

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
SPECIAL BENCH – I, CHENNAI**

**CP(IB)/73/CHE/2022**

*(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 **M/s. Amar Prakaash Developers Private Limited***

**K. V. Capital**

Represented by its partner Mr. Ashok M. Jain  
Shop No. 207, 2<sup>nd</sup> Floor,  
161A, Mint Street, Sowcarpet,  
Chennai-600 079.

*... Financial Creditor*

-Vs-

**Amar Prakaash Developers Private Limited**

No.92, 1st Floor, Happiness Tower,  
Thirumudivakkam Main Road,  
Thirumudivakkam,  
Kancheepuram-600 132.

*... Corporate Debtor*

*Order pronounced on **18<sup>th</sup> April, 2023***

CORAM :

**SANJIV JAIN, MEMBER (JUDICIAL)**  
**SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : E. Omprakash, Senior Counsel  
for R. Padmanaban, PCS*

*For Corporate Debtor : Kumarpal Chopra, Advocate*

**ORDER**

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

This is an Application filed by K. V. Capital (hereinafter referred to as "**the Financial Creditor**") against **Amar Prakaash Developers Private Limited** (hereinafter referred to as "**the**



**Corporate Debtor**”) under Section 7 of the Insolvency & Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Financial Creditor is a Registered Partnership Firm. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 12.2.2008 bearing CIN: U70102TN2008PTC066406. The registered office address of the Corporate Debtor as per the Application is stated to be situated at No.92, 1st Floor, Happiness Tower, Thirumudivakkam Main Road, Thirumudivakkam, Kancheepuram -600 132. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Vishwanathan, Reg. No. IBBI/IPA-003/ICAI-N-00275/2020-2021/13069; to act as the IRP.

3. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.7,08,14,599/- (Rupees Seven Crore Eight Lakh Fourteen Thousand Five Hundred and Ninety Nine) which is due and payable by the Corporate Debtor. Further it is stated in Part-IV of the Application that the date of default is



"10.03.2022". Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

SL.NO	LIST OF DOCUMENTS	Date of the Document	DOCUMENT NO.	DOCUMENT DESCRIPTION
1.	Mortgage Deed	10.09.2018	5056/2018	Deed of Simple Mortgage
2.	Statement of Accounts	01.04.2018-10.03.2022	NA	Statements of Accounts of K.V. Capital from 01/04/2018 to 10.03.2022
3.	Partnership Deed	01.04.2018	NA	Partnership Deed of K.V. Capital
4.	Form-A	17.07.2017	NA	Details of the Partners along with Payment Receipts
5.	Registration Certificate	17.07.2017	585/2017	Registration Certificate of K.V. Capital
6.	GST Registration Certificate	16.04.2021	Reg. No. 33AASF0974DIZA	GST Registration Certificate of K.V. Capital
7.	Demand Notice	08.02.2022	NA	Demand Notice from K.V. Capital to Amar Prakaash Developers Private Limited
8.	Reply Legal Notice	01.03.2022	NA	Reply Legal Notice from AMAR PRAKAASH DEVELOPERSS PRIVATE LIMITED to K.V. Capital
9.	Authorisation letter	08.03.2022	NA	Authorisation to practicing Professional to appear on Applicant's behalf



4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor during the year 2018 approached the Financial Creditor for grant of loan to complete the construction of the project Pallavaram Taluk, Kancheepuram and thereafter availed a loan of Rs. 3.00 Crores. Thereafter, it was submitted that in order to create security, the Corporate Debtor had executed a Mortgage deed in favour of the Financial Creditor dated 10.09.2018 which was duly registered vide document number 5056 of 2018 by the Registering Officer. The extent of land was 2,590 sq. ft. together with 10,798 Sq. Ft. as super built up area at First Floor, Club Aurum Building, Thirumudivakkam, Kancheepuram District.

5. Further, it was submitted by the Learned Counsel for the Financial Creditor that as per the said mortgage deed the loan was repayable on demand. The rate of interest agreed was @ 27% p.a.. The said mortgage deed was executed pursuant to a Board Resolution of the Corporate Debtor which is dated 31.07.2018 a copy of which has been attached with the mortgage deed.

6. It was submitted by the Learned Counsel for the Financial Creditor that disbursements were made through RTGS on various dates sometime in the year 2018. In support of the same the Financial Creditor has attached along with the Application copy of



the ledger account of the Corporate Debtor as maintained in the books of the Financial Creditor.

7. The Learned Counsel for the Financial Creditor submitted that a demand notice dated 8.2.2022 was sent to the Borrower demanding payment of Rs. 6,73,75,671 (Rupees Six Crore Seventy Three lakh Seventy Five Thousand Six Hundred and Seventy One) as on 31.12.2021. As per the tracking report attached the same was delivered to the corporate debtor on 12.02.2022. Despite demand by the Financial Creditor, the Corporate Debtor failed to repay the amount.

8. The said demand notice was replied by the Corporate Debtor vide letter dated 01.03.2022 through its Advocate Mitraa Legal. In its reply, the Corporate Debtor had admitted the borrowing and the mortgage of property, however it contended that some NOC was withheld by the Financial Creditor and that a notice of six months is required before the Financial Creditor could enforce the mortgage.

9. The Corporate Debtor was set ex-parte vide order of this Tribunal dated 19.04.2022. Corporate Debtor filed a Restoration Application being Rest. A 9 (CHE)/2022 which was ordered on 17.02.2023 and Corporate Debtor was directed to file reply within



a period of 7 days from the date of the order. Corporate Debtor filed its reply vide affidavit dated 14.03.2023.

10. The Respondent / Corporate Debtor in his reply has not 'denied the borrowings and the mortgage'. The Corporate Debtor further reiterated the contentions as raised in his reply to the demand notice i.e. that some NOC was withheld by the Financial Creditor and that a notice of six months is required before the Financial Creditor could enforce the mortgage.

11. Heard the submissions made by the Learned Counsel for the parties. From the averments made in the counter, it is clearly seen that the Corporate Debtor has admitted its liability towards the amounts borrowed. Further, it is also seen that the 'default' which is arising in the present Application has happened much after the advent of Covid - 19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. It is also seen that through the present Application, the Financial Creditor is not seeking enforcement of mortgage but seeking resolution of Corporate Insolvency of the Corporate Debtor. Further, no amounts have been paid by the Corporate Debtor till the date of hearing in response to the demand notice dated 12.02.2022 which is now more than a year old.



12. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, 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.

13. The Financial Creditor has proposed the name **Mr. Vishwanathan**, Reg. No. IBBI/IPA-003/ICAI-N-00275/2020-2021/13069,(email-id:-viswanathan.irp@gmail.com)as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till **12.06.2023**. The proposed IRP who is appointed shall 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.



14. 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 respondent 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 respondent 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 respondent 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 respondent.

*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;

15. However during the pendency of moratorium period in terms of Section 14(2) 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 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 arrangement 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.

16. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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.

17. The Financial Creditor is further directed to pay the IRP a sum of Rs. 3.00 Lakh (*Rupees Three Lakhs Only*) within a period of 7 days from the date of this order to meet the cost of CIRP.

18. 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 Financial Creditor 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 Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

— Sd —

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

— Sd —

**SANJIV JAIN**  
MEMBER (JUDICIAL)