



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

CP(IB) 174/(PB)/2020

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

1. Haji Abdul Hai

Residence at
B-19/59, Deoria Bhelpur
Varanasi 221010

Petitioner No 1

2. Zaheer Abbas

Residence at
B-19/59, Deoria Bhelpur
Varanasi 221010

Petitioner No 2

3. Mansoor Jalal

Residence at
B-19/59, Deoria Bhelpur
Varanasi 221010

Petitioner No 3

4. Ajmal Saoud

Residence at: -
B-19/59, Deoria Bhelpur
Varanasi 221010

Petitioner No 4

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5. Rehana Khatoon

Residence at: -
B- 18/98, Revdi Talab, Bhelupur
Chittupur, Varanasi, 221002

Petitioner No 5

6. Haji Shamim Akhtar

Residence at: -
B- 18/98, Revdi Talab, Bhelupur
Chittupur, Varanasi, 221002

Petitioner No 6

...Petitioners/ Financial Creditor

Versus

M/s Proplarity Infrastructure Pvt. Ltd.

Registered office at:
B-238, 2nd Floor, North Ex Mall,
Prashant Vihar, Delhi - 110085
[CIN: U70109DL2013PTC248914]

...Respondent/ Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

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Appearances

Counsel for Applicant: Mr Kaustav Saha, Advocate

Counsel for Respondent: None

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 16.11.2022

1. This is an application filed on 31.10.2019 by the Mr. Haji Abdul Hai and 5 other Financial Creditors to initiate Corporate Insolvency Resolution Process (“CIRP”) against Proplarity Infrastructure Pvt. Ltd. [CIN: U70109DL2013PTC248914] (Hereinafter referred to as “Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default on the part of the Respondent for an amount of Rs. 17,00,000 (Rupees Seventeen Lakh Rupees to be paid to the Applicant.
2. The Corporate Debtor was incorporated on 01.03.2013, having CIN: U70109DL2013PTC248914, under the Companies Act, 1956. Its registered office is B-238, 2nd

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Floor, North Ex Mall, Prashant Vihar, Delhi - 110085.

Therefore, this Bench has jurisdiction to deal with this petition.

3. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- The Petitioners are individual investors in a commercial construction project undertaken by the Respondent. The Respondent is a company incorporated under the Companies Act, 1956 and is engaged in the business of real estate and infrastructure development.
- In 2016, the Petitioners collectively invested a sum of Rs. 24,00,000/- (Rupees Twenty-Four Lakhs Only) in a commercial complex called “Proplarity Gomtiganj” located at Sector J, Ansal API, Sushant Golf City, Sultanpur Road, Lucknow, Uttar Pradesh (“the Project”) of the Respondent, a reputed and renowned construction company having significant experience and know-how in the business of real estate development.
- On 1st April, 2016, the Respondents entered into two separate agreements (“Original Agreement”) – one with Petitioner Nos.

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1 to 4, who invested Rs. 12,00,000/- and one with Petitioner Nos. 5 and 6, who invested a sum of Rs. 12,00,000/-.

- The two Original Agreements contained identical terms and conditions. According to Clauses 2 and 3 of the said Original Agreement, the investing parties invested a sum of Rs 12,00,000/- in the Project as consideration towards expression of interest for allotment of 230 sq. m in the Project. Clause 7 provides that the Respondent gave the Petitioners an unconditional guarantee to buy back the allotted area on the expiry of one year from the date of execution of the Original Agreement. Additionally, as per Clause 8 read with Annexure A, the Respondent was to pay interest at 25% p.a. on the amount despite to the Petitioners on the monthly basis for the duration of the Original Agreement, i.e. till 1st April, 2017. The nature of the Original Agreement was made clear in Clause 10, which provided that the allotment in the Project was only made to the Petitioners to secure the payment made by them to the Respondent, and the Petitioners would have no right to sell, transfer, use for any collateral purpose or hold the possession of the allotted

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area during the existence of the agreement or after termination.

- The Respondents have failed to comply with its obligation to remit the monthly interest due to the Petitioners as set out in Annexure-A of each Original Agreement. The Respondents have failed to pay interest of Rs. 2,10,828 /- to Petitioner Nos. 1 to 4 and interest of Rs. 2,00,048/- to the Petitioner Nos. 5 and 6, thereby breaching its contractual obligations. Despite repeated intimation of the Petitioner, the Respondents have failed to pay the principal amount of Rs. 24,00,000/- to the Petitioners.
- Having failed to repay the principal amount, along with the interest, the Respondent proposed to enter into a fresh agreement with the Petitioners for reimbursement of the sum of Rs. 24,00,000/- invested by the Petitioners in the Project. The Petitioners agreed to this proposal and identical fresh agreements dated 28th June, 2017 were concluded by the Respondent with Petitioner Nos. 1 to 4 and Petitioner Nos. 5 and 6 (“New Agreement”).
- As per the New Agreement, the Respondent has obtained all necessary approvals from the concerned authorities, and that



the possession of units in the Project would be handed over upon completion. The New Agreement even acknowledges the existence of the Original Agreement. Clauses 1 and 2 record the assurance and obligation of the Respondent to return the sum of Rs. 12,00,000/- invested by each group of the Petitioners within 12 months from the date of New Agreement. The said amount was to be returned by the Respondent in twelve monthly instalments of Rs. 1,00,000/- in the form of post dated cheques. Clause 5 of the agreement provides that upon execution of the agreement, the Original Agreement dated 1st April, 2016 would be rendered null and void.

