

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

C.P. No. 1347/MB/C-II/2019

Under section 7 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

**Good Value Financial Services Private
Limited**

[CIN: U31909MH2006PTC165650]

...Financial Creditor

(Petitioner/Applicant)

Versus

Peacock Construction Private Limited

[CIN: U45400MH2009PTC194913]

...Corporate Debtor

(Respondent)

Order Delivered on : 31.12.2019

Coram:

Hon'ble Member (Judicial) : Mr. M.K. Shrawat

Hon'ble Member (Technical) : Mr. Chandra Bhan Singh

Appearances:

For the Financial Creditor : Mr Pranav Shah, Advocate i/b Mr
Abhishek Adke, Advocate

For the Corporate Debtor : Ms Neha M Shah i/b Maniar
Shrivastav Associate

Per: M.K. Shrawat, Member (Judicial)

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Good value Financial Services Private Limited ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Peacock Construction Private Limited ("the Corporate Debtor"). The Petitioner/Applicant i.e. Good value Financial Services Private Limited has furnished information in Form 1 under Rule 4 of the

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Insolvency and Bankruptcy Code 2016, Application to Adjudicating Authority Rules 2016, in the capacity of 'Financial Creditor' on 03.04.2019.

2. In the requisite Form, Under the Head Particulars of Financial Debt the total Debt granted is stated to be a sum of

Date	Cheque No.	Amount (Rs.)
28.10.2009	000018	5,25,00,000/-
18.12.2010	000488	10,00,000/-
Total		5,35,00,000/-

Total of Rs.5,35,00,000/- (Rupees five crore thirty-five lakh only) as principal as on 28.03.2019 along with Rate of interest @ 18% compounding quarterly has been mentioned in the requisite Form. The total amount of default thus calculated is stated to be Rs.28,62,55,961/-. The date of default is 13.04.2018.

3. The Corporate Debtor is a Private company limited by shares and incorporated on 13.08.2009 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45400MH2009PTC194913. Its registered office is at Shop No. 10, Mithila Shopping Centre, Ground Floor, V M Road, Juhu scheme, Vile Parle (West), Mumbai - 400049. Therefore, this Bench has jurisdiction to deal with this petition.
4. **Submission made by the Financial Creditor: -**

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- 4.1 The Financial Creditor had advanced on 28.10.2009 Rs.5,25,00,000/- and on 18.12.2010 Rs.10,00,000/- vide two different cheques a loan aggregating to Rs.5,35,00,000/-.
- 4.2 The Financial Creditor submits that The Corporate Debtor had falsely alleged that Rs.5,35,00,000/- was not provided as a loan but as an advance for acquiring from the Corporate Debtor, floor space index of 15,500 square metres to be consumed on portion of the larger Property.
- 4.3 The Financial Creditor thereafter addressed a letter dated 28.03.2019, reiterating that the amount of Rs.5,35,00,000/- was an advance by way of a loan and that the same was repayable on demand along with interest at the rate of 18% interest on quarterly interest. Vide said letter dated 28.03.2019 the Financial Creditor has demanded the loan back and refuted all other excuses of the Debtor, as claimed by the Petitioner.
- 4.4 The Applicant has also in its Petition enclosed a copy of the "Recall and Demand" Notice to the Respondent dated 13.04.2018 addressed for making payment of dues.
- 4.5 The Applicant in furtherance of his case has enclosed copies of Bank Certificate and bank Statement issued by Bank of India, Malad (West) which clearly testifies the "Debt" and also "Default" on the part of the Corporate Debtor as existed in the books of the Applicant affirming the Loan advanced.
5. The copy of the Petition was served on the Corporate Debtor vide letter dated 02.04.2019. Necessary Proof of service in this regard have been placed on record by the Petitioner.
6. **Submission by the Respondent/Corporate Debtor: -**
- 6.1 The Financial creditor has not produced document on record which would record charging of any interest as well as there is

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no contract between the parties for charging the rate of interest.
There is no contract for compounding of interest.

