

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(Arguments through web-based video conferencing platform)**

**CP (IB) No.162/Chd/Hry/2020**

**Under Section 7, of the IBC 2016**

**In the matter of:**

**Mr. Sandeep Bidani**

S/o Shri Inder Mohan Bidani  
having its address at  
A-132, Ground Floor, M2K Aura,  
Sector-47, Gurugram,  
Haryana-122018

....Petitioner-Financial Creditor

Vs.

**Praxis Developers India Pvt. Ltd.**

having its Regd. Office at  
847, 8th Floor, JMD Meghapolis,  
Sector-48, Sohna Road, Gurugram,  
Haryana-122017

....Respondent-Corporate Debtor

And also at  
Praxis Developers India Pvt. Ltd.  
C/o Azad Hussain (Director)  
C-363, Thathar Colony,  
Amer, Jaipur, Rajasthan-302028

**Judgment delivered on: 06.01.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Petitioner/Financial Creditor : Mr. Piyush Bansal, Advocate

For the Respondent/Corporate Debtor : Mr. Varun Mehra, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**JUDGMENT**

The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Sandeep Bidani (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Praxis Developers India Private Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Sandeep Bidani-petitioner, the Financial Creditor and the affidavit verifying the contents of the petition is on pages 29-30 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure A-1 of the petition. The Corporate Debtor is stated to be incorporated on 26.09.2013. The company has its registered address at 847, 8th Floor, JMD Meghapolis, Sector 48, Sohna Road, Gurgaon HR 122017 IN. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for the disposal of the same are narrated hereunder:

3.1 The Corporate Debtor approached the Financial Creditor to invest in Farm House in their Project i.e. 'Holiday Farms' situated at Tehsil Jamwa Ramgarh, District Jaipur, Rajasthan. Financial Creditor based upon the representations made by the Corporate Debtor, that the Financial Creditor

will get an Assured Return amounting to Rs.51,023/- for a period of 24 months or upto the possession, agreed to invest in Farm House bearing No.J-07 bearing Farmhouse No.J-07, Block 'y' having Farmland area Of approximately 1083.33 square yards comprising of farmhouse area of approximately 1600 square yards and paid a total sum of Rs.47,34,795/- (Rupees forty-seven lacs thirty-four thousand seven hundred and ninety-five only) to the Corporate Debtor by the Financial Creditor, towards total consideration for the aforesaid Farm House.

3.2 An allotment letter dated 20.02.2014 was issued in favour of the Financial Creditor in respect of the aforesaid Farm House. Also on 20.02.2014, the Corporate Debtor issued a letter containing the terms and conditions of the aforesaid investment.

3.3 Thereafter the Corporate Debtor again approached the Financial Creditor to invest in Farmland in their Project i.e. 'Holiday Farms' situated at Tehsil Jamwa Ramgarh, District Jaipur, Rajasthan. The Financial Creditor based upon the representations made by the corporate debtor, the Corporate Debtor shall pay to the Financial Creditor an assured return @ 11% per annum on monthly basis, the Financial Creditor agreed to purchase Farmland bearing Farm No.H-09, Block No. H has a farm area of approximately 1000 square yards in the said project and paid a total sum of Rs.33,00,000/- (Rupees Thirty-Three Lacs only) to the Corporate Debtor by the Financial Creditor.

3.4 Thereafter the Corporate Debtor again approached the Financial Creditor for a finance facility for a sum of Rs.1,00,00,000/- for a period of one year repayable along with interest with an annual rate of 18%.

3.5 Based upon the representations made by the Corporate Debtor, the Financial Creditor and the Corporate Debtor entered into a Secured Finance Agreement, wherein the Financial Creditor extended a loan of Rs.1,00,00,000/- to the Corporate Debtor vide Cheque bearing No.826657 for a period of one year repayable with an interest of 18% p.a. In order to secure the aforesaid amount, the Corporate Debtor handed over the original title Deeds of two Sale Deeds detailed as under:

- a. Khasra No.220/267/5 admeasuring 1 bigha located in the revenue estate of the Village Dhula Tehsil, Jamvaragarh District Jaipur.
- b. Khasra No.220/267/1 admeasuring 1 bigha located in the revenue estate of the Village Dhula Tehsil, Jamvaragarh District Jaipur.

