IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.1319/MB-IV/2022

Under Section 7 of the IBC, 2016

In the matter of

Ask Property Investment Advisors Private Limited

[CIN: U74140MH2009PTC189703]

…Financial Creditor

v/s.

Tridhaatu Asset Holdings Llp

AAB-1213

…Corporate Debtor

Order Delivered on: 25.08.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Financial Creditor:	Mr. Chetan Kapadia, Mr. Bhavik Mehta, Ms. Prakruti Joshi i/b Dhruva Liladhar & Co., Ld. Counsel.
For the Corporate Debtor:	Mr. Ahmed Padela i/b Lexican Law Partners, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Ask Property Investment Advisors Private Limited ("the Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Tridhaatu Asset Holdings Llp, the Corporate Debtor.

   1.1. The Company Petition is filed on 03.11.2022 claiming an amount of Rs.7,33,40,000/- as on 03.11.2022 in default. The Part IV of Form 1 specify the date of default as 24.10.2022.

2. Under a Debenture Trust Deed dated 04.02.2019 ("DTD") executed inter alia amongst the Principal Debtor, Corporate Debtor and the Applicant Financial Creditor. The applicant/Financial Creditor is acting as the investment manager for ASK Real Estate Special Situations Fund-I, a scheme launched by ASK Real Estate Fund (hereinafter referred to as "Fund"). The Fund agreed to subscribe to 4400 secured, rated, listed, cumulative, redeemable, non- convertible debentures of the face value of Rs. 1,00,000/- each issued by the Principal Debtor.

   2.1. Subsequently, as agreed between the parties to the DTD, the Fund subscribed to and was allotted on a private placement basis, only 300 secured, rated, listed, cumulative, redeemable, non- convertible debentures of the face value of Rs. 1,00,000/-, against an aggregate investment of Rs. 3,00,00,000/-.

   2.2. On 27.09.2021 the parties to the DTD executed an Exit Agreement modifying the terms of the DTD. Under the Exit Agreement, it was primarily agreed by the parties that the NCDs would be redeemed on or before 30.12.2021. The Principal Debtor failed to redeem the NCDs and make payment of the Exit Sums under the Exit Agreement.

2.3. On 30.6.2022, the applicant addressed Default Notice to the Corporate Debtor, the Principal Debtor and other guarantors requiring them to pay the exit sums failing which the applicant shall take necessary actions to exercise all rights and remedies available to them under the transaction document and exit agreement. Thereafter, another notice dated 26.07.2022 was sent by the Fund through its lawyers informing that sum of Rs. 6,86,87,760 is due and payable and ask them to pay jointly or severally within 7 days of the receipt of the said notice. The Debenture Trustee i.e. Vistra ITCL (India) Limited, issued a notice dated 21.10.2022 asking the Principal Debtor to deposit a sum of Rs. 5.30 Crores in the bank account in the name of the fund maintained with Kotak Mahindra Bank as well as other guarantors, the Debenture Trustee with respect to NCDs (on behalf of the Financial Creditor invoked the Corporate Guarantee).

2.4. The NCDs are secured inter alia by a corporate Guarantee dated February 5,2019 executed by the Corporate Debtor(" Corporate Guarantee"). The Principal Debtor defaulted on its obligation to redeem the NCDs and repay the amounts due to the Financial Creditor. Therefore, vide guarantee invocation notice dated October 21,2022, the Debenture trustee with respect to the NCDs (on behalf of the Financial Creditor) demanded repayment from the Corporate Debtor in terms of the Corporate Guarantee.

3. The Corporate debtor vide its Affidavit in Reply dated 06.04.2023 states that ASK property Investment Advisors Private Limited is not the Financial Creditor and consequently cannot maintain this Company Petition ; there was no default by the Corporate Debtor on the alleged date the date of default mentioned in the petition would not lie; Corporate Guarantee could not be

invoked for amounts other than as set out in the Corporate guarantee; there is no any record of default with the Information Utility the amount claimed by the Financial Creditor is not a Financial Debt u/s7 of the Act.

4. The Operational Creditor vide its Affidavit in Rejoinder dated 27.04.2023 states on perusal of the Affidavit in Reply, it is noted that the Corporate Debtor has not denied (i) subscription by the Fund, and allotment of the NCDs to it, against the disbursement of the principal debt amount of Rs.3,00,00,00,000/-, pursuant to the terms of the Debenture Trust Deed dated February 4, 2019 (Annexure H to the Company Petition); (ii) that the debt is due; (iii) that the Corporate Debtor has defaulted in its repayment obligations under the Corporate Guarantee read with the Exit Agreement. In fact, the Affidavit in Reply is interspersed with uncontroverted facts in relation to the receipt of the principal debt amount of Rs.3,00,00,000/- (Rupees Three Crores only) and the acknowledgment of liability to the extent of the Exit Sums under the Exit Agreement. Further, in the Affidavit in Reply, the Corporate Debtor has avoided the merits of the matter, and has only challenged the maintainability of the Company Application on several false and frivolous grounds. The Operational Creditor has denied all the statements, allegations, contentions raised by the Corporate Debtor in its Affidavit in reply.

