IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB)3565/MB/C-IV/2019
Under section 7 of the I&B Code, 2016
In the matter of
Jamshed Ali Ansari
…Financial Creditor
v/s.
Okay Estate Developers Private Limited
[U70100MH1995PTC091260]
…Corporate Debtor

Order Delivered on: 04.03.2020

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: Mr. Dhruva Gandhi a/w Jamshed Ansari Patel, Petitioner in Person.

For the Respondent: None

ORDER

Per: **Rajasekhar V. K. Member (Judicial)**

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **Mr. Jamshed Ali Ansari** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shree Okay Estate Developers Private Limited** ("the Corporate Debtor"). The Financial Creditor

claiming a sum of Rs.36,22,348/- which is said to amount in default as on 25.09.2019 which is said to be the date of default.

2. The Corporate Debtor is a Private Company incorporated on 31.07.1995 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U70100MH1995PTC091260. Its registered office is at 40, Harbour Crest Building, Ground Floor, Shivdas Champsi Road, Tulsiwadi, Mazagaon, Mumbai-400010. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 30.09.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 36,22,348/-(Rupees Thirty-Six, Twenty Two Thousand, Three Fourty Eight only) as on 25.09.2019 which is said to amount in default as on 25.09.2019 which is said to be the date of default.

4. The brief facts of the case are as follows: -

   i. On 23.05.2014, the Financial Creditor had agreed to purchase a flat from the Corporate Debtor for a sum of Rs. 99 Lacs and paid a booking amount of Rs.6.00 Lacs.

   ii. On 09.09.2014 an agreement was executed for purchase of flat No. 501, admeasuring 551 sq. ft carpet area on the 5th floor, Zainab Apartment, Final Plot No.723, TPS-III, Mahim Division, Wanjawadi, Mahim, Mumbai-400016, which was registered on 12.09.2014. In terms of the said agreement, the Corporate Debtor was supposed to give possession of the flat on or before 30.09.2015

(Page No. 23) Para 8A. Pursuant to the said agreement, the Financial Creditor paid a sum of Rs. 27 Lacs to the Corporate Debtor along with further payment towards VAT, Service Tax, Stamp Duty and Registration in all the Financial Creditor has paid sum of Rs.37,39,605/-.

iii. In the interregnum, the Corporate Debtor sold the plot of land on which the flat was to be constructed, to one Mr. Hanif Usman Kapadia following this the Financial Creditor instituted suit No.454 of 2019 before the Hon'ble Bombay High Court for specific performance of the contract. In the said suit consent terms dated 01.07.2019 came to be executed based on which an order came to be passed by the Hon'ble High Court decreeing in payment of a sum of Rs.50 Lacs to be paid to the Financial Creditor herein. The certified copy of the consent terms and decree has been filed at Ex. J at pages 78 to 83 of the Petition.

iv. On 18.04.2019, the Corporate Debtor in pursuance of the said decree paid a sum of Rs.15 lac to the Financial Creditor and also handed over a PDC dated 30.06.2019 for the remaining sum of Rs.35.00 Lac.

v. On 20.07.2019 when the cheque dated 30.06.2019 for a sum of Rs.35 Lac was presented, the same was dishonored by the bankers.

vi. On the said date i.e. on 20.07.2019, the Corporate Debtor transferred the sum of Rs.10 Lac into the account of the Financial Creditor and further sum of Rs.5 Lac on 09.08.2019 respectively.

5. It is the case of the Financial Creditor that in terms of clause 10 of the decree at page 82 of the Petition in the event of default of in payment of the balance sum of Rs.35 lac of default in the amount payable in terms of clauses 2, 3, 6, 7 and 8 thereof. The plaintiff (Financial Creditor) shall be entitled to a decree in a sum of Rs.50 Lac as against the Corporate Debtor. Therefore, after deducting the same of Rs.15 Lac from the said sum of Rs.50 Lac, the Financial Creditor is entitled to a sum of Rs.35 Lac towards principle with interest @ 18% per annum from 21.07.2019 till payment/realization of the amount in full. The Financial Creditor has computed the default amount as on 25.09.2019 to be Rs.36,22,348/-

6. The Court Notice dated 18.10.2019 was ordered which was served on the Corporate Debtor on 12.10.2019 by speed post in terms of affidavit of service filed by the Financial Creditor. Despite receipt of said notice there is no representation on the side of the Corporate Debtor. The matter was finally listed for admission on 04.12.2019 on which date matter was heard and reserved for orders.

7. We have heard the learned Counsel for the Financial Creditor and perused the records. The claim of the Financial Creditor (Home Buyer) arises out of the decree dated 08.07.2019 which is based on consent terms dated 01.07.2019 entered into between the parties in suit No.454 of 2019 before the Hon'ble High Court of Bombay.

8. On perusal of the records it is clear that there is a violation of the consent terms which have been entered into between the financial creditor and the Corporate Debtor.

9. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor

is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

10. The Financial Creditor has proposed the name of Mr Milind Kasodekar [Reg. No.IBBI/IPA-002/IP-N00116/2017-18/10285], as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

11. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP (IB) 3565/MB/C-IV/2019** filed by **Mr. Jamshed Ali Ansari,** the Financial Creditor, under section 7 of the IBC of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Okay Estate Developers Pvt. Ltd.** the Corporate Debtor, is **admitted**.

(b) 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,-

(i) 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;

(ii) 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 Adjudicating Authority 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) **Mr Milind Kasodekar [Reg. IBBI/IPA-002/IP-N00116/2017-18/10285]**, having address at No.77, Vijay Nagar Colony, 2147, Sadashiv Peth, Pune-411030 [email: milind.kasodepar@mrmcs.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP/RP shall carry out his functions as contemplated under sections 15, 17, 18, 19, 20 and 21 of the IBC. The IRP/RP shall file periodical progress reports with this Adjudicating Authority.

(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 Creditor shall deposit a sum of Rs.3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims.

These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The IRP/RP shall submit periodical reports to this Adjudicating Authority indicating the progress of the CIRP.

(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.

(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/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
RAJASEKHAR V.K.
Member (Judicial)

04.03.2020

/rohit/