6.2 The document placed on record evidence contrary to the claim, the ledger confirmation relied upon by the Applicant only records and reflect principal amount and not any amount towards interest. In spite of that, no objection was raised by the Applicant at any stage.

6.3 The Financial Creditor has provided its own account which is contrary to the actual account. The Applicant never debited interest in its own account. The Applicant's accounting is on accrual basis; therefore, they were required to debit interest in the account of Respondent maintained with the Applicant and accordingly treat the same as income. The Applicant has never done that. In fact, they have produced false and fabricated accounts of its own.

6.4 The Financial Creditor's contention of loan, if it has to be accepted then there is no term defined or produced which would signify that when the payment was required to be made. Therefore, there is no contract or agreement produced on record which would show when the default has taken place. In view thereof, it is respectfully submitted that it is not possible to ascertain from Applicant's pleading that debt exist and default occurred.

6.5 The Financial Creditor's case is that interest is payable quarterly. Admittedly, no payment is ever made towards interest by the Respondent. Assuming Applicants case to be true and correct, in that event that default took place on non-payment of interest which as per Applicant is due and payable since 2010. Accordingly, the cause of action accrued in 2010.

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6.6 The Financial Creditor's claim therefore on face of it is barred by law of limitation. The Financial Creditor's claim proceed on the basis that default occurred on 13.04.2018 i.e. absolutely false and bogus and clever attempt to bring the claim within limitation.

Findings: -

7. This Bench heard the arguments of the Financial Creditor and perused the records.
8. It is established that debt is due on part of the Corporate Debtor which is corroborated from Confirmation of Accounts dated 01.04.2011, 01.04.2017 and 01.04.2018, Bank certificate issued by Bank of India, Malad (West) dated 30.03.2019 and Bank statement issued by Bank of India evidencing a sum of Rs. 5,35,00,000/- credited to the Corporate Debtor.
9. It is claimed that on the date of default the total debt due was Rs. 28,62,55,961/-, however, the charging of interest was contested. At this juncture it worth to place on record the definition of " Financial Debt" as prescribed u/s.5(8) & (f) of The Code wherein a Financial Debt means a debt along with interest, **if any**, which is disbursed against the consideration for the time value of money and includes any amount raised under any transaction having commercial effect of a borrowing. The term "if any" has been adjudicated upon by Hon'ble Courts and held that in case of absence of Interest the Debt is still qualifies as defined under this Section, if it contains commercial effect of the borrowing. Therefore, under the fitness of circumstances we hereby hold that the principal amount in question is the Financial Debt, however, the question of quantum of interest is to be verified and ascertained by the Resolution Professional on the basis of the verification of the accounts of both the parties.

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10. On going through the facts and submissions of the petitioner and upon considering the same, the Financial Creditor has established beyond doubt that the loan was duly sanctioned and duly disbursed to the Corporate Debtor and that there has been default in payment of the Debt by the Corporate Debtor.
11. The Financial Creditor has proposed the name of **Mr Arun Kapoor**, Registration No. IBBI/IPA-003/IP-N00030/2017-2018/10230, 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 along with a copy of his Certificate of Registration.
12. 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.
13. The petition bearing **C.P. No. 1347/MB/C-II/2019** filed by **Good value Financial Services Private Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Peacock Construction Private Limited [CIN: U45400MH2009PTC194913]**, the Corporate Debtor, is **admitted**.
14. There shall be a moratorium under section 14 of the IBC, in regard to the following:

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- 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.
15. 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. That 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;
16. 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

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the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

17. 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.
18. **Mr Arun Kapoor**, Registration No. IBBI/IPA-003/IP-N00030/2017-2018/10230, having address at G-601, Army Co-operative Housing society, Sector 9, Nerul (East), Navi Mumbai – 400706, Maharashtra, 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 issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
19. 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.
20. The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one 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).
21. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and

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email immediately, and in any case, not later than two days from the date of this Order.

22. 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.
23. Ordered accordingly.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

31.12.2019
SAM

Sd/-

M.K. SHRAWAT
Member (Judicial)