IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

CP No. 395/IBC/NCLT/MAH/2020

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

Swatantra Kumar
Aadhar No. 553522468325
Having Registered Office at :- 1504, Challenger 1, Thakur Village, Kandivali (East), Mumbai – 400101.

.. Financial Creditor
(Petitioner)

V.

JVPD Properties Private Limited
CIN No. :-
(U45400MH2011PTC213212)
Having Registered Office at :- 501, 5th Floor, Prime Plaza, S.V. Road, Santacruz (West), Mumbai :- 400054.

.. Corporate Debtor
(Respondent)

Order delivered on: 01.11.2021

Coram:

Hon'ble Ashok Kumar Borah, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner : Mr. Aditya, Advocate

For the Respondent : Ms. Khushboo Rohra, Advocate

ORDER

Per: - Shyam Babu Gautam, Member (Technical)

1. The Petitioner, 'Bank of India'(hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 16.01.2020 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code(hereinafter as **Code**) against 'JVPD Properties Private Limited' (hereinafter as 'Corporate Debtor').

2. The Corporate Debtor Company is carrying Business of Construction and Development. The Financial Creditor is an Individual.

3. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs Only) the Principal loan and interest amount of Rs. 33,99,999/- up to 31.11.2019. The date of Disbursement was 24.02.2014.

SUBMISSIONS BY THE FINANCIAL CREDITOR

4. The Financial Creditor is an Individual and had given friendly loan of an amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs Only) to the Corporate Debtor @ 18% per annum for a period of two years and was extended for a further period of two years up to March, 2018.

5. The Financial Creditor further submits that by a Memorandum of Understanding (MOU) dated 24.02.2014 executed between the parties, the Financial Creditor had given a loan amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs Only) to the Corporate Debtor @ 18% p.a. for a period of two years.

6. Further in order to secure the said loan, the Corporate Debtor had allotted Flat No. 3001 and 3002 on the 30th Floor (being 28th residential floor above 2 podiums) of the proposed residential building to be known as "Bhagtani Serenity" being constructed on land bearing C.T.S. No. 63A/5 and 64 D, S ward of Village Tirandaz, Taluka Kurla, Mumbai, to the Financial Creditor as security against the said Loan.

7. It was further agreed that in case of default of the payment of loan amount or any interest part, the Financial Creditor had the right to claim the rights and interest in the said Flats which are not constructed by the Corporate Debtor, so the Financial Creditor filed the said Petition.

8. The Financial Creditor had paid the amount of Rs. 1,10,00,000/- to the Corporate Debtor in the following manner :-

Sr. No.	Cheque No./Date	Bank	Amount (Rs.)
1.	514776 Date:- 24.02.2014	Axis Bank	60,00,000/-

2.	514776 Date:- 24.02.2014	Axis Bank	50,00,000/-
		Total	**Rs. 1,10,00,000/-**

9. The Financial Creditor submits that during the tenure of the MOU, the Corporate Debtor paid the interest @ 18% on the said loan amount of Rs. 1,10,00,000/- up to 24.04.2016. The total interest amount paid during the said period is Rs. 35,64,000/-. Further, for the payment of the said interest amount, the Corporate Debtor had given post-dated cheques to the Financial Creditor.

10. After the expiry of the said MOU, the Corporate Debtor approached the Financial Creditor and showed its inability to pay the outstanding loan amount and requested extension for further period of two years up to March, 2018 for the repayment of the loan amount on the terms as contemplated in the MOU.

11. Further, by the 2nd MOU dated 19.02.2016 executed between the parties, the Financial Creditor extended the period of loan amount of Rs. 1,10,00,000/- to the Corporate Debtor @ 12 p.a. for a period of two years up to March, 2018.

12. During the tenure of the said 2nd MOU commencing, the Corporate Debtor had paid the interest @12% on the said loan amount of Rs. 1,10,00,000/- only up to 24.04.2017. The total interest amount paid during the said period is Rs. 11,88,000/- i.e. only up to 24.04.2017. it

is further submitted that under the second MOU dated 19.02.2016, the Corporate Debtor is liable to pay interest of an amount of Rs. 22,77,000/-. The Corporate Debtor paid interest of Rs. 11,88,000/- but failed and neglected to pay the balance amount of Rs. 10,89,000/-.

