IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.1225/MB-IV/2021

Under Section 7 of the IBC, 2016

In the matter of

Encore Asset Reconstruction Company Private Limited

[CIN: U74140DL2013PTC259641]

...Financial Creditor

v/s.

Bairagra Builders Private Limited

[CIN: U45200MH1995PTC094309]

...Corporate Debtor/Guarantor

Order Delivered on: 16.05.2023

Coram:

Mr. Prabhat Kumar Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:	Mr. Amir Arsiwala, Ld. Counsel
For the Respondent:	Mr. Shyam Kapadia, Ld. Counsel

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) Encore Asset Reconstruction Company Private Limited, ("the Financial Creditor"), seeking initiation of Corporate

Insolvency Resolution Process (CIRP) in the case of Bairagra Builders Private Limited, ("the Corporate Debtor"). The present application is filed on 08/09/2021.

1.1. The total amount outstanding is Rs. INR 31,47,14,883/- (Indian Rupees Thirty One Crores Forty Seven Lakhs Fourteen Thousand Eight Hundred and Eighty Three only) inclusive of principal amount disbursed, interest, penal interest, costs and expenses incurred by the Financial Creditor as on July 31, 2021 along with further interest at the contractual rates and costs incurred by the Financial Creditor from August 1, 2021 till the date of realization of the same, with respect to the Term loan facilities granted to the Borrowers and guaranteed by the Corporate Debtor. The date of default for both the Term Loan No.LM-01 as well as Term Loan No. LM-17 with respect to the Corporate Debtor is 04.07.2021.

2. The Financial Creditor submits that, Kallappanna Awade Ichalkaranji Janata Sahakari Bank Limited ('KALJS Bank') advanced a Term loan of INR 10,00,00,000/- (Indian Rupees Ten Crores only) to Shri Tradco Deesan Private Limited (hereinafter referred to as the 'Borrower No.1') vide Loan Agreement No. LM-01 dated March 29, 2019. Further, KAIJS Bank advanced a Term loan of INR 15,00,00,000/- (Indian Rupees Fifteen Crores only) to Shri Tradco India Private Limited (hereinafter referred to as the 'Borrower No.2') vide Loan Agreement No. LM-17 dated March 29, 2019.

2.1. The Financial Creditor further submits that the aforementioned loans taken by Borrower No.1 and Borrower No. 2 from KAIJS Bank are secured by a guarantee of inter-alia the Bairagra Builders Private Limited i.e. Corporate Debtor vide two Joint and Several Guarantee Bonds both dated March 29, 2019.

2.2. The Corporate Debtor has also executed two Deeds of Mortgage, both dated March 28, 2019 for creating a charge by way of a mortgage on its immovable property, in favour of KAIJS Bank in lieu of the two Term Loans granted to the Borrower No.1 and Borrower No.2.

2.3. Accordingly, KAIJS Bank declared the loan accounts of both the Borrowers, Non - Performing Asset (NPA) on January 27, 2020. The aforementioned two Loan accounts, Loan Agreements and all security documents executed by the parties were assigned and transferred by KALJS Bank to Encore Asset Reconstruction Company Private Limited i.e., the Financial Creditor vide a Registered Assignment Agreement dated August 7, 2020 with effect from March 21, 2020.

2.4. Due to continuous default committed by the Borrowers in repayment of the loan amounts, the Financial Creditor was constrained to issued notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') dated May 4, 2021 to the Borrower No.1 and Borrower No.2, the Corporate Debtor as well the personal and other Corporate Guarantors to repay the outstanding loan amounts.

2.5. Due to failure on part of both the Borrowers as well as the Corporate Debtor, the Financial Creditor issued a demand notice dated May 20, 2021 to the Corporate Debtor calling upon the Corporate Debtor herein to repay a sum of INR 30,51,35,757/- (Indian Rupees Thirty Crores Fifty-One Lakhs Thirty-Five Thousand Seven Hundred and Fifty-Seven only) as on May 17, 2021 together with further interest, expenses, costs and charges with effect from May 18, 2021 till the payment of the same, within seven days of the date of the notice.

2.6. The Corporate Debtor as well as the Borrowers raised frivolous disputes to avoid and deny the payment of the outstanding amounts through its reply as demanded by the Financial Creditor in its notices dated May 4, 2021 and May 20, 2021, respectively.

3. The Corporate Debtor has filed his affidavit in reply dated 15.03.2022 stating that Financial Creditor has intimated fact of acquisition of alleged right, title and interest of Kallappanna Awade Janata Sahkari Bank Limited, and the same was replied demanding the Deed of Assignment and statement of account summary from date of disbursement of the alleged loan till 30th April, 2021 but the Financial Creditor failed to do so. The Corporate Debtor in its reply has denied all the allegations made by the Financial Creditor.

4. The Financial Creditor through its affidavit in rejoinder has denied all the averments, contentions made by the Corporate Debtor in its reply.

Findings

5. This Bench heard both the parties and perused the material on record.

5.1. This bench finds that the Corporate Debtor executed Deed of Mortgage No.1 & 2 both dated 28.03.2019, which were duly registered with Sub-Registrar/Assistant Sub-Registrar, Borivali, Mumbai. The said Mortgages are registered with ROC in terms of Sec 77 of the Companies Act. The Corporate Debtor simultaneously executed Two Joint and several guarantee Bond both dated 29.03.2019. On combined Reading of Mortgage Deed and Guarantee Bonds this bench finds the liability of the Corporate Debtor is limited to 10,00,00,000/- under each Mortgage and the Financial Creditor is entitled to sell the Mortgage property to recover the outstanding debt wed by the Principal Borrower.

5.2. On reading of Guarantee bond this bench finds that the Corporate Debtor has undertaken to pay the amount due from the Principal Borrower within two days after the demand in writing when made by the Financial Creditor. In the present case a notice invoking guarantee under the guarantee bond was issued on 21.05.2021 calling upon the Corporate debtor to pay the amount in default. During the course of hearing it was submitted by the Corporate debtor that the deed of guarantee is in challenge before the civil court however, later on it was clarified that it is challenge to assignment deed not the deed of guarantee.

5.3. On perusal of the documents submitted by the Applicant Financial Creditor, it is clear that there exists a financial debt and the debt is in default and also the outstanding amount is more that the threshold limit of Rs.1,00,00,000/- (Rupees one crore only). Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor and that there is a Debt due & payable by the Corporate Debtor. Default has also been established herein.

5.4. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated against the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

6. The Applicant has proposed the name of Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

7. The petition bearing CP(IB) No. 1255/2021 filed by, Encore Asset Reconstruction Company Private Limited (Financial Creditor), under section 7 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 Bairagra Builders Private Limited is **admitted.**

a) 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 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, -

(v) 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;

(vi) 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) The bench hereby appoints Ms. Prajakta Menezes, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01349/2018-19/12016 and email: prajakta@prmlegal.in . She is appointed as IRP for conducting CIRP of the Corporate Debtor and 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 Financial Creditor shall deposit a sum of Rs.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).

(i) The Registry is directed to communicate this Order to the Financial 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.

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

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
16.05.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)