



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-735/MB/2020

Under Section 9 of the IBC, 2016

In the matter of

**Shri Karvir Navasini Mahalaxmi Ispat
Private Limited**

...Operational Creditor

v/s.

Lake District Realty Private Limited

...Corporate Debtor

Order Pronounced on: **12.04.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Mr. Charles DeSouza a/w Mr. Shivam Laturiya &
Ms. Prachi Rungta i/b APS Law Associates,
Advocates.

For the Respondent : Mr. Shashwat Rai i/b Keystone Partners, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Shri Karvir Navasini Mahalaxmi Ispat**



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Private Limited, (“the Operational Creditor”) on 26.02.2020, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Lake District Realty Private Limited** (“the Corporate Debtor”).

2. The Corporate Debtor is a company incorporated on 10.04.2015 under the Companies Act, 2013, as a private company limited by shares with the Registrar of Companies, Maharashtra, Pune. Its Corporate Identity Number (CIN) is U70101PN2015PTC154662. Its registered office is at Bunglow No. 10, Staveley Road, Near Jeos Mess, Camp, Pune – 411 001. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of ₹69,36,497/- (Rupees Sixty-nine lakh Thirty-six thousand Four hundred and Ninety-seven only) which includes principal of ₹55,99,568/- and interest @ 18% p.a. The dates of default are between 10.01.2018 to 20.02.2018 as per the date of respective invoice falling due after the stipulated credit period as stated in the statement showing invoice details of the Operational Creditor raised on the Corporate Debtor.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor submits that the company is in the business of iron and steel and manufacturing of TMT. Corporate Debtor is in the business of building and construction. The Corporate Debtor entered into a business deal with the Operational Creditor for their requirement of TMT steel. The Corporate Debtor issued Purchase



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Orders on 23.11.2017 and 29.12.2017 against which the Operational Creditor delivered the goods at Pune and raised seven (7) invoices for an aggregate sum of ₹55,99,568/-. The payment terms stipulated that they are payable within 45 days and will attract interest @18% p.m. for the delayed payment.

- b) The Corporate Debtor after receiving the material did not make payment. However, the Corporate debtor issued three post-dated cheques to the Operational Creditor, which were dishonoured when presented in the bank with the remark “payment stopped by drawer”. Thereafter, the Operational Creditor sent a Demand Notice to the Corporate Debtor. Thereafter, the Corporate Debtor issued a fresh cheque on 30.04.2019 for an amount of ₹55,99,568/-, however, the said cheque also was dishonoured when presented in the bank.
- c) Finally, the Operational Creditor issued Form-3 and Form-4 demanding a sum of ₹69,36,497/- including interest @18%. The Corporate Debtor replied to the said Form-3 and Form-4 on 19.06.2019 denying receipt of any goods against the Purchase Order and no amount due and payable to the Operational Creditor. Under the circumstances, the Operational Creditor moved the present application seeking initiation of the CIRP of the Corporate Debtor.
5. Corporate Debtor has filed reply to the Petition wherein it submits that -
- a) No amount is due and payable to the Operational Creditor and stated that the Petition is vague and devoid of any particulars therein as the



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Operational Creditor did not supply any goods to the Corporate Debtor.

- b) That during November 2017, it sought a quotation for some construction material from the Operational Creditor. Upon receipt of the quotation, the Corporate Debtor placed some orders on the Operational Creditor. However, the Operational Creditor did not supply the material(s) sought by the Corporate Debtor.
- c) That during 2018-19, the Operational Creditor approached the Corporate Debtor and assured of supplying the goods for which sought post-dated cheques (PDCs) as security for the goods to be supplied. The Corporate Debtor issued PDCs to the Operational Creditor for the goods to be supplied, however, no goods supplied to the Corporate Debtor. Therefore, the Corporate Debtor instructed its bank for stop payment of the said cheques.
- d) That the invoices produced by the Operational Creditor contains signature of a security guard who was posted at one of the project sites of the Corporate Debtor. The Corporate Debtor doubts that the Operational Creditor has colluded with the said security guard to get his signature and stamp of one PRA Realty Pvt. Ltd. that would have been available with the said security guard for logistical purposes.
- e) The Corporate Debtor has indirectly employed 14 people on its various sites, it has at least six (6) flat purchasers for its project and also has large order bookings from large clients. Therefore, in case the Petition



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is admitted, there will be adverse impact on the business of the Corporate Debtor as well as on the employment of the employees as also on the flat purchasers.

f) In view of the facts narrated above, the Corporate Debtor seeks dismissal of the Petition.