13. The Financial Creditor submits that inspite of repeated reminders, the Corporate Debtor neither paid the interest nor refunded the loan amount. Further, even after the receipt of the amount, the Corporate Debtor failed to start the project in which the Flat was given as security to the Financial Creditor. The Financial Creditor had requested the Corporate Debtor vide letters dated 15.11.2017, 01.12.2017 and 20.12.2017 to refund the amount with interest.

14. The Financial Creditor further submits that the Corporate Debtor failed to start the project therefore, many purchasers of the Flat project have filed Criminal Complaints against the Corporate Debtor and its Directors. A FIR is also registered, and the matter is under investigation of Economic Offences Wing.

15. The Financial Creditor submits that as per the accounts maintained by the Financial Creditor, the Corporate Debtor failed to pay an amount of Rs. 1,43,99,000/- i.e. principal loan amount of Rs. 1,10,00,000/- and interest of Rs. 33,99,000/- @ 12% up to 31.11.2019.

16. The Financial Creditor states that the debt was duly disbursed. The Corporate Debtor failed to repay the loan amount and the date of default is 24.10.2017.

17. The Petitioner draws the attention of this Bench towards the Bank Statement of Account of the Corporate Debtor to corroborate the

amount claimed. Relevant certificates under section 2(a) of the Bankers' Book Evidence Act, 1891 has also been produced on record.

18. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

SUBMISSIONS BY THE CORPORATE DEBTOR

19. The Corporate Debtor submits that the Corporate Debtor had taken Loan from the Financial Creditor. The Corporate Debtor submits that due to heavy recession in the Real Estate Industry, the Corporate Debtor faced lot of problems in the project undertaken for development.

20. The Corporate Debtor said that due to aforesaid reasons the business of the Corporate Debtor Company collapsed. The purchasers of the flats filed complaints and FIR's were filed against the Directors. Due to such reasons the Corporate Debtor was unable to refund the loan amount to the Financial Creditor. The Corporate Debtor further submits that at present also the Corporate Debtor Company is going through hardships and has no flow of money and therefore is not in a position to pay the claim amount of the Financial Creditor.

FINDINGS

21. On going through the submissions made by the Learned Counsel appearing for both the sides and on perusing the documents produced on record, it is seen that the Corporate Debtor has accepted its liability to pay to the Financial Creditor in its reply dated 07.11.2020. The

Corporate Debtor has not disputed the loan disbursed and has expressed its inability to pay to the Financial Creditor due to insufficiency of funds. There is no dispute as to loan amount disbursed by the Financial Creditor to the Corporate Debtor.

22. Due to persistent failure on the part of the Corporate Debtor to repay the loan, the Financial Creditor vide letters dated 15.11.2017, 01.12.2017 and 20.12.2017 requested the Corporate Debtor to refund the interest amount.

23. The Financial Creditor has attached copy of Balance sheet of the Corporate Debtor for the Financial Year 2014-2015 which reflects the debt payable to the Financial Creditor. The Financial Creditor has also attached the MOU dated 24.02.2014 and the 2nd MOU dated 19.02.2016 executed between the Financial Creditor and the Corporate Debtor which shows that the amount of loan was disbursed and the Corporate Debtor was also liable to pay an interest on the said loan @ 18% p.a.

24. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential ingredients, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.

25. As a consequence, keeping the said facts in mind, it is found that the Financial Creditor has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner. We are of the conscientious view that this Petition deserves **'Admission'.**

26. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

27. The Financial Creditor has proposed the name of Insolvency Professional. **The IRP proposed by the Financial Creditor, Mr. Kedar Parshuram Mulye, having registration No. IBBI/IPA-001/IP-P-01365/2018-19/12282, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.**

28. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

29. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

30. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the

progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

31. The Petition is hereby **"Admitted".** The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

32. Ordered Accordingly.

Dated this the 1st day of November, 2021

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-

ASHOK KUMAR BORAH
MEMBER (JUDICIAL)