

**FREE OF COST COPY****IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P. (IB) No.160/BB/2020

U/s 7 of IBC, 2016

R/w Rule 4 of I&amp;B (AAA) Rules, 2016

**In the matter of:****M/s. Heimdall Advisory Pvt. Ltd.**Regd. Off: Plot No.471,  
Udyog Vihar, Phase – V,  
Gurugram – 122 016.

- Petitioner / Financial Creditor

**Versus****M/s. Sharadamba Developers Pvt. Ltd.**Regd. Off: No.38/A, 3<sup>rd</sup> Cross,  
Kanakapura Main Road,  
Shakambari Nagar,  
Bengaluru – 560 078.

- Respondent / Corporate Debtor

**Order Pronounced on: 16<sup>th</sup> April, 2021****Coram:**

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Counsel/Parties Present (through Video Conferencing):**

For the Petitioner : Mr. Kumar Anurag Singh

For the Respondent : --

**ORDER****Per: Ashutosh Chandra, Member (Technical)**

1. This Application has been filed by M/s. Heimdall Advisory Private Limited (hereinafter referred to as 'Petitioner/Financial Creditor') under Section 7 of the I&B Code, 2016 R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Sharadamba Developers Private Limited (hereinafter referred to as 'Respondent / Corporate Debtor') for committing a default of Rs.2,13,07,397.26 (Rupees Two Crores



Thirteen Lakhs Seven Thousand Three Hundred and Ninety Seven and Twenty Six Paise only), which includes interest amount of Rs.1,53,07,397.26.

2. Brief facts of the case, as mentioned in the Petition, are as follows:

(1) M/s. Heimdall Advisory Pvt. Ltd., the Financial Creditor, is a Company incorporated on 07.07.2008 under the Companies Act, 1956 bearing CIN: U74120HR2008FTC038139' with its registered office situated at Plot No. 471, Udyog Vihar, Phase-V, Gurugram-122 016, Haryana.

(2) M/s. Sharadamba Developers Pvt. Ltd., the Corporate Debtor herein, is a Company incorporated on 30.04.2015 under the Companies Act, 2013 bearing CIN: U70100KA2015PTC080053 with its Regd. Office situated at No.38/A, Kanakapura Main. Road, Shakambari Nagar, Bengaluru-560078. Its Authorised Share Capital is Rs. 10,00,000 and Paid-up Share Capital is Rs.1,00,000.

(3) The Financial Creditor had entered into an Agreement dated 01.12.2016 with the Corporate Debtor herein and Metrocorp Infrastructure Limited and Mr. Deepak Krishnappa, the terms of which were as follows:

(a) At the Corporate Debtor's request, the Financial Creditor had agreed to lend and advance a sum of Rs. 60,00,000 (Rupees Sixty Lakhs only) to the Corporate Debtor as a short-term loan.

(b) The initial tenure of the loan advanced to Corporate Debtor was 90 days from the date of execution of the Agreement, i.e., 90 days from 01.12.2016 (or in other words, up to 01.03.2017). It was agreed that the tenure could be extended by Financial Creditor at its sole direction; however, this was never done. Even as per the Agreement, the maximum tenure for which repayment could be extended was only one year from the date of execution of the Agreement.

(c) The principal loan amount was repayable along with simple interest at 20% per quarter, and the Financial Creditor had the right to demand repayment of the loan at any time after the initial tenure period of 90 days at its sole discretion.

(d) Metrocorp and Krishnappa had represented that they were entitled to develop, sell and utilize certain lands at Plot No.226 in Sy. Nos.257 (Old



No.260), 254 and 256 (Old Sy. No.259) situated at Sadahalli Village, Kasaba Hobli, Devanahalli Taluk, Bengaluru Rural District, Karnataka, measuring approximately 4800 sq. ft. and that a deed of assignment dated 29.09.2016 had been entered into between Financial Creditor and Metrocorp by which Metrocorp had assigned all its rights in the said Plot to the Corporate Debtor.

- (e) The Financial Creditor had reserved unto itself a right to treat the loan amount advanced by it to the Corporate Debtor, at its sole discretion, as an advance for the purchase of the Plot; and if Financial Creditor had elected to do so, Corporate Debtor would have been under an obligation to issue an unconditional allotment letter in favour of the Financial Creditor or its nominee/affiliates within 7 days of exercise of such option. The Corporate Debtor and the other relevant parties were to execute and/or register all necessary documents as necessary for effecting allotment, hand over and conveyancing of the Plot to Heimdall and/or its nominees/affiliates. In such a scenario, the loan amount of Rs. 60,00,000 was to be treated as an advance, and the Corporate Debtor would have been under an obligation to pay the balance sale consideration for the Plot, of Rs.79,20,000. However, this option was not exercised by the Financial Creditor.
- (f) Pramerica, which is a shareholder in Metrocorp, had obtained an interim order of injunction against Metrocorp and Krishnappa in CP No.9/2013 which was then pending adjudication before this Adjudicating Authority. As a result of this injunction, Metrocorp could not alienate any of its assets. It was agreed that within 15 days of receipt of the loan amount by the Corporate Debtor, Metrocorp and Krishnappa would make a joint application to the NCLT to request for a modification, relaxation or partial vacation of the injunction order, to the extent of the Plot. They did not do so. In the event of Metrocorp and Krishnappa not obtaining such an order within 45 days of filing such application, the Corporate Debtor had the right of demand immediate refund of the loan amount advanced by it, along accrued interest. In addition, the Corporate Debtor had specifically agreed under Clause 4(b) and 5(b) of the Agreement that in



the event of any proceeding being filed for the collection of recovery of the loan amount advanced to it under the Agreement, all expenses incurred by Heimdall, including legal fees and court costs incurred by it, was to be paid by the Corporate Debtor to the Financial Creditor.

- (4) It is stated in the Petition that the Financial Creditor issued a reminder Notice to the CD on 23.02.2017, reminding it that the principal loan amount of Rs.60,00,000 along with interest thereon (them amounting to Rs.12,00,000, for one quarter) would be due and payable on 01.03.2017, under the terms of the Agreement. Accordingly, it called upon the Corporate Debtor to repay the same on or before 01.03.2017.
- (5) Since there was neither a response to the said notice nor repayment made, the Financial Creditor issued a formal Demand Notice on 03.03.2017 to the Corporate Debtor, calling upon it to repay the loan amount of Rs.60,00,000 along with the interest amount of Rs.12,00,000 within 7 days, i.e., by 10.02.2017.
- (6) In response to the same, the CD vide letter dated 09.03.2017, expressed its inability to repay the amounts due, and seeking that the time for repayment be extended till 30.06.2017. However, no repayment was made by that date. The Financial Creditor issued a notice on 07.09.2017 to the Corporate Debtor, calling upon it to forthwith repay the principal loan amount of Rs. 60,00,000 and also interest accrued up until 31.08.2017, erroneously quantified in the letter in a sum of Rs.28,00,000. The actual interest which was then payable (for three quarters) was Rs. 36,00,000. Despite repeated follow-ups, the Corporate Debtor has failed to repay the loan amount or interest and it thus filed the instant Petition.
3. Further, the Financial Creditor vide written submissions dated 03.03.2021 has *inter alia* stated as under:
- (1) It is stated that the Corporate Debtor vide its letter dated 09.03.2017, has unequivocally acknowledged that an amount of Rs.72 lacs inclusive of the interest accrued at that time is payable by the Corporate Debtor. Further, the date of default occurred on 01.03.2017 when the tenure of the Agreement



came to an end. Therefore, in terms of Section 7 of the Code, there has been an admitted default in repayment of debt by the Corporate Debtor.

(2) It is further stated that in the instant case the Corporate Debtor is under the process of being struck off and the same is not an impediment in initiating insolvency proceedings under Sec. 7 of the Code, in light of the judgments passed by the Hon'ble NCLAT in *Company Appeal (AT) (Insolvency) No.765 of 2019 – Mr Hemang Phophalia v. The Greater Bombay Cooperative Bank Ltd. & Anr.* and *Company Appeal (AT) (Insolvency) No.754 of 2019 – Elektrans Shipping Pvt. Ltd. v. Pierre D'Silva & Anr.*, wherein it was inter alia held that insolvency proceedings can be initiated against a Company which has been struck off. In this case, as the Corporate Debtor is in the process of being struck off, the defence is not available with the Corporate Debtor. However, in the event the Company get struck off, it would not be an impediment in initiating CIRP against the CD.

(3) It is also stated that both the Parties had consented to the terms of the Agreement which provided for a rate of interest at 20% per quarter. Furthermore, the CD has even failed to repay the Principal loan amount itself. It has relied upon the judgment of the Hon'ble NCLAT in *Sh Naveen Luthra v. Bell Finvest (India) Ltd. & Anr.*, wherein it has held that as the CIRP is not a litigation and the Adjudicating Authority is not a Court of law which does not decide a money claim or suit. Further, in para 33 it has been held that 'as initiation of CIRP under Section 7 or Section 9 do not amount to recovery proceedings, the question of deciding the claim, which may include the interest by the Adjudicating Authority does not arise for the purpose of triggering the CIRP.' In light of the same it is stated that rate of interest has no bearing for initiation of the CIRP.

4. Heard Mr. Kumar Anurag Singh, learned Counsel for the Petitioner through **Video Conference**. None appeared for the Respondent. We have carefully perused the material brought on record, the pleadings of the Petitioner and extant provisions of the Code and the Regulations made thereunder.

5. The case was listed for admission on various dates viz., 17.06.2020, 14.08.2020, 18.01.2021, 29.01.2021, 18.02.2021 & 25.02.2021. The Adjudicating Authority



ordered notice to the Respondent. Notice was served upon the Respondent by the Petitioner on 08.02.2021 besides serving the notice on e-mail. Even though the Petitioner has served the notice on the Respondent, neither the Respondent nor anybody appeared its behalf and also no reply has been filed till date. It is clear that either the Respondent has nothing in its possession to defend its case or is deliberately entering non-appearance and avoiding these proceedings in the hope of buying time or avoiding liability. We are therefore of the view that the Respondent has no defense to offer and hence we have to accept the averments made by the Petitioner as the same remain unopposed. Therefore, we have no option but to allow the Petition, filed u/s 7 of the Code, and initiate CIRP under the Code.

6. Further, it is seen from the website of the MCA, the ACTIVE Compliance in respect of the Corporate Debtor is "ACTIVE Non-Compliant" and the Company Status (for e-filing) is 'Strike Off'. However, in view of the Judgments rendered by the Hon'ble NCLAT and relied upon by the Petitioner, wherein, it was *inter alia* held that insolvency proceedings can be initiated against a Company which has been struck off, we do not consider the fact that the Company has been struck off the register of the ROC would come in the way of initiating CIRP. In fact it supports the finding that the company is not functioning, has no revenue or income to meet its liabilities and hence is insolvent.
7. As stated supra, the Corporate Debtor vide its letter dated 09.03.2017, has unequivocally acknowledged that an amount of Rs.72 lacs inclusive of the interest accrued at that time as payable by it. 09.03.2017, expressed its inability to repay the amounts due, indicating that it was not in a position to repay its debts and was insolvent. No payment was made even in the extended time till 30.06.2017. Thus, the Debt and Default in question are not disputed by the Respondent and the Respondent failed to avail the opportunity given by this Adjudicating Authority.
8. The instant Petition is filed strictly in accordance with the extant provisions of the Code. The Petitioner has suggested a qualified Insolvency Professional namely Ms. Medha Kulkarni, bearing Registration No.IBB/IPA-001/IP-P00121/2017-2018/10263, e-mail: medha1273@gmail.com, having address at



D-301, Admiralty Square, 13<sup>th</sup> Cross, 6<sup>th</sup> Main, Indiranagar, Bengaluru – 560038. She has filed her written consent in Form-2 dated 26.02.2020, by inter alia declaring that she is eligible to be appointed as a **Resolution Professional** in respect of the Corporate Debtor herein and that there are no disciplinary proceedings pending against her with the Board or Indian Institute of Insolvency Professions of ICAI.

9. Hence, the Instant Company Petition is a fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Corporate Debtor.

10. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority under Section 7(5)(a) of the Code and other extant provisions of the IBC, 2016, we hereby admitted C.P. (IB) No. 160/BB/2020 by initiating Corporate Insolvency Resolution Process in respect of the Corporate Debtor, with the following consequential directions:

- 1) **Ms. Medha Kulkarni**, bearing Registration No. IBBI/IPA-001/IP-P00121 /2017-2018/10263, e-mail: [medha1273@gmail.com](mailto:medha1273@gmail.com), having address at D-301, Admiralty Square, 13<sup>th</sup> Cross, 6<sup>th</sup> Main, Indiranagar, Bengaluru - 560038, who is a qualified Insolvency Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/ Corporate Debtor, namely, **M/s. Sharadamba Developers Private Limited**, to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The Petitioner and IRP should mutually discuss and fix fee for IRP.
- 3) The following moratorium is declared prohibiting all of the following, namely:
  - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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;
- e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
- f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 4) The IRP is directed to follow all extant provisions of the IBC, 2016, and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file Progress Reports to the Adjudicating Authority from time to time.
- 5) The Board of Directors and all the staff of Respondent / Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out her functions as such, under the Code and Rules made by the IBBI.



2020

- 6) The Registry is directed to forward a copy of this order immediately to both the parties and the IRP.
- 7) Post the case for report of IRP on 19.05.2021

Sd/-

**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

Sd/-

**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**



CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL  
*[Signature]*  
for Deputy Registrar  
National Company Law Tribunal  
Bengaluru Bench