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IN THE NATIONAL COMPANY LAW TRIBUNAL BENGALURU BENCH

C.P.(IB) No.209/BB/2019
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

Corporation Bank

Mangaladevi Temple Road,
Pandeshwar,
Mangalore - 575 001.

- Petitioner/Financial Creditor

Versus

M/s.Amintha Infrastructure Private Limited

305/1, Shamanna Lane,
Church Road, Murugesh Palya,
Bangalore- 560 084.

- Respondent/Corporate Debtor

Date of Order: 30th August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri K.C. Sudarshan

For the Respondent : None

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.209/BB/2019 is filed by Corporation Bank (hereinafter referred to as 'Petitioner/Financial Creditor') U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Amintha Infrastructure




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Private Limited, on the ground that it has committed default for total amount of Rs.7,17,03,414/- (Rupees Seven Crore Seventeen Lakhs Three Thousand Four Hundred and Fourteen Only) as on 01.07.2015 including interest.

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

- (1) Corporation Bank ('Petitioner/Financial Creditor') is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act 1980 (Act V of 1980) having PAN:AAACC7245E.
- (2) M/s.Amintha Infrastructure Private Limited ('Respondent/Corporate Debtor'), having CIN: U45205KA2012PTC065713 incorporated on 03.09.2012. The Authorised and Paid up Share Capital of the Company is Rs.5,00,000/- (Rupees Five Lakhs Only).
- (3) It is stated that the Corporate Debtor entered into a Joint Development Agreement with the owners of converted land in Sy.No.106, measuring 1 acre and 17 guntas situated at Dommasandra Village, Bidarahalli Hobli, Bangalore, East Taluk to develop the same as Row Houses. The owners also executed a Power of Attorney authorising the Corporate Debtor to do all acts of developing including the power to raise loans on the 60% of the total developed area. On an application made by the Corporate Debtor, the Financial Creditor Bank sanctioned a sum of Rs.6.60 Crores term loan to finance the construction of Row Houses in terms of the Joint Development Agreement. The Corporate Debtor also availed a Vehicle Loan. The conditions of sanction included that the promoter stood guarantee and also creation of equitable mortgage on the 60% Developers' share in the total developed area. The Corporate Debtor executed a term loan agreement agreeing to repay in



nine instalments of Rs.73.33 Lakhs each. On the same day the Corporate Debtor also executed a Memorandum of Entry cum Deposit of the Title Deeds and created an equitable mortgage in favour of the Financial Creditor Bank creating mortgage on 20 row houses to be constructed being the Developers' Share under the Joint Development Agreement.

- (4) It is also stated that the Corporate Debtor availed a Vehicle Loan of Rs.20 Lakhs and executed Term Loan and Hypothecation Agreement in favour of the Bank. The Corporate Debtor was not correctly servicing the loan and did not keep up their commitment made to the Financial Creditor under the various agreements and undertaking. At the persuasion of the Financial Creditor the Corporate Debtor made a payment one instalment of Rs.7,39,000/-. The Corporate Debtor failed to regularize and clear the Loans which resulted in the Loans account being categorised as Non-Performing Asset. The notices issue by the Financial Creditor has not yielded any payment from the Corporate Debtor.
- (5) Since the Respondent failed to make payment of its admitted dues, the Bank issued a notice dated 03.11.2016 to the Corporate Debtor under Section 13(2), R/w Section 13(3) of SARFAESI Act. 2002 (Act No.2 of 2002) by demanding the Corporate Debtor to pay Rs.6,80,00,000/-. Therefore, the Financial Creditor has filed an application before the Debts Recover Tribunal dated 24.05.2017 bearing O.A.No.570/2017 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Respondent had failed to pay the amount and also did not raise any dispute by way of reply. Therefore the instant Company Petition is filed in accordance with law.