- By entering into New Agreements, the Petitioners agreed to forego a significant amount of interest due from the Respondent under the Original Agreement and were prepared to accept the return of only the principle sum of Rs. 24,00,000/- collectively in satisfaction of the Respondent's obligations. However, the Respondent failed to honour even the modified obligations.
- Till date, the Respondent has remitted a sum of Rs. 2,00,000/ to Petitioner Nos. 1 to 4 and a sum of Rs. 5,00,000/- to

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Petitioner Nos. 5 and 6. It has a total outstanding debt of Rs. 10,00,000/- towards Petitioner Nos. 1 to 4 and Rs. 7,00,000/- towards Petitioner Nos. 5 and 6, making a total outstanding debt of Rs. 17,00,000/-

- Despite repeated requests, the Respondent has failed to repay the sum of Rs. 17,00,000/-.
- In August 2018, Petitioner No. 1 deposited three post dated cheques 25th May 2018, 25th June 2018 and 26th June 2018 given by the Respondent to Petitioner No. 1 under Clause 2 read with Annexure 1 of the New Agreement. However, the said cheques were dishonored on 14th August 2018 with the endorsement “Account closed”. Similarly, postdated cheques dated 15th May 2018, 15th June 2018 and 16th June 2018 given to Petitioner No. 5 were dishonored on 13th August 2018 with the endorsement “Dummy branch; account closed”.
- It becomes clear that the Respondent has no intention to honor its obligation under the New Agreement.
- That, in view of abovementioned facts the Applicant approached this Tribunal to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

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4. The Tribunal issued notice to the Respondent; however, the Respondent has failed to appear on many dates initially even though as per the records the service was duly effected on 08.02.2022. On 12.04.2022, the Counsel for the CD prayed for adjournment to file its reply in the matter. The reason for not filing reply given by the CD was that the Directors of the CD were in jail. Further, in the order dated 12.04.2022 it has been observed that the Respondent had appeared on 04.02.2022, then on 04.03.2022, then on 30.03.2022 but no reply was filed therefore the request to file reply was declined. Thereafter the matter was transferred to Bench VI and despite service of e-notice the CD failed to appear on many dates and was set ex-parte vide order dated 30.05.2022.
5. We have heard the submissions made by the parties and have gone through documents on record.
6. We observed that the principal amount involved in the matter is Rs. 17,00,000 (Rupees Seventeen Lakhs) and vide Notification No. S.O 1205 (E), dated 24-3-2020 the threshold for filing a section 7 application was increased from one lakh to one crore and since the present application



has been filed before 24.03.2020, the present application is exempted from Notification No. S.O 1205 (E).

7. The Original Agreement dated 01.04.2016 was for the purpose of investment in the commercial project of the Corporate Debtor and as per clause 2 of the said Agreement the consideration amount was towards expression of interest for allotment of some area in the project (230 Sq. ft Approx). However, the Corporate Debtor was not able to honour the terms of the said Agreement. Subsequently on 28.06.2017, the Financial Creditors and Corporate Debtor entered into another agreement wherein the Corporate Debtor undertakes to make payment of the entire amount along with interest. Further, Clause 5 of the agreement provides that upon execution of the agreement, the Original Agreement dated 1st April, 2016 would be rendered null and void. Accordingly, as per Clause 5 of the new agreement it is clear that we only have to see the 2nd agreement that was entered into by both the parties on 28.06.2017 since the 1st agreement was null and void as per the said clause. As per Clause 1 of the agreement it is stated that the Corporate Debtor assures to make payment of the entire amount in

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installments through postdated cheques within a span of one year. However, the Corporate Debtor defaulted in the repayment of said amount since post dated cheques given at the time of agreement were dishonored on 14th August 2018 with the endorsement “Account closed”. Similarly, postdated cheques dated 15th May 2018, 15th June 2018 and 16th June 2018 were dishonored on 13th August 2018 with the endorsement “Dummy branch; account closed”.

8. Mere plain reading of the provision under section 7 of IBC shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. That while dealing with an application under section 7 the Adjudicating Authority is required to consider the question whether the ‘debt’ and ‘default’ is proved or not.
9. That from the documents placed on record by the Financial Creditor we find that the agreements executed between the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor’s claim that the Corporate Debtor has defaulted on repayment.



10. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and **initiates** CIRP on the Corporate Debtor with immediate effect.

11. 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. Praveen Kumar Agrawal, for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00700/2018-2019/12348.

12. Mr. Praveen Kumar Agrawal 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 dated 14.10.2019. 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. Praveen Kumar Agrawal as per the requirement of the IBBI Regulations. The applicant has also placed on record the Certificate of Registration of the Insolvency Professional dated 08.02.2019. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

13. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

14. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

15. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

16. Mr. Praveen Kumar Agrawal, having registration number IBBI/IPA-002/IP-N00700/2018-2019/12348 is

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appointed as the Interim Resolution Professional in the matter.

17. 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.

18. 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 prohibitions are imposed:

“(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.”

19. 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.

20. 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

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the provisions of the Code, Rules and Regulations. He shall file his report within 30 days before this bench.

Let a copy of this order be served to the parties concerned

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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MEMBER (JUDICIAL)