IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (I&B) 3244/NCLT/MB/2018
Under Section 7 of the IBC, 2016

In the matter of
Indiabulls Housing Finance Limited
...Financial Creditor

V/s
Aashita Builders Private Limited
...Corporate Debtor

Order delivered on: 27.2.2019

Coram: Hon'ble Mr. V.P. Singh, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Senior Counsel Mr. Gaurav Joshi, Counsel Mr. Chirag Kamdar, Adv. Mr. Nanki GS., Adv. Ms. Paridhi Saraf

For the Respondent: Adv. Mr. Nikhil Ratti Kapoor

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (IBC) by the financial creditor namely **Indiabulls Housing Finance Limited** against the Corporate Debtor namely **Aashita Builders Private Limited** to initiate corporate insolvency resolution process against the corporate debtor. The amount claimed to be in default as on 24.8.2018 is Rs. 63,76,39,587 along with TDS for an amount of Rs. 1,34,49,890/-.

2. The Financial Creditor has stated that loan amounting to Rs. 54,00,00,000/- was advanced to the Corporate Debtor under the Loan Agreement dated 28.9.2015 and the Addendum dated 30.9.2015. As per the Loan Agreement, the rate of interest is 18.10% pa. Through the Addendum dated 30.9.2015, Mr Vikas Kasliwal and M/s Shree Ram Urban Infrastructure Limited were added as guarantors to the loan advanced. The Loan Agreement as per Schedule II provided for the repayment in 60 equal monthly instalments commencing from 5.10.2015 to 5.10.2020.

3. The Financial Creditor has stated that the Corporate Debtor failed to pay the instalments after 1.11.2016. Further stated that due to a breach of the terms of the Loan Agreement read with the Addendum, the Financial Creditor recalled the entire outstanding loan facility by a notice dated 6.8.2018 issued under Section 13(2) of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. The Financial Creditor has in Part-V of Form 1 provided details of the security for the amounts advanced to the Corporate Debtor. The Financial Creditor has annexed CIBIL Report which shows that an amount of Rs. 54,00,00,000/- sanctioned on 30.9.2015 by the Financial Creditor has an outstanding balance of Rs. 46,98,00,000. The Financial Creditor has also annexed a copy of the statement of account of the Corporate Debtor as maintained by the Financial Creditor.

5. The Financial Creditor has proposed the name of Mr Ravi Prakash Ganti having Registration no. IBBI/IPA-002/IP-N00102/2017-18/10245 as Interim Resolution Professional.

6. The Computation annexed to the petition by the Financial Creditor is reproduced below:

Loan Account No.	S000238985
Applicable Interest Rate	18.10%
Recall Amount (In Rupees)	62,61,51,003
Interest till 24.08.2018 (In Rupees)	1,14,88,584
No of Days	37
Total Outstanding as on 24.08.2018 (In Rupees)	63,76,39,587
Pending TDS (In Rupees)	1,34,49,890

7. The Corporate Debtor has filed an affidavit-in-reply dated 11.12.2018 stating, *inter-alia,* the following:

   a) The Financial Creditor has vested interest in the flagship real-estate project known as 'Palais Royale' undertaken by the company known as Shree Ram Urban Infrastructure Limited ("SRUIL"). It is submitted that the Petitioner is a partner of SRUIL and time and again a party in the financial decision making process of SRUIL and its connected companies. The Petitioner provided loans to the associate companies of SRUIL so that the amounts could be transferred to SRUIL to enable SRUIL to repay its loans taken from the Petitioner. It is submitted that the Petitioner thus was aware of the financial hardships faced by the SRUIL and despite, it advanced loans to the associate companies of SRUIL including the Respondent. The Corporate Debtor submitted that the Petitioner advanced monies to group companies/associate companies/sister concerns of

SRUIL. It is submitted that the amount of Rs. Fifty-four crores were remitted directly to SRUIL on 30.9.2015 in a single payment.

b) The funds disbursed do not fall under the definition of Section 5(8), IBC as the funds have not been disbursed against the time value of money and further submitted that the funds were disbursed for the Corporate Debtor's use, but instead were advanced so that they could be sent to SRUIL to repay the Financial Creditor. Therefore, the parties do not share the relation of Financial Creditor and Corporate Debtor.

c) The entire modus operandi of the Financial Creditor's dealings with SRUIL and its related entities, including the Respondent herein requires a forensic audit.

d) The amount claimed to be in default is different in part IV of the petition and notice under Section 13(2) of the SARFAESI Act.

e) SRUIL and the Corporate Debtor will be in a position to pay the outstanding dues of the Financial Creditor once the sale of flats is complete.

8. The Financial Creditor has rebutted the defences raised by the Corporate Debtor and stated that the alleged motive behind the sanctioning of loan is irrelevant for a petition under Section 7, IBC. The Financial Creditor has produced a letter dated 26.9.2015 of the Corporate Debtor stating that the loan of Rs. Fifty-four crores are availed for the acquisition and development of residential units.

9. We have heard the parties and perused the record.

10. The Financial Creditor had disbursed an amount of Rs. Fifty-four crores to the Corporate Debtor under the Loan Agreement dated 28.9.2015 and the Addendum dated 30.9.2015. The Corporate Debtor defaulted in re-payment of instalments. Subsequently, the Financial Creditor issued a notice dated 6.8.2018 under Section 13(2), SARFAESI Act recalling the loan facility. The Financial Creditor has annexed CIBIL Report reflecting that dues are outstanding.

11. The defences raised by the Corporate Debtor that amounts were meant for SRUIL and not for the use of Corporate Debtor and the relationship of the Petitioner and Respondent does not fall under IBC are untenable given the documents annexed to the petition which show disbursement of loan to the Corporate Debtor. The defence regarding mismatch in the claim amount is untenable given the order passed by

Hon'ble NCLAT in the matter of *The Dhar Textile Mills Ltd. vs Asset Reconstruction Company (India) Limited,* Company Appeal (AT) (Insolvency) No. 11 of 2019. The Corporate Debtor's averment in reply that it will be in a position to pay the debt of the Financial Creditor upon the sale of flats is an admission of debt & default.

12. As per the Section 7 of IBC, a petition has to be admitted if a default has occurred, debt is due, and application filed for initiating CIRP is complete, and no disciplinary proceedings are pending against the proposed resolution professional.

13. This Petition reveals that there is a debt as defined in Section 3(11) of IBC. There is a default within the meaning of Section 3(12) of IBC. The application of the Financial Creditor is complete, amount of more than Rs one lac is due and no disciplinary proceedings are pending against the proposed interim resolution professional. Therefore, this petition deserves to be admitted.

ORDER

14. The petition filed by the Indiabulls Housing Finance Limited for initiating corporate insolvency process under Section 7 of IBC, 2016 against the corporate debtor is admitted. This Bench at this moment declare moratorium u/s 14 of the I&B Code 2016 with consequential directions as mentioned below:

   I. That this Bench at this moment 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 IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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

V. That the public announcement of the corporate insolvency resolution process should be made as per provision specified under section 13 of IBC.

VI. That this Bench at this moment appoints, Mr Ravi Prakash Ganti having registration no. IBBI/IPA-002/IP-N00102/2017-18/10245 as Interim Resolution Professional to carry the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

15. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by email and speed post.

राष्ट्रीय कम्पनी विधी अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
मुंबई न्यायपीठ
MUMBAI BENCH

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)

DT. 27.2.2019

Certified True Copy
Copy issued "free of cost"
On 28. 2. 2019

B. A. Patel

Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India