

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

CP (IB) No.898/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Arham Fintrade LLP

[LLPIN: AAD-9375]

...Financial Creditor

V/s

Vjaydeep Developers LLP

[LLPIN: AAF-8112]

...Corporate Debtor

Order Dated: 04.10.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Prakhar Tandon, Advocate.

For the Respondent(s) : Mr. Shretima Bagri, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P.(IB) No.898/NCLT/MB/C-IV/2021 filed by Arham Fintrade LLP, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against

Vjaydeep Developers LLP, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Ms. Manish Manshukhlal Shah, Designated Partner of Financial Creditor vide its Board Resolution dated 04.05.2021, claiming total default amount as under:

Principal Outstanding	Rs.3,00,00,000/-
Interest	Rs.3,86,98,545/-
Total	Rs.6,86,98,545/-

3. The date of Default is 31.12.2018. Petition is filed on 25.08.2021.
4. The case of the Financial Creditor is as under:
- a) The Financial Creditor submits that the Financial Creditor entered into an agreement of sale dated 09.11.2017, with the Corporate Debtor for Development/Purchase/Allotment of Apartment No.1 on the Ground Floor stacked with three parking space, of a proposed building called "Victory Exquisite", to be constructed on a property situated at Ville Parle (E), Mumbai, for an amount of Rs.3,00,00,000/- (Rupees three crores only). A copy of the Agreement of Sale for the said flat entered into between the Corporate Debtor and Financial Creditor at pp 12-83 of the Petition.
- b) The Financial Creditor submits that in accordance with clause 4.1 of the said Agreement the Financial Creditor herein deposited Rs.3,00,00,000/- (Rupees three crores only) as against allotment of the said Apartment. A copy of the bank statements evidencing payments made to the Corporate Debtor at pp 84-97 of the Petition.

- c) The Financial Creditor submits that since, the Corporate Debtor was unable to construct the said building as and when promised by them to the Financial Creditor, they promised to refund the Corporate Debtor the entire amount of Rs.3,00,00,000/- (Rupees three crores only) along with 36% interest compounding quarterly.
- d) The Financial Creditor was constrained to send a letter dated 31.03.2019, seeking repayment of dues along with interest. The Corporate Debtor replied to the said letter vide its reply dated 15.04.2019 wherein the Corporate Debtor admitted their debt and sought for some time to repay the Financial Creditor. A copy of the said reply is attached to p.99 of the Petition.
5. The Corporate Debtor has filed its Affidavit of Reply and submits as under:
- a) The Corporate Debtor was greatly affected by the global slow economic down prior to Covid-19 pandemic. The Corporate Debtor was unable to raise finance to complete the work of construction of project.
- b) The Corporate Debtor agreed that the Financial Creditor has paid Rs.3,00,00,000/- (Rupees three crores only) as against the allotment of the property to the Corporate Debtor. The Corporate Debtor under the amount given by the Financial Creditor was converted into a loan vide letter dated 31.03.2019, however, due to financial crises and due to pandemic of Covid-19, the Corporate Debtor is not able to repay and seek time of six months for re-payment of the same.

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- c) The Corporate Debtor presently does not have the requisite financial capacity to raise finances in order to complete the project.
6. The Financial Creditor has submitted the Bank Statement for period of 01.04.2017 to 31.03.2018 which reflects the outstanding amount of Rs.3,00,00,000/- (Rupees Three Crores only). The Bank Statement is attached at p. 84 as Annexure 'E' of the Petition.

Findings:

7. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
8. We have prudently gone through the pleadings available on record. The Financial Creditor entered into an agreement of sale dated 09.11.2017 with the Corporate Debtor for Development Allotment of Apartment. The Financial Creditor has paid Rs.3,00,00,000/- (Rupees three crores only) to the Corporate Debtor for against the Agreement.
9. The Corporate Debtor has not disputed the claim amount nor denied the Agreement entered between the parties.
10. It is observed by the Bench that the Corporate Debtor has replied vide its reply dated 15.04.2019 to the letter 31.03.2019 issued by the Financial Creditor stating inability to pay the dues. The Corporate Debtor has also showed its inability to pay the dues in its reply.
11. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore 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.

12. The application is complete and has been filed under the proper form and well within limitation. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.
13. The Applicant has proposed the name of Mr. Vishnu Kant Kabra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P02178/2021-2022/13747] 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

14. This Application being C.P. (IB) No. 898/NCLT/MB/C-IV/2021 filed by Arham Fintrade LLP, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Vjaydeep Developers LLP, 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. Vishnu Kant Kabra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P02178/2021-2022/13747] 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) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) 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/-
Manoj Kumar Dubey
Member (Technical)
04.10.2022

Sd/-
Kishore Vemulapalli
Member (Judicial)