

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/845/2019 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. KGS Developers Limited**

M/s. PMI ENGINEERINGS EXPORTS PVT. LTD.

Plot B – 29, Phase – II,
Madras Export Processing Zone,
(MEPZ) – SES, Tambaram,
Chennai – 600 045

... Financial Creditor

-Vs-

M/s. KGS DEVELOPERS LIMITED

No.10, 2nd Cross Street,
Raja Annamalaipuram,
Chennai – 600 028

...Corporate Debtor

Order Pronounced on 18th December, 2019

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : P.S. Suman, Advocate
Preethi, Advocate
For A.K. Mysamy & Associates*

For Corporate Debtor : None appeared

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed by **M/s. PMI Engineering Exports Pvt. Ltd.** (hereinafter

referred to as '*Financial Creditor*') under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against ***M/s. KGS Developers Limited*** (hereinafter referred to as '*Corporate Debtor*').

2. Part – I, of the Application discloses the fact that the Petitioner is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Limited Company with CIN:U31909TN1974PLC006798 which was incorporated on 30.11.1974 and that its Nominal Share Capital and Paid up Capital is ₹50,00,00,000/- and ₹31,72,80,810/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.10, 2nd Cross Street, Raja Annamalaipuram, Chennai – 600 028.

3. Part – III of the Application discloses the fact that the Financial Creditor had proposed the name of one Mr. Anil Kumar Khicha as the Interim Resolution Professional, who has also filed his written consent in Form 2. From Part-IV of the Application, it is seen that a sum of ₹4,94,52,006/- including interest is being claimed by the Financial Creditor from the



Corporate Debtor. The transactions given as to the amount claimed by the Financial Creditor as against the Corporate Debtor is stated to have arisen consequent upon a loan being given by the Financial Creditor to the Corporate Debtor.

4. Part V of the Application describes the particulars of the documents, records and evidence of default of the Financial debt which *inter alia* includes the following;

- a) Demand Promissory Note dated 25.11.2014 issued by the Corporate Debtor in favour of the Financial Creditor.
- b) 7 Security Cheques given by the Corporate Debtor.
- c) Letter of Corporate Debtor dated 20.12.2016
- d) Letter of Financial Creditor dated 15.04.2019 requesting payment;
- e) Agreement for Sale of UDS;
- f) Agreement for Construction of Flat.

5. The Ld. Counsel for the Financial Creditor submitted that the Financial Creditor provided an unsecured loan of Rs.2,00,00,000/- (Rupees Two Crore only) to the Corporate Debtor on 25.11.2014 to be repaid together with interest at the rate of 22% p.a. and the aforesaid amount was transferred by the Financial Creditor to the Corporate Debtor vide cheque No. 211545 dated 24.11.2014 drawn on Indian



Bank which was encashed by the Corporate Debtor on 25.11.2014

6. It was submitted that, as a security, the Corporate Debtor issued a 'Demand Promissory Note' dated 25.11.2014 in favour of the Financial Creditor promising to duly pay a sum of Rs.2,00,00,000/- (Rupees Two Crore Only) together with interest at the rate of 22% p.a. as against the receipt of the Unsecured loan. The Ld. Counsel for the Financial Creditor submitted that thereafter, the Financial Creditor has continuously and repeatedly requested the Corporate Debtor to repay the entire loan together with interest pursuant to which the Corporate Debtor had issued the following cheques in favour of the Financial Creditor;

	Cheque No.	Cheque Date	Cheque Amount	Remarks
1	799217	25.11.15	39,60,000	Not presented
2	799215	25.11.16	39,60,000	Not presented
3	799219	25.11.16	20,00,000	Not presented
4	784609	25.11.16	5,27,120	Not presented
5	784593	25.11.16	47,44,080	Not presented
6	994338	25.05.17	1,30,42,480	Not presented
7	994342	25.05.17	20,00,000	Not presented

7. It was submitted by the Ld. Counsel for the Financial Creditor that as per the 'Demand Promissory Note' dated 25.11.2014, the Corporate Debtor was duly bound to repay the loan of Rs.2,00,00,000/- (Rupees Two Crores Only)

together with interest at the rate of 22% p.a. on demand. It was further submitted that the Financial Creditor has continuously and repeatedly requested the Corporate Debtor to repay the entire loan along with due interest thereon and the Corporate Debtor has repeatedly failed to repay the same inspite of having issued multiple cheques towards such repayment. It was further contended that the Corporate Debtor has admitted its tight financial position for the last several years due to which it has defaulted continuously in repaying the loan of the Financial Creditor for the last 4 to 5 years.

