IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT – III

C.P.(IB)-652(MB)/C-III/2023

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016.)

In the matter of

Idea Trading Company

Having Registered Office at: Room no.2, Building No.1, Ground Floor, Shiv Krupa Complex Aachole Road, Near Aachole Talao Nalasopara (E), Thane-401203.

......Financial Creditor/Applicant

Vs

African Daisy Realty Pvt.. Ltd.

Having Registered Office at: C-108, Sarovar Darshan Tower, Opp TMC Head Office, Panchpakhadi , Thane West - 400602

.......Corporate Debtor/Respondent

Order Delivered on: 24.01.2024

CORAM:

SHRI CHARANJEET SINGH GULATI	**SMT LAKSHMI GURUNG**
HON'BLE MEMBER (T)	**HON'BLE MEMBER (J)**

Appearances:

For the Financial Creditor: Adv. Sunayana Kashid a/w Adv. Vedchetan Patil
For the Corporate Debtor: Adv. Radha Agrawal

<u>Per: Charanjeet Singh Gulati, Member (T)</u>

<u>ORDER</u>

1. The Present **Company Petition (IB)-652(MB)/2023** is filed under section 7 of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Idea Trading Company**, ("Financial Creditor") through its Authorised Representative, *Mr. Janardan More*, who has been duly authorised vide letter dated 06.03.2023 for initiating Corporate Insolvency Resolution Process ("CIRP") against **M/s African Daisy Realty Pvt. Ltd.** ("Corporate Debtor") for default in repaying an amount of **Rs. 3,72,49,178** (Indian Rupees Three Crores Seventy-Two Lakhs Forty-Nine Thousand one hundred seventy-eight only), as on 30.06.2022.

2. Looking at the Company Petition, it reveals that the Corporate Debtor approached the Financial Creditor for availing a loan/finance facility of Rs. 2,20,15,266/- for the purpose of procuring certain tenders and Government works contracts from Jalgaon Municipal Corporation and same was agreed by the Financial Creditor and an amount of Rs. 2,20,15,266/- was disbursed to the Corporate Debtor Account.

3. Further, the detail of the disbursement are as follows:

Date of Disbursal	**Amount**
14.12.2009	Rs.20,78,961/-
21.12.2009	Rs. 19,55,000/-
01.01.2010	Rs. 22,99,200/-
22.01.2010	Rs.24,06,600/-
06.01.2010	Rs.8,54,600/-
25.02.2010	Rs.13,04,700/-
22.03.2010	Rs.8,12,900/-
02.08.2010	Rs.15,24,900/-
10.08.2010	Rs.4,83,000/-
20.08.2010	Rs.5,33,700/-
24.08.2010	Rs.8,00,000/-
24.08.2010	Rs.13,41,900/-
04.09.2010	Rs.10,80,100/-
04.09.2010	Rs.16,67,300/-
14.09.2010	Rs.17,53,600 /-
16.09.2010	Rs. 8,20,000/-
12.05.2011	Rs.2,87,835/-
Total	**Rs. 2,20,15,266/-**

4. On 15.07.2015, both the parties executed Memorandum of Understanding ("MoU") wherein the Corporate Debtor, agreed confirmed and declared that it shall repay the aforesaid sum of Rs. 2,20,15,266/- (Rupees Two Crore twenty lakhs fifteen thousand two hundred sixty-six only) on or before 30.06.2019 and in the event Corporate Debtor failed to repay the said sum, Financial Creditor shall then be entitled to recover the said amounts along with an interest at the rate of 12% p.a. from 12.05.2011 till realization.

5. The relevant paras of the MoU are as follows:

> *"4. That, accordingly, the FIRST PARTY now agrees confirms and declares that, it shall repay the entire loan amount of Rs. 2,20,15,266/-on or before 30th July 2019.*
>
> *5. That the parties agree, confirm and declare that, if the FIRST PARTY fails to repay the said amount on or before 30th June 2019, then the FIRST PARTY shall pay an annual interest of 12% on the said loan amount from 12th May 2011 till realisation."*

6. However, the Corporate Debtor failed to discharge and/or repay its liabilities towards the Petitioner. In consequence to this, the Corporate Debtor vide letter dated 01.07.2019, expressed its deep regret in not honouring its commitment and further requested the Petitioner to defer the repayment for 3 years.

7. Taking into consideration the difficulties faced by the Corporate Debtor, the Financial Creditor agreed to further

extend the repayment time by 3 years and also agreed between the parties that instead of 12% p. the corporate debtor shall pay interest at the rate of 15 % from 01.07.2019 till realization.

