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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
IBA/821/2020**

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **Real Value Promoters Private Limited**

M/s. H.S.Syndicate,

A Partnership Firm Represented by its Partner,
Sandyhya Mehta,
Registered Office at,
No.12, Wallace Garden,
2nd Street, Thousand Lights,
Chennai – 600 006.

... Financial Creditor

-Vs-

Real Value Promoters Private Limited

Ambojini, No.17, Poes Road,
2nd Street, Teynampet,
Chennai – 600 018.

...Corporate Debtor

Order Pronounced on 15th December 2021

CORAM:

Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor: Mr. Abishek Raman, Advocate

For Corporate Debtor: Mr. N.P. Vijay Kumar, Advocate

ORDER

Per: Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

Under Adjudication is an Application that has been filed by
M/s. H.S. Syndicate (hereinafter referred to as "*Financial
Creditor*") under Section 7 of the Insolvency & Bankruptcy Code
2016 (in short, 'IBC, 2016') r/w Rule 4 of the Insolvency &

Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Real Value Promoters Private Limited** (hereinafter referred to as "*Corporate Debtor*"). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is a partnership firm. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Limited Company with CIN:U70101TN1995PTC032687 which was incorporated on 24.08.1995 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at Ambojini, No.17, Poes Road, 2nd Street, Teynampet, Chennai – 600018. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Asir Raja Selvam, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.1,10,00,000/- (Rupees One Crore Ten Lakh only) is being claimed by the Financial Creditor as the Financial debt. Part – V of the Application discloses the details of the documents which have

been filed by the Financial Creditor in order to prove the 'Financial debt', which are as follows;

- a) Memorandum of Understanding dated 11.12.2019 executed between the Financial Creditor and the corporate Debtor.
- b) Proof of transfer of the Principal Amount by the Financial Creditor to the corporate Debtor.
- c) Working / Calculation sheet providing the calculation of the payments made, principal and interest payments which are outstanding.
- d) Admissions of liability by the Corporate Debtor vide statement dated 31.03.2019.

4. The Learned Counsel for the Financial Creditor submitted that M/s. Kochar Finance by way of loan has disbursed a sum of Rs.50,00,000/- to the Corporate Debtor on 24.04.2008. It was submitted that Rs.44,00,000/- had been given to the Corporate Debtor and the interest of Rs.6,00,000/- was deducted from the loan amount on disbursement.

5. It was submitted that in furtherance of the loan, the Corporate Debtor has to repay the loan by making 10 equated monthly payments of Rs.5,00,000/- starting from 25.05.2008 till 25.02.2009. It was further submitted that the Corporate Debtor had frequently delayed in making payments till the 5th instalment and delayed around seven months in making the 6th instalment.

Thereafter, Corporate Debtor had stopped making any payment to M/s. Kochar Finance.

6. It was further submitted that the Corporate Debtor had paid only Rs.29,00,000/- towards Principal Amount and Rs.2,42,000/- towards interest accrued during the defaulted period (between October, 2008 and August 2010). Thus a total amount of Rs.21,00,000/- was due and payable to M/s. Kochar Finance.

7. It was further submitted that on 13.08.2010, the Financial Creditor had taken over the loan facility extended to the Corporate Debtor. Therefore, as of 13.08.2010, the Corporate Debtor has to pay Rs.21,00,000/- to the Financial Creditor herein.

8. It was further submitted that the Corporate Debtor had made few payments to the Financial Creditor from 13.08.2010 until 29.01.2018, only towards interest. Therefore, the Principal Amount due and payable to the Financial Creditor is Rs.21,00,000/- and interest due on Principal Amount from 13.08.2010 had become Rs.44,95,630/-.

9. It was further submitted that the delayed interest calculations and the outstanding Principal Amount payable were not disputed by the Corporate Debtor. Further, the Corporate

Debtor vide account statement dated 31.03.2019 had acknowledged that its liability towards the Financial Creditor is Rs.60,50,500/-.

10. In the meanwhile, the Financial Creditor had filed an application IB/1096/2019 before this Tribunal. Pursuant to that the parties executed a Memorandum of Compromise dated 11.12.2019 wherein the Corporate Debtor had promised to pay Rs.1,10,00,000/- in five instalments. In view of that, the Financial Creditor had withdrawn the application on 13.12.2019.

