

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1216/MB-IV/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

Bank of Baroda

...Financial Creditor/Applicant

V/s

**Darode Jog Redevelopment Private
Limited**

[CIN: U45200PN2012PTC144840]

...Corporate Debtor/Respondent

Order Dated: 19.01.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. U.C. Nayak i/b M V Kini
Law Firm, Advocates.

For the Respondent(s) : Mr. Rohit Gupta a/w
Mr. Agam H. Maloo, Advocates.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being C.P. (IB) No. 1216/NCLT/MB/C-IV/2020 filed by Bank of Baroda, the Financial Creditor/Applicant,

under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Darode Jog Redevelopment Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. Sumeet Singh Dang, Manager of Financial Creditor vide its Authority Letter dated 05.09.2020, claiming total default of Rs.8,27,39,947/- (Rupees eight crore twenty-seven lakh thirty-nine thousand nine hundred forty-seven only) along with further interest @ 15.35% compounded with monthly rests from 24.08.2019. The Date of Default as mentioned in the Petition is 25.07.2019.
3. The case of the Financial Creditor is as under:
 - a) The Corporate Debtor is engaged in the business of demolition of old residential/ commercial structures and its redevelopment.
 - b) In response to newspaper advertisement issued on 21.01.2012 by Bharatshree Co-Operative Housing Society Limited (Beneficiary), calling tender from various Developers, to demolish, construct and develop its property situated at Erandwane, Pune, the Corporate Debtor had participated in the said tender process.
 - c) The Tender submitted by the Corporate Debtor was accepted and accordingly on 13.05.2013 a Development Agreement was entered into between the Corporate Debtor and the Beneficiary
 - d) In terms of the Clause No. 22 of the said Development Agreement, the Corporate Debtor must deposit Performance Bank Guarantee from any Nationalized Bank for a total value of Rs.10 crore in favour of the Beneficiary.

-
- e) As such, the Corporate Debtor approached the Bhavani Peth Branch of erstwhile Dena Bank, now Bank of Baroda (Financial Creditor) (According to the Scheme of Amalgamation, as published vide Government of India Notification No. GSR 2(E) dated 02.01.2019, erstwhile Dena Bank was amalgamated with the Bank of Baroda) for sanction of Bank Guarantee Facility (Non-Fund Based Credit Limits) to the extent of Rs.10 crore.
- f) Accordingly, the Financial Creditor sanctioned Non-Fund Based Credit Limit of Rs.10 crore to the Corporate Debtor vide its sanction letter dated 21.06.2014 against the following securities:
- Cash margin in the form of Fixed Deposit for Rs.1.50 crore.
 - Collateral Security in the form Equitable Mortgage of a commercial property having value of Rs.9.91 crore.
 - Personal Guarantee of Directors of the Corporate Debtor as well as owners of the Commercial Property offered as collateral.
 - Counter Guarantee by the Corporate Debtor for the full value of the Bank Guarantee issued/ to be issued by the Financial Creditor.
- g) On 07.07.2014, after completion of loan documentation formalities, the Financial Creditor issued four Bank Guarantees of Rs.2.50 crore each in favour of the Beneficiary having a validity period of three years.
- h) As per the terms of the Development Agreement, the above Bank Guarantees will be in force till handing over of physical, peaceful

and vacant possession of all 109 tenements by the Corporate Debtor to the Beneficiary till 17.03.2017 or earlier.

- i) However, the Corporate Debtor could not perform its obligation under the aforesaid Bank Guarantees till 17.03.2017. Therefore, the Corporate Debtor approached the Beneficiary and entered into a Supplementary Agreement to extend the Performance Period by one-year i.e. up to March, 2018.
- j) Thereafter, the Corporate Debtor approached the Financial Creditor to renew the existing Non-Fund Based Credit Limits for one year and to issue four fresh Bank Guarantees of Rs.2.50 crore each replacing earlier ones in favour of the beneficiary for an extended period of one year.
- k) The Financial Creditor, after obtaining necessary documents issued fresh four Bank Guarantees for a total value of Rs.10 crore in favour of the Beneficiary valid up to 17.03.2018.
- l) However, the Corporate Debtor failed again to perform the contractual obligation i.e. to demolish, construct, develop and transfer 109 tenements to the Beneficiary within the time schedule. Therefore, the beneficiary, vide its letter dated 21.02.2018 addressed to the Financial Creditor, informed about the invocation of the above referred four Bank Guarantees totalling to Rs.10 crore and requested the Financial Creditor to release the said amount to the credit of Bank Account of Beneficiary.
- m) Though the Corporate Debtor was successful in getting “Status Qua Order” on 15.03.2018, Hon’ble Commercial Court, Pune in its final Judgment on 24.04.2019 dismissed the application seeking stay of

invocation of Bank Guarantees. Further, the said Judgment of Hon'ble Commercial Court was also upheld by Hon'ble Bombay High Court vide its order dated 24.06.2019 and dismissed the Appeal filed by the Corporate Debtor against the orders of Hon'ble Commercial Court, Pune.

