

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1255 (ND)/2019

In the matter of

M/s. T.R. Real Estate Pvt. Ltd.

**Having its Registered Office at:
208, 4th Floor, Kanchan Sagar 18/1, Old,
Palasia, A.B. Road Indore Madhya Pradesh- 452018**

.....Financial Creditor

V/s

**M/s Kaba Infratech Pvt. Ltd.
Acting through its Director:**

**Having its Registered Office at:
1/5060, Lower Ground, Sant Nagar,
Main Desh Bandhu Gupta Road,
Karol Bagh, New Delhi- 110005.**

**Also at:
701, Padma Tower-1, Rajendra Place-5
New Delhi- 110008**

.....Corporate Debtor

SECTION: 7 of IBC, 2016

Order delivered on 18.09.2019

CORAM:

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SMT. SAROJ RAJWARE, HON'BLE MEMBER (T)**

**Present for the Petitioner: Mr. Sunil Choudhary, Advocate
Present for the Respondent: Mr. Kuldeep Kumar, Advocate**

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27/9/19

ORDER
PER SMT. SAROJ RAJWARE, MEMBER (T)

The petitioner, as a Financial Creditor, has prayed for initiation of the Corporate Insolvency Resolution of the Respondent/Corporate Debtor for its inability to liquidate its debt under Section 7 of the Insolvency & Bankruptcy Code, 2016 (herein after referred to as the "Code").

2: As per averments, the Corporate Debtor is engaged in the business of Infrastructure, including road widening, road construction etc. and had requested the Financial Creditor for a loan of Rs. 6 crores to complete a project awarded by "UP PWD". An agreement dated 20.07.2017 was executed between the Financial Creditor and the Corporate Debtor. The duration of the loan was for 3 months attracting a simple interest of 24% per annum. The Financial Creditor disbursed Rs. 1,89,00,000/- in November, 2017 as per the request of the Corporate Debtor. As per the terms of the agreement, the loan amount was to be repaid within 90 days. However, even after a lapse of 2 months from the due date of return, the Corporate Debtor has failed to pay the loan amount. The Corporate Debtor wilfully defaulted in repaying the debt even after the UP PWD has released substantial payments to them.

3. The Financial Creditor filed a criminal complaint before Tis Hazari Courts Delhi and thereafter a settlement was arrived at between them on 18.07.2018. As per the terms of the agreement, the Corporate Debtor

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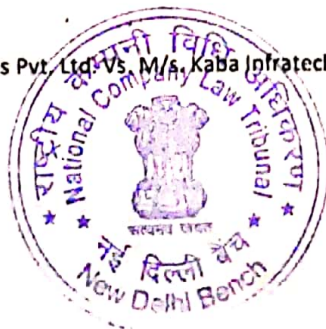
agreed to make the entire payment by 30th November, 2018 along with interest @ 18% per annum. However, the Corporate Debtor made a payment of only Rs. 25 lakhs in instalments and the balance remained unpaid.

4. The Corporate Debtor in its reply filed has denied all the allegations. It has stated that the application is not maintainable as the disbursal of the entire loan of Rs. 6 crores was never made. As per the agreement dated 20.07.2017, the terms and conditions have never been fulfilled which were the soul of the contract. Only 1/3rd of the agreed loan was made in instalments over a period of more than 3 months. Hence returning the amount within 3 months was not be possible. Moreover, due to delay in the project execution, the security amount of Rs. 1.5 crore has not yet been released by the UP PWD.

5. Arguments of both the parties have been heard and the record perused. It is an admitted fact that Financial Creditor had extended a loan of Rs. 1.89 to crores M/s Kaba Infratech Pvt. Ltd. The Corporate Debtor had agreed to repay this amount within 5 months starting from 1st July, 2018 to 20th November, 2018 as per the settlement dated 18.07.2018. The arguments of the Corporate Debtor that the loan agreement was for Rs. 6 crores while only Rs. 1.89 crores was given and that too over a period of 3 months, does not hold ground. As per the agreement dated 20.07.2017, the Financial Creditor had agreed to "Provide Financial help up to an amount of Rs. 6 crores for completion of

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balance work road project". Thus, it is clear that a total amount of Rs. 6 crores was not required to be paid in one-go and amount up to Rs. 6 crores was to be paid as per the needs of the project. Moreover, there was no demand or document to substantiate that the balance funds were asked for or the work of Corporate Debtor suffered due to non-availability of the balance funds. Thus, it is established that the loan and interest @ 24% per annum, later reduced to 1.5% per month, is outstanding against the Corporate Debtor and Corporate Debtor has failed to pay back the money up on 30.11.2018 as per the agreed schedule and there is a default. The Corporate Debtor had admitted the outstanding liability, vide issuance of the cheques in favour of the Financial Creditor. Upon dishonour of the same it culminated in a settlement arrived at between the parties in the complaint case instituted for dishonour of the cheques. The Corporate Debtor subsequently made part repayment of Rs. 25 lakhs only.

6. In view of the facts and circumstances of the case and the documents on record, the prayer of the Financial Creditor merits consideration. This petition is therefore Admitted. A moratorium in terms of Section 14 of the Code comes into effect forthwith, staying:

"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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(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.

Further,

(2) 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.

(3) 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. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

"Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating

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Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

- 7: The Financial Creditor has proposed the name of Mr. Vinay Kumar Singhal as the IRP in this case. His particulars are: Registration No. IBBI/IPA-002/IP-N000624/2018-19/11880, address: 411, 4th Floor, Essel House, Asif Ali Road, near Turkman Gate, New Delhi-110002. Consent and certificate of registration of Mr. Vinay Kumar, are on record. We therefore confirm him as the IRP in this case. He is directed to take all such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21. The IRP shall file his report as per statutory requirements.
8. Copy of the order be communicated to both the parties as well as to the IRP.
- 9: To come on 29th October, 2019 for further consideration.

-Sd-

(Saroj Rajwara)
Member (T)

-Sd-

(Ina Malhotra)
Member (J)

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[Signature]
27/10/19
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003