6. The Operational Creditor in its rejoinder reiterated that the Corporate Debtor has made false statement in the reply. It states that the PRA Realty Pvt. Ltd. is a sister concern of the Corporate Debtor and both have their office at the same address. Both the Corporate Debtor and the PRA Realty Pvt. Ltd. have a common director who has major holdings in both the companies. The Operational Creditor submits that the goods were delivered to the address of the Corporate Debtor, however, the Corporate Debtor, with mala-fide intent, may have put the stamp of the sister-concern on the documents of the Operational Creditor, which got unnoticed considering that both these companies belong to same persons. It further states that both the PDCs given earlier in August 2018 and again given in June 2019 were dishonoured.

6.1 The Operational Creditor submits that the Corporate Debtor re-issued PDC in lieu of the dishonoured cheques which substantiates there is a valid transaction took place; the Operational Creditor paid GST @18% against the good supplied to the Corporate Debtor, details of which are now reflected in the GST Portal; State GST Pune issued a letter to State GST Kolhapur confirming that invoices in respect of the aforesaid matters are reflecting in GSTR-2A of the Corporate Debtor, copy of the said letter



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is attached with the rejoinder. In view of the facts and circumstances, the Operational Creditor pleads for admission of the Petition and commencement of the CIRP of the Corporate Debtor.

FINDINGS:

7. The Operational Creditor has claimed an amount of ₹69,36,497/- towards the outstanding operational debt for supply of construction materials such as TMT steel. The Operational Creditor has raised invoices and copy of invoices along with Purchase Orders are attached with the Petition. The material supplied by the applicant has been acknowledged under stamp of sister concern of the Corporate Debtor at the address notified in the Purchase Order. There is no dispute on the fact that the person signing on the delivery challan is employed by the Corporate debtor. An allegation of collusion with the employee in obtaining signature on the delivery challan is not tenable considering the fact that the invoice(s) so raised were in knowledge of the Corporate Debtor as all these invoice(s) are found reflecting in form 2A of GST, which is statement of input tax credit available to the buyer of goods and this fact has been confirmed by the jurisdictional GST officer of the Corporate Debtor. No dispute was raised by the Corporate Debtor in relation to invoices reflecting in its GSTR-2A form. The purchase order dated 23.11.2017 and 29.12.2017 was issued by the Corporate Debtor; material supplied against these purchase order(s) was acknowledged as received by the employee belonging to Corporate Debtor's group concern; and cheque(s) for identical amounts were issued on two occasion(s) to clear the principal amount claimed in this



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application. In view of this, this Bench feels that the contention, the material was not supplied, is false on its face and is merely an attempt to mislead this Bench on affidavit by cooking an unbelievable story, which is contrary to facts brought on record.

7.1 We also do not find any merit in the contention that the admission of the Corporate Debtor into CIRP for the default would prejudice the interest of flat buyers or its employees, as such admission is not adversarial qua Corporate Debtor. On the contrary, the Code provides for resolution of reasons that leads to the situation of default and every attempt is made to keep the Corporate Debtor going. The contention that whether flood destroyed the records of Applicant or not can be adjudicated by trial court only and cannot be decided by this Bench, we feel that this issue is not relevant as the transaction giving rise to debt claimed in default is substantiated by the evidence(s) placed before us by the applicant.

7.2 In view of the above discussion, we find that there exists a debt of more than ₹1,00,000/-, the minimum threshold limit prescribed under section 4 of the Code at the relevant time; there is default in payment of such debt; and there exists no dispute in relation to such payment. This application has been filed within 3 years from the occurrence of default. Accordingly, this bench feels that it is a fit case for admission of the Corporate Debtor into CIRP u/s 9 of the Code and the Petition deserves to be admitted.

7.3 The Petitioner has not proposed any name for the IRP. Accordingly, this bench appoints one of eligible Insolvency Professional as IRP from the



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panel maintained by the IBBI and circulated to this Bench for appointment in such cases.

8. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing No.: CP(IB)-735(MB)/2020 filed by **Shri Karvir Navasini Mahalaxmi Ispat Private Limited**, the Operational Creditor, under Section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Lake District Realty Private Limited [CIN: U70101PN2015PTC154662]**, the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction



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of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium-
 - (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Ms. Kiran Martin Golla having registration No.: IBBI/IPA-002/IP-N00787/2019-2020/12483, email : ip.kirangolla9@gmail.com, mobile:



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9820756698 is hereby appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of ₹5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
9. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
10. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the



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Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

12.04.2023/pvs