3. Heard Shri K.C. Sudarshan, learned Counsel for the Petitioner. None appears for the Respondent. We have carefully perused the pleadings of the party and the extant provisions of the Code and the law.
4. The learned Counsel for the Petitioner submits that notice as directed by this Tribunal has already been served on the Director of the Corporate Debtor' Company and also on the Company. The learned Counsel for the Petitioner, while pointing out various averments made in the petition and also filed synopsis, as briefly stated supra. He has further submitted that the debt and default in question are not in dispute and the instant Company Petition is filed in accordance with law.
5. The Petitioner has filed documents with regard to Disbursal of the Loan, the Credit Sanction Intimation dated 26.03.2014, the Term Loan Agreement dated 07.06.2014, the Deed of Hypothecation dated 07.06.2014, the Letter undertaking dated 07.06.2014, the Guarantee Agreement dated 07.06.2014, the Credit Sanction Intimation dated 26.03.2014, the Board Resolution dated 23.07.2014, the Loan Agreement dated 11.08.2014, the Deed of Hypothecation dated 11.08.2014, the Letter undertaking dated 11.08.2014, the DPN and Take Delivery Note of DPN and the Guarantee Agreement dated 02.03.2016. The Petitioner has also filed Statement of Account which contains from Page No.97-110 to the Company Petition to show that the Corporate Debtor is due the outstanding amount in question. The Petitioner also filed the copy of the letter dated 10.07.2019 issued by NESL with regard record of default in respect of the Corporate Debtor to show that the Corporate Debtor committed default with regard to payment of Rs.9,85,02,821/-.
6. The case is listed for admission on various dates viz. 29.05.2019, 17.06.2019, 11.07.2019, 23.07.2019, 26.07.2019, 13.08.2019 & 30.08.2019. The case is adjourned on all these dates due to various



reasons, at the request of the Petitioner for compliance of office objections, serving the notice etc. Accordingly the Petitioner has filed memo dated 11.07.2019 enclosing proof of service of notice on the Corporate Debtor. The notice was received by the Director of the Corporate Debtor's Company namely Shri K. Shaker on 04.07.2019. The Respondent failed to avail the opportunity given by the Adjudicating Authority and also did not file any Statement of Objection to oppose alleged outstanding amount raised in the Company Petition. Therefore, it is deemed that the Corporate Debtor has nothing to oppose about the amount claimed by the Petitioner.

7. So far as the law with regard to initiation of CIRP is concerned, Hon'ble NCLAT vide order dated 15th May, 2017 passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017 in the case of M/s.Innoventive Industries Limited vs. ICICI Bank & Anr. has dealt the issue of admission of a case filed under Section 7 of the Code, under Paras 55 to 58, which are extracted below:

"55. Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B Code, the trigger for filing of an application by a financial creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:

- i. "record of the default" recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. The name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. Any other information as may be specified by the Board.*

56. The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section



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(4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I&B Code:

“(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).”

57. Sub-section (5) of Section 7 of the I&B Code provides for admission or rejection of application of a financial creditor. Where the Adjudicating Authority is satisfied that.....the documents are complete or incomplete.

58. The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority’s summary adjudication, though limited to ‘ascertainment’ and ‘satisfaction’.”

The Hon’ble Supreme Court has also upheld the above judgement in Civil Appeal Nos.8337-8338 of 2017 vide judgment dated 31st August, 2017. The Hon’ble Supreme Court has adverted to Section 7, at para 28, which reads as under:

“28. When it comes to financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1



[Signature]
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is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

8. Therefore, we are of the considered opinion that the instant application is filed strictly in accordance with the extant provisions of the Code and debt and default is established by the Financial Creditor by submitting substantial evidence in support of the claim and also suggested a qualified Resolution Professional namely Shri Raghunathan Krishnasamy, with Registration No. IBBI/IPA-002/IP-N00419/2017-18/11200, who also filed written Consent in Form-2 dated 18.02.2019 and necessary declaration. Therefore we are of the prima facie opinion that said IRP is eligible to be appointed as IRP in this case. Hence, the instant Company Petition is fit case to admit



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by initiating CIRP appointing by IRP, and declaring moratorium etc. in respect of the Corporate Debtor.


9. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a) and other extant provisions of the IBC, 2016, we hereby admitted C.P.(IB)No.209/BB/2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Respondent/Corporate Debtor with the following consequential directions:

- 1) **Mr.Raghunathan Krishnasamy**, bearing **Registration No. IBBI/IPA-002/IP-N00419/2017-18/11200**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/ Corporate Debtor namely M/s.Amintha Infrastructure Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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 Securitisation



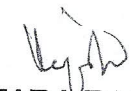
and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- 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;
 - e) 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;
 - f) 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;
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
 - 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
 - 5) Post the case for report of IRP on 10.10.2019.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

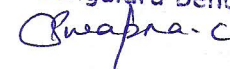
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(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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Deputy/Registrar
National Company Law Tribunal
Bengaluru Bench



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