8. Thus, the Ld. Counsel for the Financial Creditor submitted that as on 31.05.2019, the Corporate Debtor is liable to pay the following amount to the Financial Creditor;

	Particulars	Amount in Rs.
1	Principal	2,00,00,000
2	Interest @ 22% p.a.	2,94,52,006
	TOTAL	4,94,52,006

9. In relation to the Corporate Debtor, it is brought to the notice of this Tribunal from the record of proceedings that when the matter came up for hearing for the first time on 12.09.2019, Counsel on behalf of the Corporate Debtor had appeared and he was directed to file reply within two weeks

and the Financial Creditor was directed to file the rejoinder, if any and the matter was posted for final submissions on 23.10.2019. Thereafter, when the matter came up for hearing on 23.10.2019, it was observed by this Tribunal as follows;

"Learned Counsel for the parties are present. From the Order dated 12.09.2019 it is evident that the Corporate Debtor has to file its reply within a period of two weeks after circulating copy to the other side. Ld. Counsel for the Petitioner represents that no reply has been received as of date. In the circumstances, this Tribunal is constrained to close the right to file reply in relation to the Corporate Debtor, however, that will not bar the Corporate Debtor from participating in the proceedings with the available records before this Tribunal as of today. Post this matter for hearing on 18.11.2019"

10. When the matter came up for hearing on 18.11.2019, none appeared on behalf of the Corporate Debtor and the Tribunal observed as follows;

"Learned Counsel for the Petitioner is present. None appears for the Corporate Debtor. However, it is also seen from the records of the Tribunal that filing of reply had been closed in relation to the Corporate Debtor. Heard. Order is reserved."

11. In the meantime, after the Orders were reserved, the Corporate Debtor moved an MA/1279/2019 in IBA/845/2019 under Section 60(5) of the IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016, seeking to reopen and rehear the Application in IBA/845/2019 and consequently allow the Corporate Debtor to



defend the petition on merits. However, this Tribunal by its order dated 21.11.2019, for the reasons stated therein has dismissed the said MA. Hence we were constrained to proceed with the matter in the absence of the Corporate Debtor.

12. We have heard, the submissions made by the Ld. Counsel for the Financial Creditor, perused the records placed on file. It is evident from the records that the Corporate Debtor has issued a 'Demand Promissory Note' dated 25.11.2014. The Financial Creditor has made a demand towards his entire loan amount and based on such demand having been made, the Corporate Debtor has issued seven cheques for various amount as stated above, in favour of the Financial Creditor and it is averred that the said cheques were not presented by the Financial Creditor upon a specific request made by the Corporate Debtor. In the circumstances there is a clear evidence in the case of the existence of financial debt and the default of such financial debt which is payable by the Corporate Debtor to the Financial Creditor.

13. From the list of documents annexed and the cheques provided, it is evident that they are within the period of limitation of 3 years and are not barred by limitation. The claim amount as made in the petition is also in excess of



Rs.1,00,000/- being the statutory minimum amount fixed under Section 4 of the IBC, 2016 for approaching this Tribunal by the creditors, in the instant case by Financial Creditor and further in relation to the Corporate Debtor the registered office of which is situated within the State of Tamilnadu, this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

14. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

15. The Financial Creditor has proposed the name of **Mr. Anil Kumar Khicha** having Registration Number [IBBI/IPA-001/IP-P00422/2017-2018/10745] as Interim Resolution Professional (IRP) and a 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 I&B Code, 2016.

16. 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 Corporate Debtor 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 Corporate Debtor 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 Corporate Debtor 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 Corporate Debtor.”

17. 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.
- (3) The provisions of sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

18. 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

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.”

19. 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 Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond