

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

CP 4733 (IB)/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

ICICI Prudential Real Estate AIF I

...Financial Creditor/ Petitioner

v/s

**Sunshine Housing & Infrastructure
Private Limited**

...Corporate Debtor

Order dated 08.05.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr Ravikumar Duraisamy

For the Petitioner: Sr. Adv. J. P. Sen, Adv. Siddharth Ranade and
Adv. Shivani Garg.

For the Respondent: Sr. Adv. Gaurav Joshi, Adv. Bhanik Sahid,
CS Siddharth Doshi, Adv. Garg Shah and
Adv. Prema Gandhi

Per V.P. Singh, Member (Judicial)

ORDER

1. This is a petition being CP 4733/2018 filed by ICICI Prudential Real Estate AIF I, Financial Creditor or Petitioner, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against Sunshine Housing & Infrastructure Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) for default in repayment of principal amount of ₹40,00,00,000/-and interest of ₹16,99,00,000/-. The Petition is filed on 21.12.2018. The Petitioner has annexed a statement showing the calculation of the amount due and payable as on 21.12.2018.
2. The facts of the case are that the Petitioner invested ₹40,00,00,000/- by subscribing to 4,000 unlisted, unrated,

secured, redeemable non-convertible debentures of the face value of ₹1,00,000/- each, with a term of 42 months from the First Tranche Closing Date. The terms of the Debentures are provided in the Debenture Subscription Agreement dated 6.09.2016 (**DSA**) read with the Debenture Trust Deed dated 26.10.2016. The said DSA and the Deed are annexed to the Petition.

3. The details of the Petitioner's ownership of Debentures of the Corporate Debtor is reflected in National Security Depository Limited (NSDL) transaction statement dated 5.12.2018 as well as Annual Return of the Corporate Debtor for the F.Y. 2017-18. The said statement and Annual Return are annexed to the Petition.
4. The Petitioner has sent a notice dated 15.10.2018 to the Corporate Debtor intimating about the occurrence of 'Event of Default' as it has not received the payment for the period 1.10.2018 till the date of the notice. The Petitioner called upon the Corporate Debtor to repay the entire investment amount along with interest.
5. The said investment of the Petitioner was secured by Deeds of Guarantee executed by Corporate as well as Personal Guarantors dated 7.9.2016 who have unconditionally guaranteed the repayment of all amounts due under the investment agreement. The Debentures were also secured by a mortgage. The copy of the Deeds of Guarantee dated 7.9.2016 issued by the Corporate as well as Personal Guarantors of the Corporate Debtor in favour of the IDBI Trusteeship Services Ltd. (Debenture Trustee) is annexed to the Petition. The form along with a certificate for creation of charge is also annexed to the Petition.
6. The Petitioner has also annexed its bank statement for the period 1.7.2016 to 25.10.2018 showing the amount invested by the Petitioner and the interim payments made by the Corporate Debtor.
7. The Corporate Debtor has filed its Affidavit in reply on 10.4.2019 admitting the debt and stating its inability to service the debt by way of interest due to financial difficulty. It is stated in the

Affidavit that the Corporate Debtor does not have funds to either pay the interest or the principal amount.

8. We have heard arguments for both the sides and perused the records.
9. The Petition is filed by Mr Sunil Munot who is authorised to file the present petition vide board resolution dated 24.7.2018.
10. The Petitioner invested ₹40,00,00,000/- by subscribing to 4,000 debentures of the face value of ₹1,00,000/- each, with a term of 42 months from the First Tranche Closing Date. The terms of the Debentures are provided in the DSA dated 6.09.2016 read with the Debenture Trust Deed dated 26.10.2016. The said DSA and the Deed are annexed to the Petition.
11. The details of the Petitioner's ownership of Debentures of the Corporate Debtor is also reflected in the NSDL transaction statement dated 5.12.2018 as well as Annual Return of the Corporate Debtor for the F.Y. 2017-18.
12. The Petitioner has annexed the Debenture Subscription Agreement dated 6.09.2016 and the Debenture Trust Deed dated 26.10.2016 that contain the terms of the Debentures; the NSDL transaction statement dated 05.12.2018 and Annual Return of the Corporate Debtor for the F.Y. 2017-18 showing the Petitioner's ownership of Debentures of the Corporate Debtor; The copy of the Deeds of Guarantee dated 7.9.2016 issued by the Corporate as well as Personal Guarantors of the Corporate Debtor in favour of the IDBI Trusteeship Services Ltd. (Debenture Trustee) and the form along with a certificate for creation of charge is also annexed to the Petition.
13. The Corporate Debtor has admitted the debt and its inability to service the debt by way of interest due to financial difficulty in its Affidavit dated 10.4.2019. It is stated in the Affidavit that the Corporate Debtor does not have funds to either pay the interest or the principal amount.
14. In the light of above facts and circumstances, the existence of debt and default is reasonably established as even admitted by the Corporate Debtor itself.

15. The Petitioner has proposed the name of Mr Rajendra M. Ganatra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-003/IP-N00049/2017-18/10363 as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code, and given his declaration; no disciplinary proceedings are pending against him.
16. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition 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 petition filed under Section 7 of I&B Code, 2016, against the Corporate Debtor for initiating corporate insolvency resolution process is at this moment 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 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 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 at this moment appoints Mr Rajendra M. Ganatra a registered insolvency resolution professional having Registration Number [IBBI/IPA-003/IP-N00049/2017-18/10363 as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
17. The Registry is at this moment 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/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P. SINGH
Member (Judicial)

8th May, 2019