

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH - I**

**CP (IB) 922/MB/C-I/2022**

Under section 7 of the Insolvency and Bankruptcy  
Code, 2016

*In the matter of*

**Catalyst Trusteeship Limited**

**[CIN: U74999PN1997PLC110262]**

GDA House, First Floor, Plot No. 85 S. No. 94 & 95,  
Bhusari Colony (Right), Kothrud Pune 411038.

... Financial Creditor /Petitioner

Versus

**Ecstasy Realty Private Limited**

**[CIN: U65990MH1992PTC064890]**

2nd Fl., Solitaire Building, 80, S.V. Road, Santacruz (W)  
Mumbai 400054.

... Corporate Debtor /Respondent

**Order Delivered on 03.02.2023**

***Coram:***

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)  
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances:***

For the Financial Creditor : Mr. Dinyar Madon, Ld. Senior  
Counsel  
For the Corporate Debtor : Mr. N H Seervai, Ld. Senior  
Counsel.

**ORDER**

***Per: Justice P. N. Deshmukh, Member (Judicial)***

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Catalyst Trusteeship Limited**. ("the Financial Creditor"), seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against **Ecstasy Realty Private Limited** ("the Corporate Debtor").

2. The present Petition was filed on 25.08.2022 before this Adjudicating Authority on the ground that credit facilities of Rs.1203,55,50,671/- (Rupees One Thousand Two Hundred and Three Crores Fifty Five Lakhs Fifty Thousand Six Hundred and Seventy One Only) were availed by the Corporate Debtor i.e. (Rs.600,00,00,000/- Rupees Six Hundred Crore Only) along with interest at the rate of 16 % p.a. and the Corporate Debtor has defaulted in repayment of the same.
3. The total amount claimed to be in default by the Financial Creditor is Rs.1203,55,50,671/- (Rupees One Thousand Two Hundred and Three Crores Fifty-Five Lakhs Fifty Thousand Six Hundred and Seventy-One Only). The date of default stated to be is 30.06.2022.
4. The Corporate Debtor is a private company limited by shares incorporated on 17.01.1992 under the Companies Act, 1956, with the Registrar of Companies, Mumbai. Its registered office is at 2nd Fl., Solitaire Building, 80, S.V. Road, Santacruz (W) Mumbai 400054. Therefore, this Bench has jurisdiction to deal with this petition.

**Submissions advanced by the Financial Creditor:**

5. The Financial Creditor submits that the Corporate Debtor had proposed construction of residential cum retail project situated at C.S. No.(s) 866/B/2 Part located at village Ambivali, Taluka Andheri, District Mumbai, Suburban and the residential apartment/buildings to be constructed thereon. To meet the

requirement of funds, the Corporate Debtor proposed to issue Debentures on the basis of private placement.

6. Accordingly, a board Resolution dated 20.03.2018 and Special Resolution dated 20.03.2018 was passed authorizing borrowing of funds by way of issuing 850 secured rated, listed, redeemable, non-convertible debentures of face value Rs. 1,00,00,000/- each upto the aggregate value of Rs. 850,00,00,000/- in two series being series A and series B; wherein Series A being debenture issued of an aggregate amount Rs. 600,00,00,000/- and Series B being debenture issued of an aggregate amount Rs. 250,00,00,000/-. Thereafter, Series A Debentures of Rs.600,00,00,000/- (Rupees Six Hundred Crore Only) were fully subscribed by the Debenture Holders in the following manner as under:

i) Debentures subscribed in Series A

Sr. No.	Date	Quantity
1.	28.03.2018	340
2.	28.03.2018	110
3.	28.03.2018	50
4.	28.03.2018	25
5.	29.03.2018	10
6	29.03.2018	10
7.	29.03.2018	15
8.	29.03.2018	40
	Total	600/-

7. As per clause 4.4 of amended Debenture Trust Deed dated 27.03.2018 the Corporate Debtor was liable to pay to the debenture holders on each interest payment date, interest on the outstanding debenture amount at the rate of 15% per compounded quarterly and also maintain and also failed to maintain the interest payment Reserve Account in Escrow with the Bank. The principal

amount of Rs.4,81,60,89,967/- along with interest at the rate of 15% p.a. compounded quarterly were defaulted by the Corporate Debtor on the below mentioned dated:

i) Principal default dates ‘

27.12.2022
27.03.2022
27.06.2022

ii) Interest default dates

31.03.2019
30.09.2019
31.12.2019
31.12.2020
31.03.2021
30.06.2021.
30.06.2022

8. Therefore, due to repeated defaults by the Corporate Debtor; the Financial Creditor issued a recall notice dated 21.07.2022 to the Corporate Debtor demanding repayment of the loan advanced, interest and other monies cumulatively amounting to Rs.12,03,55,50,671/- [Rs.4,81,60,89,967//-(principal) + Rs.19,72,61,762/- (Interest @ 15% p.a.) + Rs. 7,02,21,98,942/- ((Default interest)]. **(Application Vol 1 at pages 20-22)**
9. Owing to the default in performance of the conditions of the Debenture Trust Deed dated 27.03.2018 read with Amended Debenture Trust Deed dated 27.03.2018, consequently the Financial Creditor declared an event of default on 30.06.2022 inter

alia calling upon the Corporate Debtor to repay the amount.  
**(Application Vol 1 pg 23 )**.

10. The Corporate Debtor vide its reply to the application filed by the Financial Creditor's has disputed the debt and the maintainability of the Application.

**Submissions made the Corporate Debtor:**

11. The preliminary objection raised by the Corporate Debtor is on the issue of maintainability as the Applicant is not a Financial Creditor and has not advanced any monies to the Corporate Debtor. Thus, it is submitted by the Corporate Debtor that the Applicant does not have any locus to maintain this Application.
12. The Corporate Debtor submits that no default was committed by the Corporate Debtor as no money was due and payable as on 30.06.2022 as the Applicant and Debenture Holders have granted a moratorium to the Corporate Debtor *inter alia* to the effect that till September 2023, no repayment shall be due under the terms of the Debenture Trust Deed dated 27.03.2018.
13. In furtherance, of the same on 16.03.2022 the Corporate Debtor addressed an email to the Edelweiss Group seeking a moratorium and requesting the Edelweiss Group to confirm the same in writing:
  - i. Moratorium for 18 months.
  - ii. Release of the Additional property (i.e. Bandra Property owned by the Corporate Debtor sister concern VRPL and mortgage in favour of the Edelweiss Group to secure the amounts under the DTD

- iii. Release of Rs.25 crore/-
14. Further, on 16.03.2022, the Edelweiss group replied to the email of the Corporate Debtor that the restructuring and release of the Bandra Property will be finalized and approved at the time of the Blackroad (Sapphire) transaction closure.
15. The Corporate Debtor submits that vide email dated 23.03.2022, the Edelweiss group (one of the debenture Holders holding 84.67% Debentures) addressed the Corporate Debtor stating that they are agreeable for Moratorium for principal and interest of 18 months while the repayment will start from September 2023 onwards subject to completion of the Sapphire Transaction.
16. It is submitted that the said sapphire transaction was completed by 25.03.2022, thus the Corporate Debtor had acted pursuant to the aforesaid terms and conditions imposed on it, as a pre-condition to the grant of moratorium as recorded in the emails dated 23.03.2022 and 16.03.2022.
17. On 25.03.2022 and 30.03.2022, the Applicant/Debenture Holders in compliance with the emails dated 16.03.2022 and 23.03.2022 also transferred a further sum of Rs. 9.33 Crores to the Corporate Debtor.
18. Moreover, it is the case of the Corporate Debtor that the Debenture Holders/Applicant has unilaterally, contrary to the contract between the parties and without the Corporate Debtor's knowledge or consent (at the relevant time) increased the interest rate from 15% to 16.25% p.a. and the same was brought to the notice of the Debenture Holder vide letter dated 16.07.2020. The

letter is attached as Annexure 5 to the Reply of the Corporate Debtor.

19. Further, the Corporate Debtor states that the Corporate debtor is solvent. In lieu of the submission the Corporate Debtor has placed on record the Valuation Report dated 17.08.2022 from Registered Valuers who are empaneled with the Applicant wherein the projected profit including interest, before tax for phase II development is estimated Rs. 3,197.54 Crores and the Phase II land is valued at Rs. 1,563.10 Crores. **(Annexure 25)**
20. Reliance is placed by the Corporate Debtor on judgement of the Hon'ble Supreme Court in *Vidharbha Industries Power Limited v. Axis Bank Limited [Civil Appeal No. 4633 of 2021]* to support the proposition that the overall financial health and viability of the Corporate Debtor ought to be considered when deciding the Application.
21. The Corporate Debtor in light of the aforementioned Judgment submits that in the present case there is no default as the debt was not due and payable as the Debenture Holders consented to alteration of the Head of Terms/Debenture Trust Deed by virtue of granting a moratorium. Moreover, it the case of the Corporate Debtor that since the debt itself is not due and payable, the Application is not maintainable.

**Submissions made by the Financial Creditors by way of Affidavit in Rejoinder:**

22. The arguments advanced by the Financial Creditors is that the Corporate Debtor has not submitted evidence supporting his contention that the Company is solvent. Moreover, the Corporate

Debtor's has been incurring losses year after year as per the standalone profit and loss statement filed by the Corporate Debtor. **(Annexure K Page 36-37 of Rejoinder).**

***Findings:***

23. We have heard the parties and perused the records.
24. Owing to the aforesaid circumstances as demonstrated, in our opinion, the entire proceeding even otherwise appears to have been initiated with an intent other than the resolution of the Corporate Debtor. What surprises us is the manner in which the Applicant/Financial Creditor proceeded despite there being a moratorium in place.
25. Another surprising factor as apparent is that on one hand the Applicant financial creditor is alleging default and on the other hand it is additionally disbursing monies amounting to Rs. 9.33 Crores on 25th March, 2022 and 30th March, 2022. In our view, the very fact of disbursement of Rs. 9.33 Crores gives credence to the fact that a moratorium was in place and the debt was not due and payable.
26. It is settled law the proceedings under the Insolvency and Bankruptcy Code, 2016 are not recovery proceedings. The object of the code is to revive the Corporate Debtor. The Adjudicating Authority has to be mindful of this aspect while deciding any application for initiation of CIRP under Section 7 or Section 9 of the IBC, 2016. The said legal proposition was laid down by the Hon'ble Apex Court in Innoventive Industries, wherein it was held as under:

*"12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."*

27. Hence, for the reasons stated above we reject the Company Petition bearing C.P.(IB) No. 922/MB/C-I/2022.

**Sd/-**  
**SHYAM BABU GAUTAM**  
**Member (Technical)**

03.02.2023  
SAM

**Sd/-**  
**JUSTICE P. N. DESHMUKH**  
**Member (Judicial)**