

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

CP(IB)No.1063/NCLT/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

Industrial Engineering Works

...Financial Creditor/ Applicant

v/s

Sky-Build Private Limited

...Corporate Debtor

Order Dated 13.12.2019

Coram:

RAJESH SHARMA

Member (Technical)

BHASKARA PANTULA MOHAN

Member (Judicial)

For the Applicant: Adv. Rahul Sarada, Adv. Pankaj Uttaradhi,
Adv. Aayush Kothari;

For the Respondent: Adv. Hetal Jobanputra;

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an Application being CP 1063(IB)/MB/2019 filed by **Industrial Engineering Works** the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Sky-Build Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming ₹20,00,000/ (Rupees Twenty Lakh only) as on the date of filing this Application.
2. This Application is filed by Ms. Gita Arun Walia, Partner and Authorised signatory of the Applicant Partnership Firm, duly authorised vide Letter of Authorisation dated 18.02.2019, which is annexed to the Application.
3. This Application has been filed based on the consent terms dated 09.12.2017 filed by the Applicant and the Corporate Debtor in the Summary Suit No.400 of 2016 before the Learned Bombay City Civil Court at Dindoshi, and the order dated 09.12.2017 passed by the Learned City Civil Court at Dindoshi in the abovementioned case that records that the matter is amicably settled between the parties through the consent terms. Copy of the Consent Terms and order dated 09.12.2007 is Annexed to the Application.

4. The Applicant submits that as per the Consent Terms dated 09.12.2017 drawn by the Applicant and Corporate Debtor and Order dated 09.12.2017 it is agreed by the Corporate Debtor to repay a sum of ₹30,00,000/- in three instalments vide Cheque bearing No.000809 dated 30.11.2017, Cheque bearing No.000810 dated 20.12.2017 and Cheque bearing No.000811 dated 30.01.2018 each for a sum of ₹10,00,000/-. It is further pointed out by the Counsel for Applicant from the consent terms that in event of default in payment as per consent terms, the Plaintiff therein, the Applicant in instant Application shall be entitled to the entire amount as prayed in the particulars of the Claim in the said Summary Suit. The Applicant is also granted leave to execute the decree on the basis of a certified copy of the order.
5. It is submitted by the Applicant that the Summary Suit was filed by the Applicant to recover a sum of ₹39,28,254/- which was due and payable on account of default in repayment of the hand loan granted to the Corporate Debtor at rate of interest of 12% p.a. Copy of the Plaint in the Summary Suit No.400 of 2016. Copy of Plaint along with the documents filed with the Plaint are annexed to the Additional Affidavit filed by the Applicant.
6. The Applicant submits that the Corporate Debtor has defaulted in making payments of the 2nd and 3rd instalments as per the consent terms. The dates of default being 01.01.2018 and 31.01.2018. Copies of the Cheque No.000810 dated 30.12.2017 and Cheque No.000811 dated 30.01.2018 along with the Bank Memo dishonouring the cheques are annexed to the Application.
7. The Applicant has filed Affidavit of Service dated 19.08.2019, along with the proof of delivery of the Court Notice, and copy of petition.
8. On perusal of the order sheet dated 17.09.2019 and the attendance, it is observed that Adv. Hetal Jobanputra, appeared on behalf of Corporate Debtor seeking time to file vakalatnama and Affidavit-In Reply. However, the Reply has not been filed to this day. It is imperative to mention here that sufficient

opportunity has been granted to the Corporate Debtor to file its Reply, However, the Corporate Debtor has not filed its Reply.

9. We have heard the Parties and perused the documents on record.
10. On perusal of the Consent Terms and the Order dated 09.12.2017 passed by the Learned Bombay City Civil Judge at Dindoshi in Summary Suit No.400 of 2016, and the Plaint in the said Suit, it is conclusive proof and a matter of record that the Corporate Debtor is liable to repay amounts to the Applicant in accordance with the consent terms. The Total amount as per the consent terms being ₹30,00,000/-.
11. On perusal of the copies of the cheque No.000810 dated 30.12.2017 and Cheque No.000811 dated 30.01.2018 each for a sum of ₹10,00,000/- and the Cheque Dishonour Memos issued by Bank, it is established that the Corporate Debtor has dishonoured the consent terms and defaulted in repaying the due amounts of hand loan.
12. It is relevant to mention here that although sufficient opportunity was provided to the Corporate Debtor, no Reply has been filed.
13. The Applicant had filed summary suit to recover dues arising out of hand loan granted to the Corporate Debtor, the Suit Decree having recorded the consent terms and the Corporate Debtor defaulting to repay the amounts so admitted to repay has defaulted in making the payments. The amount of default being above a sum of Rupees One Lakh only, and the Application having filed on proper form, this Application deserves to be admitted.
14. The Applicant has proposed the name of **Mr. Rajendra Kumar Khandelwal** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P01140/2018-19/11867]** as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code 2016, along with his declaration in Form 2, that no disciplinary proceedings are pending against him.
15. The Application filed under Section 7 of I&B Code, 2016 is complete. The existence of financial debt of more than Rupees

One Lakh against the Corporate Debtor and its default is also proved. Accordingly, the application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor deserves to be admitted.

ORDER

This Application filed under Section 7 of I&B Code, 2016, filed by **Industrial Banking Works**, Partnership Firm, Financial Creditor /Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Sky-Build Private Limited** Corporate Debtor for initiating corporate insolvency resolution process is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this 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 I&B Code shall not apply to –
- (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (b) A surety in a contract of guarantee to a Corporate Debtor
- 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 I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints **Mr Rajendra Kumar Khandelwal**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P01140/2018-19/11867]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
16. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)

13.12.2019