3.6 The Corporate Debtor started defaulting in making the payments towards the assured returns and also failed to pay the loan extended by Financial Creditor to the Corporate Debtor. The Financial Creditor in terms of the aforesaid default on behalf of the Corporate Debtor filed a Company Petition bearing CP (IB) No.74/CHD/ HRY/2018 titled "Sandeep Bidani vs. Praxis Developers India Pvt. Ltd." under Section 7 of the Insolvency and the Bankruptcy Code, 2016.

3.7 This Adjudicating Authority admitted the petition described above of the Financial Creditor vide orders dated 06.07.2018 and further vide orders dated 16.07.2018 this Adjudicating Authority formally appointed Mr. Sudhir Kalra as the Interim Resolution Professional on 08.09.2018. An MOU dated 08.09.2018 was entered into between Mr. Azad Hussain i.e. Ex-Director of the Corporate Debtor and the Financial Creditor, wherein Mr. Azad Hussain i.e. Ex-Director of the Corporate Debtor agreed to get registered sale deeds

executed in the favour of the Financial Creditor in respect of Investment No.1 and 2 and also agreed to adjust the accumulated assured return amounts towards Investment no. 1 and Investment No.2 by providing enhance the developed structure in Investment No.1. Further, the Ex-Director of the Corporate Debtor handed over post-dated cheques amounting to Rs.1,49,55,000/- in settlement towards the claim of Financial Creditor in respect of Investment 3.

3.8 The Ex-Director of the Corporate Debtor paid Rs.16,00,000/- to the Financial Creditor. The Ex-Director of the Corporate Debtor further as per the terms of the aforesaid MOU, got the Farmland and Farmhouse/Villa registered in the name of the Financial Creditor. The Ex-Director of the Corporate Debtor made a payment of Rs. 25,00,000/- to the Financial Creditor.

3.9 Thereafter the Ex-Director of the Corporate Debtor requested the Financial Creditor not to deposit the remaining cheques as the account for which the cheques were issued has insufficient funds. The Ex-Director i.e. Mr. Azad Hussain of the Corporate Debtor again in March 2019, again approached the Financial Creditor and submitted a fresh proposal for the settlement of the remaining claim towards Investment 3 and vide letter dated 20.03.2019 proposed to pay a further sum of Rs.5,00,000/- by end of March 2019 and further promised to pay the balance principal of Rs.54,00,000/- plus interest of Rs.50,00,000/- i.e. Rs.1.04 Crores of the Financial Creditor within one year of 1st April 2019 and monthly payment of interest at 8% w.e.f. 20th April 2019.

3.10 The aforesaid proposal of the Corporate Debtor was accepted by the Financial Creditor at a reduced rate of interest of 7% p.a. and a monthly repayment of principal and interest and it was recorded in the Minutes of the Meetings of Committee of Creditors on 31.03.2019. In terms of the aforesaid minutes, the Corporate Debtor provided post-dated cheques towards part discharge of its liability in the 6th meeting of the COC itself. The Ex-Director of the Corporate Debtor requested not to present any cheque to the bank unless the application under section 12A of the Insolvency and Bankruptcy Code, 2016 filed by the Resolution Professional is allowed by this Adjudicating Authority.

3.11 The application bearing CA No.301/2019 was filed under section 12A before this Adjudicating Authority and the said application was allowed vide order dated 03.05.2019 and accordingly Petition bearing No. CP(IB) No.74/Chd/Hry/ 2018 was disposed of.

3.12 The Corporate Debtor requested the Financial Creditor in October 2019 to deposit the cheque of Rs.18,00,000/-(Rupees Eighteen Lacs only) on 25.08.2019 and stated the same shall be cleared on presentation. However, the Financial Creditor when presented with the cheque bearing No.000276 dated 25.08.2019 amounting to Rs.18,00,000/-, the same returned dishonored due to the reason "Funds Insufficient" vide memo dated 18.10.2019.

4. In Part-III of Form No.1, Mr. Sudhir Kalra, Registration No.IBBI/IPA-001/IP-P00768/2017-2018/11314 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 04.02.2020 is attached at Annexure 2 of the petition.