11. It is further submitted that the Corporate Debtor had defaulted all the instalments starting from 01.01.2020, in turn, Financial Creditor filed the present application to initiate CIRP against the Corporate Debtor.

12. Per contra, the Learned Counsel for the Corporate Debtor averred in the counter that the present application was filed on 17.07.2020, after the introduction of Section 10A according to which the pecuniary jurisdiction of this Tribunal was raised to 1 Crore, but as on date of default i.e. 31.01.2020 (first instalment due date) the due amount was only Rs.50 lakh and argued that the cause of action arises only after 31.03.2020 (third instalment



due date) when the due amount reaches pecuniary jurisdiction of this Tribunal as per Section 10A.

13. It was further averred that the claim of the Financial Creditor is raised from the Memorandum of Compromise (MoC) dated 11.12.2019, a mere perusal of the MoC shows that there is no disbursement of money contemplated in the agreement and there is no provision for "time value of money" in the MoC. As per Section 5(8) of IBC, 2016 for a debt to be a financial debt only when it is associated with "time value of money". Therefore it is submitted that the said MoC does not constitute a financial contract and would not fall within the purview of Section 5(8) of IBC, 2016. In support of above the arguments, Hon'ble Appellate Tribunal order in Amrit Kumar **Agarwal Vs. Tempo Alliances Limited** was placed.

14. Further, the Learned Counsel for the Financial Creditor in the written submission averred that pursuant to the order of this Tribunal dated 14.09.2021, the Corporate Debtor had agreed to enter into a settlement with Financial Creditor and undertaken to pay the Principal Amount in 3 instalments and paid Rs.40,00,000/- towards the first instalment. But, in the 2nd instalment on 15.11.2021, the Corporate Debtor again defaulted and breached the agreed settlement terms.

15. Heard the submissions made by the Learned Counsel for the parties and perused the records. The Learned Counsel for the Financial Creditor has placed on record before this Tribunal a document termed as "Memorandum of Compromise (MoC)", which was entered into between the parties on 11.12.2019, wherein it is seen that the Corporate Debtor has entered into an agreement to repay the said dues to the Financial Creditor in five instalments as follows:

S.No.	Instalment	Amount	Date of Payment
1	1 st	Rs.50,00,000/-	On or before 31 st January 2020
2	2 nd	Rs.15,00,000/-	On or before 31 st February 2020
3	3 rd	Rs.15,00,000/-	On or before 31 st March 2020
4	4 th	Rs.15,00,000/-	On or before 31 st April 2020
5	5 th	Rs.15,00,000/-	On or before 31 st May 2020

And the said document is signed by the Director of the Corporate Debtor and the common seal of the Company is also affixed thereto.

16. It is appropriate to note that on 14.09.2021, the Learned Counsel appeared on behalf of the Corporate Debtor Mr.Vijay Kumar submitted to this Tribunal as follows:

"There were settlement talks between the Financial Creditor and the Corporate Debtor. A week time is given to the Corporate Debtor to make the part payment of approximately Rs.60,00,000/- as agreed between parties.

The balance amount shall also be paid before the next date of hearing.”

17. Further, it is pertinent to note that the above statement made by the Learned Counsel of the Corporate Debtor was after the filing of the Preliminary Counter dated 01.07.2021. In the written submission dated 18.11.2021 filed by the Financial Creditor stated that the Corporate Debtor had paid Rs.40,00,000/- pursuant to the settlement agreed by Corporate Debtor after 14.09.2021 and defaulted in 2nd instalment, which is also not disputed by the Corporate Debtor.

18. Thus, the above records prove that the Corporate Debtor admitted its liability and also defaulted in repayment of the agreed amount which is due and payable to the Financial Creditor. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

19. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

20. The Financial Creditor has proposed the name of one **Mr. ASIR RAJA SELVAM**, having Registration Number **[IBBI/IPA-002/IP-N00498/2017-2018/11554]** as *Interim Resolution Professional* (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

21. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

22. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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 the moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted

during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) *The provisions of sub-section (1) shall not apply to*
- (a) *such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*
 - (b) *a surety in a contract of guarantee to a corporate debtor.*

23. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code 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.

24. Based on the above terms, the Petition stands **Admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Corporate Debtor above named by



the Registry. 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 a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

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