8. Financial Creditor also issued the Demand Promissory Note dated 01.07.2019 along with letter of waiver of Notice u/s 98(a) of the Negotiable Instruments Act, 1881.

9. However, the Corporate Debtor failed again to repay the said amount or interest accrued thereto on 30.06.2022. Further, the Financial Creditor issued Demand Notice dated 01.12.2022 for an amount of Rs. 3,56,29,688/- *(Principal Loan Amount of Rs. 2,20,15,266/- + interest amount of Rs. 1,36,14,422/- from 01.07.2019 to 01.12.2022)*. Thereafter the Corporate Debtor replied to the said Demand Notice on 15.12.2022 and sought further time of 3 years for repayment of debt.

10. As per the agreed modified settlement terms, the Corporate Debtor was liable to repay the entire Financial Debt along with the interest at the rate of 15% p.a. on or before 30.06.2022. However, the Corporate Debtor failed again to repay the said amount or interest accrued thereto on 30.06.2022. In view of repeated defaults, the Financial Creditor calculated the liabilities of the Corporate Debtor of Rs. 3,72,49,178/- *(Principal amount of Rs.2,20,15,266/- + 15% Interest amount of Rs. 1,52,33,952/- from 01.07.2019 to 31.03.2023)* as on 31.03.2023.

11. In view of the above background the Financial Creditor has filed the present petition stating that the Corporate Debtor owes to the Petitioner a total outstanding amount of Rs. 3,72,49,178 (Indian Rupees Three Crores Seventy-Two Lakhs Forty-Nine Thousand one hundred seventy-eight only) and mentioned the **date of default as 30.06.2022**. The Financial Creditor states that the total interest amount that is due and payable as on 31.03.2023 is Rs. 1,52,33,952/- and the total amount that is due and payable as on the date of filing this Petition is Rs. 3,72,49,178/- (Rupees Three Crore Seventy-Two Lakhs Forty-Nine Thousand One Hundred Seventy-Eight only).

Reply by the Corporate Debtor:

12. In response to this, the Corporate Debtor has filed a reply and submitted that the Corporate Debtor could not repay the Petitioner only on account of its failure of business due to the lockdown imposed during COVID-19 Global pandemic. Further, the Corporate Debtor has admitted the debt in his reply as well as on the date of final hearing of the Petition.

13. Moreover, the submission of the Financial Creditor that the Financial Creditor issued a Demand Promissory Note dated 01.07.2019 along with a letter of waiver of Notice u/s 98(a) of the Negotiable Instruments Act, 1881 is also accepted by the Corporate Debtor in its reply.

Findings and observations:

14. We have heard the Ld. Counsel for the Parties and perused the record.

15. It is seen from the reply filed by the Corporate Debtor that it has admitted the debt. In spite of numerous reassurances, the Corporate Debtor has repeatedly failed to repay the legitimate dues owed to the Petitioner. This shows the existence of debt and default on the part of the Corporate Debtor. Moreover, the Ld. Counsel for the Corporate Debtor has also admitted the debt, during the final hearing.

16. Here we refer to the judgement of the Hon'ble Supreme Court in the ***Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407***, which clearly held that-

> *"The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.*
>
> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, **the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.** It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become*

due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

(Emphasis Provided)

17. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the "debt" (which may be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application. In the present case, apart from the MoU and disbursement, the Corporate Debtor has admitted the debt in his reply, which proves the clear admission on the part of the Corporate Debtor. Further the amount due has not paid and thus "default" has occurred.

18. In the facts and circumstances of the case, we are of the considered view that the Financial Creditor has proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Also the Petition filed is within limitation as date of default is 30.06.2022 and petition is filed on 25.04.2023. Therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint ***Mr. Dilip Vasudeo Gupta*** as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.

19. Accordingly, this Company Petition is **admitted** with the following directions:

a. **The above Company Petition (IB) 652(MB)/2023 is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against ***M/s African Daisy Realty Private Limited.***

b. This Bench appoints ***Mr. Dilip Vasudeo Gupta,*** *having Registration No:* ***IBBI/IPA-002/IP-N00765/2019-2020/12484,*** *Address:* ***8, Ellora CHS Ltd. Daftary Rd. Malad (E), Mumbai- 400097*** *email:* ***ipdilipgupta@gmail.com*** as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
   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 the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

20. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

21. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Sd/-	Sd/-
CHARANJEET SINGH GULATI (MEMBER TECHNICAL)	**LAKSHMI GURUNG (MEMBER JUDICIAL)**

Arpan, LRA