5. It is stated in Part-IV of Form No.1 that the financial creditor has provided a loan facility of Rs. 1,00,00,000/- and the total debt amount is Rs. 1,16,26,670/-. A Copy of the Secured Finance Agreement dated 18.07.2014 of the financial creditor (Annexure A-6). Copies of MOU dated 08.09.2018 along with post-dated cheques (Annexure A-10). Copy of proposal letter dated 20.03.2019 (Annexure A-12). Copy of cheque bearing No. 000276 along with returning memo (Annexure A-16).

6. The notice of this petition was issued to the respondent-corporate debtor on 01.12.2020 as to why this petition be not admitted. A reply on behalf of the respondent-corporate debtor is submitted vide Diary No.00270/2 Dated 08.07.2021 by Mr. Azad Hussain, Director of the respondent-corporate debtor, affidavit authorizing him on behalf of the respondent is attached at Page No.14-16 of the reply.

7. The corporate debtor through its reply has stated that after the settlement against investment No. 1 and investment No. 2, the only debt against the financial creditor was against investment No. 3. As per the MOU dated 08.09.2018, a due amounting to Rs. 1,49,55,000/- was acknowledged by Mr. Azad Hussain, Director of the corporate debtor as against the total loan taken from the financial creditor amounting to Rs. 1 Crore. It is further stated that Rs. 35,95,000/- remained against the loan amount of Rs. 1 Crore. The corporate debtor has sought six months time period for repayment at the time of filing of reply i.e., on 08.07.2021 but the same has not been paid till date. The reason assigned is that it could not pay the interest amount due to the worst effect of Covid and economic hardships.

8. The petitioner has filed a rejoinder vide Diary No. 00270/3 dated 2.08.2021, wherein the averments made by the corporate debtor have been denied. Further, the petitioner relied on MOU dated 08.09.2018.

9. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the written submissions and records available carefully.

10. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the financial creditor when presented the cheque bearing No. 000276 dated 25.08.2019 amounting to Rs. 18,00,000/-, the same returned dishonoured due to reason "funds insufficient" vide memo dated 18.10.2019. Therefore, the date of default is 18.10.2019 and the present petition is filed vide Diary No.1231 dated 14.02.2020. Therefore, the present petition is filed within limitation.

11. Another issue for consideration is whether there is a default in payment or not. As per Section 7 of IBC which is reproduced below:-

*"Section 7 Initiation of corporate insolvency resolution process by financial creditor.*

*(3) The financial creditor shall, along with the application furnish—*  
*(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*  
*(b) the name of the resolution professional proposed to act as an interim resolution professional; and*  
*(c) any other information as may be specified by the Board.*

*(5) Where the Adjudicating Authority is satisfied that—*  
*(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*

12. It is observed from the record that in the present case, the occurrence of default is evidenced by a copy of the MOU dated 08.09.2018 along with post-dated cheques and a copy of the proposal letter dated 20.03.2019, wherein it is stated by the corporate debtor that all the dues will be cleared by 25.03.2020. Further, the respondent-corporate debtor has admitted that out of the due amount of Rs. 1,49,55,000/-, the corporate debtor paid Rs. 41,00,000/-. It is observed from the records that the full and final payment with respect to the loan facility of Rs. 1 Crore (i.e., investment No. 3) has not been paid fully according to the proposal letter dated 20.03.2019. It may be noted that the corporate debtor has submitted that adjustment be made against Rs. 1 Crore loan availed by it and the corporate debtor is not in a situation to pay the interest amount with respect to the unpaid loan facility. Further, the amount advanced by the petitioner clearly falls under the definition of financial debt under Section 5(8) of the I&B Code. The same has been extracted hereinbelow:

*5. In this Part, unless the context otherwise requires,—*

*5(8) “**financial debt**” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—*

*(a) money borrowed against the payment of interest;*

13. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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) It is further directed that 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. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

14. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sudhir Kalra, and there is nothing adverse against him and his AFA is valid up to 21.12.2023. In view of the above, we appoint Mr. Sudhir Kalra, RegistrationNo.IBBI/IPA-001/IP-P00768/2017-2018/11314,Email;kalra.adv@gmail.com, Mobile No.8800510511, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Sudhir Kalra shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors is to share with the Resolution Professional all the information

regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for

government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Interim Resolution Professional/ Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies, and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Interim Resolution Professional/Resolution Professional to enable him to conduct the CIR Proceedings as per law.
  
- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

15. We direct the financial creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

16. The petition is admitted accordingly.

17. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

January 06, 2023

PB/ASH