

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

CP (IB) 2177/MB-IV/2019

Under section 7 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Ketki Shah Talati

...Financial Creditor

Versus

**Kasata Hometech (India) Private
Limited**

...Corporate Debtor

Order Delivered on 01.10.2019

Coram:

Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

Appearances:

For the Financial Creditor : Ms Kalyani Talunkar
For the Corporate Debtor : M/s LJ Law

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This matter was heard and reserved for orders on 06.09.2019. However, on 16.09.2019, a mention was made in open Court by

the Counsel for the Corporate Debtor to the effect that the parties will settle the matter amicably within a week, and requesting that orders be not pronounced. We, therefore, posted the matter on the board on 23.09.2019 as Item No.12. On that date, there was no representation on behalf of the parties. We adjourned the matter to 30.09.2019 for reporting settlement. On 30.09.2019, the matter was again brought on board. Again, there was no representation on behalf of the parties. Therefore, we are proceeding to pronounce the order on the present Petition today (01.10.2019) in open court.

2. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Ketki Shah Talati ("the Financial Creditor"), an individual, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Kasata Hometech (India) Private Limited ("the Corporate Debtor").
3. The Corporate Debtor is a Private company limited by shares and incorporated on 20.07.2009 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45202MH2009PTC194229. Its registered office is Shop No.5, Case Blenca Destination Architecture, Plot No.45, Sector 11, CBD-Belapur, Mumbai, Maharashtra 400614. Therefore, this Bench has jurisdiction to deal with this petition.

4. The present petition was filed on 10.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹51,00,000.00 (Rupees fifty-one lakh only) as principal and ₹9,09,845.00 (Rupees nine lakh nine thousand eight hundred and forty-five only) as interest as on 01.10.2017, which is the date of default.
5. The case of the Financial Creditor is that A Debenture Holders' Representative Agreement dated 29.03.2016 was entered into between Kasata Hometech India Private Limited, Milestone Trusteeship Services Private Limited and Karvy India Realty Limited. The petitioner subscribed to two sets of Non-Convertible Debentures (NCDs), issued under Tranche 1, Series 1 and Series 4.
6. Under Tranche 1, Series 1, the petitioner subscribed to 30 NCDs on 07.04.2016. Under Tranche 1, Series 4, the petitioner subscribed to 21 more NCDs on 06.05.2019. Payments for these NCDs were made into the bank account of the Corporate Debtor. Product Notes have been placed on record as **Exhibit 'P6'** at pp.53-57. Bank statements are also attached at **Exhibit 'P7'** (in respect of Tranche 1, Series 1) & **'P8'** (in respect of Tranche 1, Series 4) at pages 81-82. The Demat Holding Statement at p.83 reflects the Debenture Holding Statement on the part of the Financial Creditor. The total debt due and payable to the Financial Creditor is ₹59,09,845.00 (Rupees sixty

lakh nine thousand eight hundred and forty-five only), as mentioned at page 9.

7. M/s LJ Law appeared on behalf of the Corporate Debtor and made their submissions.
8. In its reply dated 05.09.2019, the Corporate Debtor has stated that it is financially sound and commercially solvent. It has an asset value of more than ₹39 crore. It also has an inventory of finished and unfinished stock off more than ₹80 crore. It is a going concern that provides employment to more than 100 persons.
9. The Corporate Debtor has further submitted that the petition is against the letter and spirit of the terms of the Debenture Trust cum Mortgage Deed dated 28.03.2016, in terms of which action in case of any default can only be initiated after a decision by the Majority Debenture Holders. The term "Majority Debenture Holders" has been defined at p.55 of the Reply, to mean "such number of Debenture Holders holding 75% of the nominal value of the then outstanding Debentures [para (v), page 5 of the reply]. The Debenture Trustee on behalf of the Debenture Holders can initiate proceedings against the Corporate Debtor in accordance with the provisions of the Debenture Trust cum Mortgage Deed dated 28.03.2016 [annexed at pages 49-127 of the Reply] and not otherwise.

10. The Corporate Debtor has further stated that it has serviced the interest to the Debenture Holders. Despite adverse market conditions, the Corporate Debtor constructed and completed two out of three projects in or around the year 2018. However, due to overall depreciation in the market conditions of the real estate business, there was drastic reduction in the sale of the units in the projects. About ₹17.52 crore is still receivable from the sold units. The underlying security is much more than the claim of the Debenture Holders.
11. A legal notice dated 14.05.2019 was sent by the Financial Creditor to the Corporate Debtor, calling upon the Corporate Debtor to make payment of the sum of ₹59,09,845/- (Rupees fifty-nine lakh nine thousand eight hundred and forty-five only), and warning the Corporate Debtor that in case there is no response, the Financial Creditor will be constrained to file an application under section 7 of the IBC.
12. We have heard the arguments of both sides and perused the records.
13. We have noted that the reply of the Corporate Debtor that it is a going concern with over 100 employees, an asset value of more than ₹39 crore, and an inventory of finished and unfinished stock of more than ₹80 crore. However, under the IBC architecture,

the shift is from “inability to pay” to “existence of default.”¹ Therefore, the present petition cannot be decided on the basis of existence of employees, or asset value of the Corporate Debtor or the inventory of stock available. It will have to be decided on the basis of existence of default. The other argument that action in case of any default can only be initiated after a decision by the Majority Debenture Holders cannot be countenanced, because that would amount to defeating the provisions of the IBC. There can be no estoppel against a statute. Therefore, the Financial Creditor is clearly within her rights to file the present petition.

14. It is noted that the Corporate Debtor has admitted the liability by the letter dated 05.02.2019, at pp.122-123 of the Petition. The Corporate Debtor had sought time till 25.03.2019 to repay all the outstanding dues. However, until the hearing of the petition on 06.09.2019, the Corporate Debtor has not settled the outstanding dues. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of the minimum amount of one lakh rupees stipulated under section 4(1) of the IBC.
15. Therefore, the default stands established and there is no reason to deny the admission of the Petition. The application made by the Financial Creditor is complete in all respects as required by law.

¹ Hon’ble Supreme Court in *Swiss Ribbons Pvt Ltd & another v Union of India & others* [2019 (2) SCALE 5]

In view of this, this Tribunal admits this Petition and orders initiation of CIRP against the Corporate Debtor.

16. The Financial Creditor has proposed the name of **Mr Jugraj Bedi**, Registration No. IBBI/IPA-001/IP-P00731/2017-18/11208 as the Interim Resolution Professional (IRP) 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 copy of the Certificate of Registration.
17. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP(IB) No.2177/MB-IV/2019** filed by **Ketki Shah Talati**, 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 **Kasata Hometech (India) Private Limited [CIN: U45202MH2009PTC194229]**, the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (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 Operational 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.
- (c) 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;

- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) 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.
- (f) **Mr Jugraj Bedi**, Registration No. IBBI/IPA-001/IP-P00731/2017-18/11208, having address at JSBA House, No.1250, Ground Floor, Dr Mukherjee Nagar, New Delhi, 110009 [email: Jugraj.bedi@gmail.com, Mobile: +91-9810272652], 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 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.

- (g) 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.
- (h) 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).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) 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

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Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

01.10.2019

Sd/-

RAJASEKHAR V.K.
Member (Judicial)