



THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

Company Petition No. (IB)/233(ND)/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Kamal Renu Credit and Invest Private Limited

APPLICANTS/FINANCIAL CREDITOR

Vs.

V4 Infrastructure Private Limited

RESPONDENT/CORPORATE DEBTOR

Order delivered on: 20.07.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

ORDER

PER: SH.DHARMINDER SINGH, MEMBER(JUDICIAL)

The Kamal Renu Credit and Invest Private Limited, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. V4 Infrastructure Private Limited, referred to as the corporate debtor.

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2. It is appropriate to mention that the applicant M/s Kamal Renu Credit and Invest Private Limited is a company registered under the provisions of The Companies Act, 1956 on 11.01.1993 having its registered office situated at 312 Pratap Bhawan, 5 Bahadur Shah Zafar Marg, New Delhi-110002. Mr. Dinesh Kumar, duly authorized on behalf of applicant vide Resolution dated 07.03.2022, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent corporate debtor.
3. The Respondent Company M/s. V4 Infrastructure Private Limited (CIN No. U45201DL2004PTC130535) against whom initiation of Corporate Insolvency Resolution Process has been prayed for having it is company incorporated under the provisions of the Companies Act, 1956 on 11.11.2004 having its registered office situated at 452/15, First Floor, Bhushan Bhawan, Azadpur, New Delhi-110033. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
4. The case of the applicant precisely is that the corporate debtor had availed financial facility from the financial creditor, Kamal Renu Credit and Invest Private Limited by way of loan agreement dated 29.10.2021. Therefore, as per part IV of the application it is claimed that as on 31.01.2022 a sum of Rs. 1,00,00,000/- is due and payable by the respondent company

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5. The Corporate Debtor has filed its reply which are listed here: -

a. That non service of the agreed interest amount by the corporate debtor is not due to any malafide but the same is solely attributed to the sluggish market conditions on account of unprecedented situation due to COVID19 which has severely affected the commercial real estate market, the area of operation of the corporate debtor and also due to the circumstances beyond control of the corporate debtor.

b. Further it is submitted that apart from the sluggish commercial real estate market, the corporate debtor is entangled in slew of court litigations which has further added to hampering of commercial operations of the Judgement debtors.

6. The applicant has filed its rejoinder stating that the Corporate Debtor, itself admitted the claim and non-service of the agreed interest on the said loan. Further it is submitted that vide order dated 29.04.2019 passed by the Hon'ble High Court of Delhi in OMP (ENF.) (COMM), wherein the Corporate Debtor was restrained to transfer and or create any third party rights in its immovable property and not the movable property, the said proceedings are entirely separate and not connected and/or related to the proceedings initiated by the Financial Creditor in the present case in any manner whatsoever. Further it is submitted that there is no bar on the Corporate Debtor to dispose off or deal with its investments/stocks in terms of the said order. Furthermore, the Corporate Debtor has no intention and willingness to



pay the entire amount of default interest upto date i.e. 30.04,2022 and the Corporate Debtor in its reply, itself admitted that as per the terms stated in the loan Agreement (Schedule I of Annexure 2), in case the Corporate Debtor fails to pay the interest accrued for three consecutive months, the Financial Creditor shall have the right to recall the entire loan.

7. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Prabhat Kumar, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P02417/2021- 2022/13656 resident of C-63,Tarang Apartments, Plot No.19, I.P Extension, Patparganj, New Delhi-110092 with email - id. prabhat.agrawal@png.co.in Mr. Prabhat Kumar has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Prabhat Kumar as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.
8. The applicant has placed following documents on record to prove its claim:
 - i. Copy of Loan Agreement dated 29.11.2021 executed between the financial creditor and corporate debtor.

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- ii. Copy of Bank Statements for the period between 1.10.2021 to 31.10.2021 of the financial creditor extending loan to the corporate debtor.
- iii. Copy of Reminder letter dated 15.12.2021 sent by the financial creditor to corporate debtor demanding payment of interest due on the loan till the end of the month of November, 2021.
- iv. Copy of Reminder letter dated 03.01.2022 sent by the financial creditor to corporate debtor demanding payment of interest due on the loan till the end of the month of December, 2021.
- v. Copy of Recovery letter dated 04.02.2022 sent by the financial creditor to corporate debtor demanding payment of interest due on the loan along with interest.
- vi. Copy of Recovery letter dated 10.02.2022 sent by the financial creditor to corporate debtor demanding payment of interest due on the loan along with interest.
- vii. Copy of legal Notice dated 15.02.2022 sent by the Financial creditor to the corporate debtor demanding principal amount of loan due along with interest.
- viii. Copies of Ledger account of the corporate debtor in the books of the financial creditor for the period from 01.04.2021 to 28.02.2022.
- ix. Copy of record of debt with NeSL.

9. Notice by the Authority was issued to which the Corporate Debtor has filled his reply stating therein that they had intentions to repay the loan but could not do the same due to unprecedented situation of COVID19 which has severely affected the commercial real estate market and the area of operation of the corporate debtor. In view of the reply the Corporate Debtor has itself acknowledge committing default in repayment of loan and admitting its liability towards the applicant herein.

10. Needless to say, that an application under Section 7 of the Code is maintainable if the debt is proved to be due and there is default. In view of the Section 4 of the Code, the moment default is of Rupees one

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hundred lakhs or more, an application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

11. The applicant clearly comes within the definition of Financial Creditor. The material placed on record as stated in the paras above further confirms that respondent has debt due and has committed default in repayment of the outstanding financial debt. On a perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.
12. We are satisfied that the present application is complete in all respect. The applicant financial creditor is entitled to move the application against the corporate debtor in view of admitted outstanding financial debt and default of the same by the corporate debtor. The default in repayment of the financial debt is not refuted by the Corporate Debtor.
13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is hereby, admitted.
14. Mr. Prabhat Kumar, having registration number IBBI/IPA-001/IP-P02417/2021- 2022/13656 is appointed as an Interim Resolution Professional for corporate debtor.
15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
16. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Prabhat

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Kumar to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however is subject to adjustment towards Resolution Process cost as per applicable rules.

17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following shall remain prohibited during CIRP:

- (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) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

19. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders.

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20. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
21. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)