

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-III

C.P. No. IB-1006/(ND)/2019

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

MR. DEVENDRA KUMAR SHARMA
416, SHALIMAR GARDEN,
EXTENSION-1
SAHIBABAD, GHAZIABAD,
UTTAR PRADESH - 201005

...FINANCIAL CREDITOR

VS.

JBB-EVEREST BUILDTECH PRIVATE LIMITED
SH-3,, IIND FLOOR
VARDHMAN GRAND PLAZA,
MANGALAM PLACE, SECTOR - 3,
ROHINI, DELHI - 110085

...CORPORATE DEBTOR

Coram:

**R.VARADHARAJAN,
Hon'ble Member (Judicial)**

Counsel for the Applicant: MR. RAVI KISHAN CHANDNA AND MS. SHRUTI
A. CHANDNA (ADVOCATES FOR CHANDNA &
ASSOCIATES)

Counsel for the Respondent: MR. INDRESH UPADHYAY AND MR. ABHISHEK
KUMAR ADVOCATE FOR INDRESH
UPADHYAY & ASSOCIATES

ORDER

Date: 09.08.2019

1. The instant application has been filed by Mr. Devendra Kumar Sharma (for brevity 'the Applicant') under the provisions of 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 for initiation of Corporate Insolvency Resolution Process (CIRP) of M/s. JBB-Everest Private Limited (for brevity 'Corporate Debtor').
2. The applicant represents that the Corporate Debtor is in the business of construction of building and construction of flats. It is averred that the Corporate Debtor through its representative approached the Applicant to grant a loan of Rs.25,00,000/- and that the Corporate Debtor would

create a mortgage of one flat in the project floated by the Corporate Debtor in Haryana. Thus the applicant granted a loan of Rs. 25,00,000/- repayable on demand along with 15% p.a. and the Applicant and the Corporate Debtor entered into a Loan Agreement dated 16.08.2017 along with the Promissory note and receipt. The said amount was disbursed by the applicant vide RTGS transaction on 16.08.2017.

3. It is further represented that the Applicant on various occasions has requested the Corporate Debtor to refund the said loan amount, but the Corporate Debtor has failed to repay. Thus the applicant issued a notice dated 10.01.2019 calling upon the Corporate Debtor to refund the then payment.
4. The total amount of debt as claimed by the applicant is Rs. 25,00,000/- (Rupees Twenty Five lakhs) along with the interest @15% per annum from the date of grant as agreed, which fell due on 16.08.2019.
5. The applicant has filed, the copy of the agreement dated 16.08.2019, copy of Promissory Note and receipt , Copy of Bank Statement from Bank of India as on 11.07.2018, which indicates a RTGS transfer on 16.08.2017 with description as JBB EVEREST BUILDTEC.

6. The respondent has filed a reply vide diary no. 0710102079172019/1 dated 20.05.2019 , and admits that it has taken a loan of Rs. 25,00,000/- from the applicant and that due to unprecedented and unforeseen circumstances, it could not repay the loan amount as owed to the Applicant.

7. The petition was listed before the tribunal on 21.05.2019, where the Corporate Debtor was directed to file an affidavit in relation to the acceptance of the liability backed by the Board Resolution passed by the Corporate Debtor, and a copy of audited accounts as on 31.03.2018. Adhering to the order, the Corporate Debtor has filed an affidavit vide diary no 0710102079172019/3 dated 07.06.2019 and at paragraph 2 of the said affidavit has admitted its liability.

8. The amount which is claimed to be in default by the Financial Creditor is to the extent of Rs. 25,00,000/- (Rupees Twenty Five lakhs) along with the interest @15% per annum from the date of grant. However, considering the documents filed by the Financial Creditor and also taking into consideration, the representation of the Respondent Company / Corporate Debtor it is seen that the Corporate Debtor has also admitted the claim as stated in the affidavit filed by the Corporate Debtor. In the circumstances mentioned above and in fact the Corporate Debtor had itself accepted the liabilities and a default of debt due to the Financial

Creditor has also occurred and the "Financial Debt" as defined under section 5 (8) of the IBC, 2016 remaining unsatisfied as evident prima facie, and that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled accordingly this Tribunal is of the considered view that this petition requires to be admitted and that CIRP process is required to be initiated against the Corporate Debtor.

9. From the Application filed it is seen that the Applicant has named an interim resolution professional in Part III of its Application whose details are as follows:

MR. ANIL KUMAR
Reg. no. IBBI/IPA-001/IP-P000144/2017-2018/10308
R/O. 303, CHANDRA GHS LIMITED, GOLF COURSE ROAD,
PLOT NO. 64, SECTOR - 55, GURGAON, HARYANA -122011

10. It is also seen from the Application that the above named IRP has given a written consent in Form 2 wherein he has agreed to accept appointment as an IRP if Application is admitted. Further, it is also evident from the said Form 2 as filed by the IRP signed under his hand that he is not a related party to the Corporate Debtor and that he is eligible to be appointed as an independent director on the Board of the Corporate Debtor. Certificate of registration of the IRP as issued by the

Insolvency and Bankruptcy Board of India (IBBI) and self attested has also been enclosed along with the Application by the proposed IRP and taking into consideration all the above, this Tribunal finds that this is a fit case to be admitted in terms of Section 7 of the Code and thereby initiate corporate insolvency resolution process as against the Corporate Debtor with the following consequences:

- a. Mr. Anil Kumar, having registration no. IBBI/IPA-001/IP-P000144/2017-2018/10308, is appointed as the interim resolution professional and he shall strictly act in accordance with the provisions of the Code and the attendant Rules enjoined upon him;
- b. In terms of Section 14, as reproduced hereunder, the Corporate Debtor shall be under moratorium on the following terms:
 - (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.

- c. However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(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.

- d. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

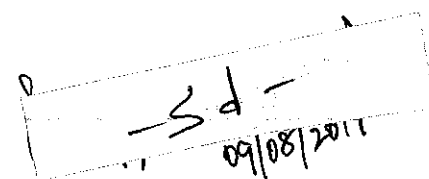
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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

- e. The Board of Directors of the Corporate Debtor shall stand suspended on and from this day as envisaged under Section 17 of the Code.
- f. In terms of Section 7(7)(a) of the Code the registry of this Tribunal is directed to communicate the order to both the Financial Creditor and the Corporate at the earliest. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry and upon receipt shall communicate to the Registrar of Companies, NCT of Delhi and Haryana for his records.

With the above directions, the application stands disposed of.

A rectangular stamp containing a handwritten signature 'Sd -' and the date '09/08/2011'.

(R.VARADHARAJAN)

MEMBER (JUDICIAL)

U.D.MEHTA/K