Findings

Findings:

5. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.
   5.1. It is undisputed fact that Debenture Trust Deed dated 04.02.2019 was entered amongst Tridhaatu Renovators Private Limited as Borrower; Tridahatu realty and Infra Private Limited as "Promoter1"; Tridhaatu Asset Holdings LLP as "Promoter 2"; Three Individuals also classified as

promoters; Vistra ITCL (India) Limited as "Debenture Trustee" and Ask Real Estate Special Situations Fund as "Investor". The Ask Real Estate Special Situations Fund is managed by Ask Trusteeships Services Private limited as Trustee, and this fact is disclosed in the para H said debenture trustee deed. Further, Clause 19 provides that, the Debenture Trustee shall hold the security and all money collected, in trust for the debenture holders. Clause 20 provides that Debenture trustee shall heave power, on occurrence of event of default, to realise the security to enforce any action proceeding in relation to mortgage property and to take any action and proceedings in relation to such mortgage property. The Debenture Trustee has power to hold negotiations for settlement and enter compromise or consent terms.

5.2. Clause 25.3 of the Debenture Trust Deed provides that *"Upon occurrence of event of default, the investor or the Debenture Trustee, acting on instructions of the Majority Debenture Holders, may without prejudice to any other rights and remedies available to it under this deed, any other transaction document and/ or applicable laws, demand payment of Guaranteed Default Return from the Company, within 15(Fifteen) days from the date of occurrence of event of default. In the event, the company fails to pay the Guaranteed Default Return within the aforesaid 15 days, the Debenture Holders may by notice to the promoters require that the entire Debentures held by the Debenture Holders be acquired by the Promoters at a price which is equivalent to the Guaranteed Default Return."* It is further provided therein that if the promoters fail to unconditionally and irrevocably pay the Guaranteed Default Return on the Put Settlement Date to the Debenture Holders, then the Debenture Holders and/or the Debenture Trustee may by notice take, inter alia, enforce a Deed of Guarantee and from the proceeds appropriate sums equal to an amount which is a short fall in the Guaranteed Default Return.

5.3. Clause 25.4, also gives similar powers to the investors in case company fails to redeem the Debentures. Accordingly, we do not file any merits in the contention of the Corporate Debtor that the applicant, being the person acting as a trustee of the fund and having been disclosed so in the Debenture Trust Deed, does not have a locus to file a present application.

5.4. The Exit Agreement dated 27.09.2021 was entered amongst Ask Real Estate Special Situations Fund as "Investor"; Tridhaatu Renovators Private Limited as "Borrower"; Tridahatu Realty and Infra Private Limited as "Promoter1"; Tridhaatu Asset Holdings LLP as "Promoter 2"; Three Individuals also classified as Promoters; Vistra ITCL (India) Limited as "Debenture Trustee". "Exit Sums" shall mean all outstanding amounts under the Debentures so that, such amounts along with any coupon and/or Redemption Premium paid to the Investor, shall give the investor an IRR of 15 % on Total investment Amount". The said agreement further provides in clause 3.3., 3.7 and 3.8 that Promoters and company acknowledge and agree that this Exit agreement is without prejudice to the rights and powers of the investor under the Transaction documents and under applicable law and which rights and powers shall only terminate and be foregone upon due receipt of the entire exist sums owed to the investor and that such rights and powers include the right and powers following the occurrence of an event of default, all of which shall continue and not be deemed as waived in any manner; Promoters and company agree that the exit sums is a financial debt of the company owned to the investor; and the investor shall be entitled to undertake any enforcements action and/or exercise any of their rights, including enforcement of security/etc as per the transaction documents and in the event of such enforcement, the company and promoters agree and acknowledge that the amount to be paid to the investor shall be such outstanding amounts and/or entitlements and accruals under the relevant debentures claimed in such proceedings, notwithstanding the exit sums identified in this agreement.

5.5. Accordingly, the contention of the Corporate Debtor that no default took place on 24.10.2022 has no substance as issued of demand issued by the Debenture Trustee required the Guarantor to deposit the amount forthwith. Nonetheless the investor had also required the guarantors as well as Principal Debtor to pay the amount of debt due and in default within 7 days from the date of receipt of its notice dated 26.07.2022. Even on basis of said notice, the default qua Guarantor took place after expiry of 7 days of the date of notice dated 26.07.2022.

5.6. Section 7 (3) of the Code provides that the record of default as with information utility as one of the evidences to substantial the date of default. However, the words "*or such other record or evidence of record as may be specified*" signifies that default can be proved by way of other evidences also. T is further supported by Serial 3 Part V of form I which provides as "*Record of default with the information Utility, if any*".

5.7. As explained in the previous paras, the investor had a right to invoke guarantee and the applicant is trustee of such investor fund, hence invocation of guarantee cannot be faulted.

6. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, this bench is

of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

7. The Financial Creditor has proposed the name of Interim Resolution Professional Mr. Ashish Arjunkumar Rathi, an Insolvency Professional.

ORDER

8. The Petition bearing CP (IB) No.1319/MB-IV/2022 filed by Ask Property Investment Advisors Private Limited ("the Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Tridhaatu Asset Holdings Llp, the Corporate Debtor is **admitted.**

    a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

        (i) 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;

        (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

        (iii) 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 (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium, -

(v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) The bench hereby appoints Mr. Ashish Arjunkumar Rathi, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00568/2017-2018/11010 and email- ipashishrathi@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

(i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.

(j) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said

Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
25.08.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)