- n) After pronouncements of order by Hon'ble Bombay High Court, the Beneficiary, Bharatshri Co-Operative Housing Society Limited, again reminded the Financial Creditor vide its letter dated 13.07.2019 to release the payment in respect of invoked Bank Guarantees.
- o) Accordingly, on 25.07.2019, Financial Creditor released the said amount of Rs.10 crore to the beneficiary by debiting the current account of the Corporate Debtor and also on same day issued a letter to the Corporate Debtor demanding payment of INR 10 crores towards the crystalized liability on account of invocation of Bank Guarantees.
- p) Thereafter, on 01.08.2019, the Financial Creditor adjusted the margin money held by it in the form of Fixed Deposits by crediting Rs.1,83,78,258/- (Rupees one crore eighty-three lakh seventy-eight thousand two hundred fifty-eight only) being the maturity value of the said Fixed Deposits to the Current Account of the Corporate Debtor. Also, on 03.08.2019, the Financial Creditor issued a Legal Notice calling upon both Corporate Debtor and its Guarantors to pay the entire outstanding dues of Rs.8,16,21,742/- (Rupees eight crore sixteen lakh twenty-one thousand seven hundred forty-two only) along with further interest @ 15.35% per annum till its realization.

-
- q) There was no response to the Legal Notice from the Corporate Debtor. Financial Creditor filed OA on 11.09.2019 before Debt Recovery Tribunal, Pune for recovery of Rs.8,27,39,947/- (Rupees eight crore twenty-seven lakh thirty-nine thousand nine hundred forty-seven only) outstanding as at 29.08.2019 including interest charged up to 23.08.2019 and further interest and penal interest at contractual rate there onwards.
4. The Corporate Debtor has not filed the reply in the matter. When the matter listed on 03.09.2021, the Corporate Debtor submitted that the Corporate Debtor has made payment of Rs.2.50 crore out of total outstanding of Rs.8.65 crore. The details of the said hearing in the order dated 03.09.2021 as follows:
- “2. Ld. Counsel for the Corporate Debtor mentioned that against the outstanding of Rs.8.65 crore they have already made the payment of Rs.2.50 crore and they are in the process of discussing with the bank settlement proposal, for which they need time of about three weeks. The Corporate Debtor has shown his bona fide by making a payment of Rs.2.50 crore against the outstanding of Rs.8.65 crore. This Bench allows a time of three weeks for Corporate Debtor to settle the issue with the bank. The Corporate Debtor has also shown his inclination to clear outstanding within a period of three months.”*
5. The Financial Creditor has filed the present Petition on 19.09.2020 and the date of default in the Petition is 25.07.2019. After giving opportunity to settle the matter, the parties are not arrived at settlement. Hence, the matter was proceeded and was reserved for orders on 14.12.2021.

Findings:

6. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
 - a) We have prudently gone through the pleadings available on record. The Financial Creditor had granted/sanctioned Non-Fund Based Credit Limit of Rs.10 Crore to the Corporate Debtor. The Corporate Debtor has made payment of Rs.2.50 crore out of total outstanding of Rs.8.65 crore.
 - b) The Corporate Debtor has not disputed the claim amount nor denied the credit facility provided to him.
 - c) On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the Corporate Debtor.
 - d) The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Lakh and default of the Corporate Debtor has been established and the application deserves to be admitted.
 - e) The Applicant has proposed the name of Mr. Anil Seetaram Vaidya, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00067/2016-2017/10145] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him

ORDER

7. This Application being C.P. (IB) No. 1216/NCLT/MB/C-IV/2020 filed by Bank of Baroda, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Darode Jog Redevelopment Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 possession of the corporate debtor.

- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Anil Seetaram Vaidya, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00067/2016-2017/10145] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- f) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

Kishore Vemulapalli
Member (Judicial)

19.01.2022

Sd/-

Rajesh Sharma
Member (Technical)