IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH – I, CHENNAI

CP/IB/37/CHE/2021
And
CP/IB/43/CHE/2021

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. Vees Properties Limited***

Reliance Value Services Private Limited
Manek Mahal, 6th Floor, 90 Veer Nariman Road,
Mumbai – 400 020

... Financial Creditor

-Vs-

Vees Properties Limited
(Formerly known as KGS Developers Private Limited)
No.10, 2nd Cross Street, Raja Anamalaipuram,
Chennai – 600 028

...Corporate Debtor

Order Pronounced on ***13th June 2022***

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : P.S. Raman, Senior Advocate
Ganesan, Advocate

For Corporate Debtor : R. Parthasarathy, Advocate

COMMON ORDER

Per: **JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT**

Under Adjudication is an Application that has been filed by **Reliance Value Services Private Limited** (hereinafter referred to as *'Financial Creditor'*) under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Vees Properties Limited** *(formerly known as KGS Developers Private Limited)* (hereinafter referred to as *'Corporate Debtor'*). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. CP/IB/37/CHE/2021 has been filed by the Financial Creditor in respect of a loan tune of availed by the Corporate Debtor to the Rs.4,00,00,000/-vide Loan Agreement dated 30.03.2019. As per the loan agreement the Corporate Debtor has to repay the debt within 30.09.2019 being a total sum of Rs.4,00,00,000/- plus interest of Rs.1,55,50,685/- totalling Rs.5,55,50,685/-.

3. CP(IB)/43/CHE/2021 has been filed by the Financial Creditor in respect of a loan availed by the Corporate Debtor Rs.5,00,00,000/ (interest @17% p.a till 31.12.2020) vide Loan Agreement dated 15.10.2016. As per clause 2.1 of the Agreement, the loan was to be repaid within 6 months together with interest at the rate of 17% p.a. Therefore, the Financial Debt was to be repaid by the Corporate

Debtor to the Applicant along with (ii) to the tune of (Principal sum) plus Rs.3,57,93, 151/- interest on or before 16.04.2017.

4. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956 on 21.10.2005. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a limited company incorporated under the Companies Act, 1956 on 30.11.1974 with CIN: U31909TN1974PLC006798. The registered office of the Corporate Debtor as per the MCA master data is situated at No.10, 2nd Cross Street, Raja Annamalaipuram, Chennai – 600 028. The Financial Creditor by way of a memo has proposed the name of one Mr. K. Sridhar, as the Interim Resolution Professional, who has also filed his consent in Form – 2. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt'.

5. During the pendency of the present Application, the Corporate Debtor has undergone a name change and the name of the Corporate Debtor was changed to M/s. Vees Properties Limited from M/s. KGS Developers Private Limited and accordingly, the Financial Creditor has filed IA(IBC)/602(CHE)/2022 in CP(IB)/37(CHE)/2021

and IA(IBC)/603(CHE)/2022 in CP(IB)/43(CHE)/2022 and the same came to be allowed by this Tribunal vide its order 07.06.2022.

6. In respect of CP(IB)/37(CHE)/2021 it was submitted by the Learned Senior Counsel for the Financial Creditor submitted that the Corporate Debtor entered into a Loan Agreement dated 30.03.2019 for a loan of Rs.15 crore with the Financial Creditor as per the Loan agreement, the Financial Creditor already transferred a sum of Rs.4 Crore to M/s. Navodaya Mass Entertainments Limited and the same was also captured in Loan Agreement dated 30.03.2019 as follows;

> The Second Party herein agrees to disburse the loan amount of Rs.15 Crores and in the process, on behalf of KGS Developers Limited, agrees to pay directly to Navodaya Mass Entertainments Limited and in the process it paid to Navodaya Mass Entertainments Limited, an amount of Rs.4 Crore vide payment made on 06th march 2018 and shall further pay the balance Rs.11 Crores direct to Navodaya Mass Entertainments Limited.

7. It was submitted that as a collateral Security the Corporate Debtor offered mortgage of 80% Equity shareholding in KGS Aranmula International Airport Limited with the Financial Creditor.

8. It was submitted that as per the terms of the Loan Agreement, the Corporate Debtor has agreed to service interest at the rate of 13.75% per annum on monthly rest without any default to the Financial Creditor on or before 30.09.2019. The Learned Senior

Counsel for the Financial Creditor submitted that the Corporate Debtor has failed to service the loan to the Financial Creditor and under the said circumstances, the present Application is filed before this Adjudicating Authority to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

9. The Respondent has filed counter. The Respondent has denied its liability towards the Financial Creditor. It is alleged that the Loan Agreement dated 30.03.2019 has been procured through fraud and coercion. Further, it was submitted that as on date of filing of the petition, there is no debt due and payable to the Financial Creditor.

10. We have heard the submissions made by the Learned Counsel for both the parties. It is seen that the Corporate Debtor in the Annual Report for the Financial Year 2019 – 2020 in Schedule 4 of the Balance Sheet under the heading "Other Advances" has admitted that a sum of Rs.9 Crore is payable to the Financial Creditor.

11. Thus, the Corporate Debtor has admitted its liability in respect of the loan availed by them from the Financial Creditor and the Financial Creditor has also proved that the Corporate Debtor has committed default in repayment of the said 'financial debt'. Further the 'default' in the present case has occurred much prior to the

period stipulated under Section 10A of IBC, 2016. Under the said circumstances, we are of the view that this Application filed by the Financial Creditor is required to be admitted under Section 7(5) of IBC, 2016.

12. The Financial Creditor has proposed the name of one **K. Sridhar**, having Registration Number **[IBBI/IPA-001/IP-P01005/2017-2018/11656],** having Authorisation for Assignment valid upto 31.05.2023 as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

13. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

14. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

> (2) 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.
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> (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and mange the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
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> (3) The provisions of sub-section (1) shall not apply to
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> (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
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> (b) a surety in a contract of guarantee to a corporate debtor.

15. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

> (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:
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> Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

16. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of

the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

18. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

19. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution

Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

21. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

22. Post this CP(IB)/37(CHE)/2021 and CP(IB)/43(CHE)/2021 for hearing on **22.08.2022.**

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Raymond