 05th February, 2019 served a notice, to the Corporate Debtor, demanding for the repayment of the loan amount of Rs. 32,61,86,762/- comprising of Principal Amount i.e., Rs. 15,50,00,000/- along with Interest up to 04.02.2019 i.e. Rs. 17,11,86,762/- calculated @ 9% per annum and notice was again served on corporate debtor on 15th February, 2019 for presenting the cheques bearing nos. 095974, 095975 and 105376 drawn on ICICI Bank, P.P. Tower Branch, Pitampura, New Delhi. The financial creditor thereafter presented the aforementioned cheques with its banker being Punjab National Bank by putting on date as 11.03.2019 but all the cheques were dishonoured and returned by the Bank with Return Memo Outward Clearing by mentioning the reason for Dishonour as "Funds Insufficient".
- e. It is submitted that financial creditor also served a notice vide e-mail dated 30th March, 2019 to the Corporate

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Debtor, for payment of the Loan Amount of Rs. 32,61,86,762/- comprising of Principal Amount i.e., Rs. 15,50,00,000/- along with Interest up to 04.02.2019 i.e. Rs. 17,11,86,762/-. Thus, the Corporate Debtor has defaulted in payment of outstanding amount of Rs. 32,61,86,762/- and the same is due and payable by the Corporate Debtor to the Financial Creditor. Hence, the present Petition for initiating the CIR Process of Corporate Debtor.

3. The Corporate Debtor has been provided with various opportunities for appearance and filing objections to the captioned petition, however, no one appeared on behalf of the Corporate Debtor, Hence, this adjudicating authority vide order dated 25.09.2019 the corporate debtor was set ex-parte and the relevant extract of the order dated 25.09.2019 is as follows:

“Learned Counsel for the Petitioner is present and in compliance with the directions dated 31.07.2019, a notice of the proceedings with speed post has been duly served on the Corporate Debtor and that an affidavit of compliance has been filed on 19.08.2019 as well as the speed post tracking report annexed, and that the delivery to the Corporate Debtor has been confirmed. However, despite service of notice of the proceedings, none appeared for the corporate debtor in person or through Counsel, in the circumstances we are

constrained to set the corporate debtor ex-parte. Post the matter on 21.10.2019.”

4. The Financial Creditor during the final argument has extensively argued and submitted that the Loan confirmation agreement dated 10.11.2017 has been annexed as Annexure-A-12, which is accompanied by the Ledger account as well as the copy of the cheques issued by the corporate debtor, which shows the acceptance of liability. The Cheques issued by the Corporate Debtor were dishonoured and returned by the Bank with Return Memo Outward Clearing by mentioning the reason for Dishonour as "Funds Insufficient" and same is annexed as Annexure-A-30, which shows there is default in payment by the Corporate Debtor. This Adjudicating Authority vide order dated 11.11.2021, while reserving the order directed the Financial Creditor to file the Authorization for Assignment for the proposed IRP and same was complied by the financial creditor on 17.11.2021 as evident from the record
5. This Adjudicating Authority has perused the petition as well as heard the arguments advanced by the Financial Creditor. It is seen from the petition that the Corporate Debtor has admitted its liability towards Financial Creditor as it has

issued the cheques in discharge of its liability and those cheques were dishonoured which clearly shows that there is default in payment. The evidence placed by the financial creditor is sufficient to establish the existence of debt as well as default in payment on the part of the Corporate Debtor. The Hon'ble Apex Court has clearly stated in *Innoventive Industries (Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407)* that the moment it is established that there is a default in payment of financial debt by the corporate debtor, which is due and payable and the application is complete and no disciplinary proceedings is pending against the proposed RP then the adjudicating authority has no option but to admit the application. The Financial Creditor has fulfilled all the requirements of law. Accordingly, this Adjudicating Authority is inclined to **admit** this application and initiate the process of CIRP of the Corporate Debtor. The financial Creditor has also proposed the name of the Resolution Professional for appointment of IRP.

6. Mr. Pawan Kumar Goyal Regn. No. -IBBI/IPA-001/IP-
P00875/2017-18/11473 (Email ID:



ca.pawangoyal@gmail.com) is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as evident from the Form-2 dated 22.04.2019. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

7. The moratorium is declared 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:

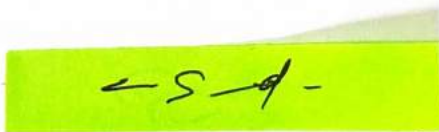
- a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;



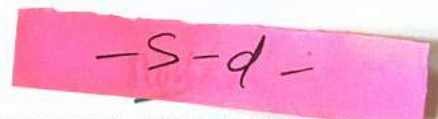
- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor's assets or any legal right or beneficial interest therein;
 - c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (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.
8. 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.
9. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. 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 function under section 20 of the IBC, 2016.

10. The financial Creditor is 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.
11. The financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.
12. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.
13. The order is pronounced by this Adjudicating Authority through Virtual Hearing



(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)