IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition (IB)No.76/ALD/2019

(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016)

IN THE MATTER OF

Deepak Gupta HUF

............Financial Creditor/Applicant.

Versus

M/s Sparkspell Homes Pvt. Ltd.

.........Corporate Debtor/Respondent.

ORDER DELIVERED ON :28.08.2019

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

For the Applicant/ Financial Creditors : Sh. Yash Tondon, Advocate.
For the Respondent/ Corporate Debtor: None.

ORDER

1. The present petition is filed by Sh. Deepak Gupta HUF through its karta has approached this Tribunal under Section 7 of IBC, 2016. The prayer is made by the petitioner/financial creditor to trigger Corporate Insolvency Resolution Process against the respondent claiming that the Petitioner as a Financial Creditor within the meaning of Section 5 (7) and respondents are the Corporate Debtor. The Financial Creditor has entered into two agreements with the Corporate Debtor and agreed to pay Rs.80,00,000/- (Rupees Eighty Lakhs) with an interest rate of 4.26% per month.

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Details of Agreements	**Amount Paid (in Rs.)**	**Cheque No.**
Agreement dated 15.04.2014 **(Agreement No. 1)**	40,00,000/-	136917 dated 24.04.2014 drawn on Punjab National Bank
Agreement dated 15.04.2014	33,00,000/-	136918 dated 23.04.2014 drawn
Details of Agreements No. 2		On Punjab National Bank
	7,00,000/-	136919 dated 26.04.2014 drawn on Punjab National Bank
Total	**80,00,000/-**	

Details in tabular form is given below shows the amount which were agreed to pay/-

<u>Agreement No.1</u>

S. No.	**Date**	**Amount**
1.	15.04.2015	**20,50,000/-**
2.	15.04.2016	**20,50,000/-**
3.	15.04.2017	**20,50,000/-**

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4.	15.02.2018	**16,88,400/-**
5.	15.02.2018	**40,00,000/-**
	Total unpaid cheque amount	**1,18,38,400/-**

Agreement No.2

S. No.	**Date**	**Amount**
1.	15.04.2015	**20,50,000/-**
2.	15.04.2016	**20,50,000/-**
3.	15.04.2017	**20,50,000/-**
4.	15.04.2018	**20,29,200/-**
5.	15.04.2018	**40,00,000/-**
	Total unpaid cheque amount	**1,21,79,200/-**

(Copy of agreement dated 15.04.2014 is annexed as Annexure A of the application.)

2. The case of the Petitioner/Financial Creditor is that in terms of the aforesaid agreement, when repayment became due and payable in the year 2015 and 2016, the Directors of the Corporate Debtor Company approached and requested the Financial Creditor not to present the cheque on the due dates as Corporate Debtor Company was facing temporary shortage of funds and Financial Creditor/Petitioner under that belief, did not present first four post-dated cheques in the Bank.

3. Further, despite several requests and reminders made by the Financial Creditor to Corporate Debtor including on 08.02.2017, 09.03.2017 and legal notice on 04.06.2018, no payment was made by the Corporate Debtor

Company. Even, the cheques issued by the Corporate Debtor Company in favour of the Financial Creditor also got dishonoured due to insufficient funds for the cheques due in 2017 and subsequently for the reasons of "Drawers Signatures Differs".

4. Further, thereafter Financial Creditor/Petitioner has filed complaint cases under Section 138 of the Negotiable Instruments Act, in the Court of Chief Metropolitan Magistrate, Saket Court, Delhi against the Corporate Debtor Company for dishonour of cheques and learned Chief Metropolitan Magistrate issued summons against the accused.

5. Further, a sum of Rs.5,86,94,399 (Rupees Five Crore Eighty-Six Lacs Ninety Four Thousand Three Hundred Ninety Nine Only) is due and payable by the Corporate Debtor Company to the Financial Creditor towards the principal amount and the interest as agreed under two separate agreement for the default of payment started from **15.04.2015.**

6. Further, the Financial Creditor is having its Bank Accounts with Punjab National Bank being (Account Number 0636000100153559) and Yes Bank (Account Number 005590100013942).

7. Ld. Counsel for the Financial Creditor submitted that in order to prove the Existence of the Financial Debt; they have annexed following documents:

    i. The statement of Bank Account as well as the two agreements dated 15.04.2014 executed between the Financial Creditor and the Corporate Debtor Company and Master Data as obtained from MCA Website, ***(Copy of the cheques along with Bank Return Memo evidencing that***

cheques got dishonoured, copy of the reminder letters dated 08.02.2017 and 09.03.2017)

ii. The applicant has annexed copy of the legal demand notice dated 04.06.2018. ***(Annexed as Annexure D of the application).***

iii. The copy of the Arbitration Notice dated 05.12.2018. ***(Annexed as Annexure E of the application)***

iv. The copy of the computation sheet of financial debt ***(Annexed as Annexure F of the application).***

v. The applicant has also annexed copy of the orders passed by the Chief Metropolitan Magistrate, Saket Court , New Delhi in the complaint cases. ***(Annexed as Annexure H of the application).***

vi. copy of the statement of accounts of Financial Creditor. ***(Annexed as Annexure G of the application).***

8. After filing of this application the notice was to be issued against the Respondent/Corporate Debtor. But from the perusal of the records, I find, when the notice sent through speed post was returned undelivered/unserved, then the petitioner/financial creditor was directed to take step for publication of notice in the newspaper and accordingly, the Petitioner/Financial Creditor published the notice in newspaper "Business Standard". Even, after the publication of notice in the newspaper, when the Respondent/Corporate Debtor did not appear, then Vide Order Dated 2nd July, 2019 the matter was fixed for ex-parte hearing on admission.

9. Accordingly, I have heard, the learned counsel appearing for the Petitioner/Financial Creditor and perused the averment made in the application filed on behalf of the petitioner and the documents enclosed with

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the petition. Learned counsel appearing for the Petitioner/Financial Creditor submitted that earlier the Corporate Debtor was functioning under the name of ***"Proplarity Homes Private Limited"***, but thereafter the name of the Company is change and now a day it is functioning under the name and title of ***"M/s Sparkspell Homes Private Limited"***, which is in accordance to Sec 23 of The Companies Act ,1956 which states as:

Sec 23. *Registration of change of name and effect thereof.*

> *(1) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such a certificate.*
>
> *(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.*
>
> *(3) The change of name shall not effect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.*

(Copy of the issuance of ROC Certificate is annexed as Pg No. 66 of the application.)

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10. He further submitted that he enclosed the statement of account of the Financial Creditor/Petitioner as **Annexure-G,** ***which from page 49 to 51*** annexed it shows that two cheques issued by the Corporate Debtor Company were presented on 5th July, 2017 and that were returned for insufficient funds. He further submitted that he files a case before the Chief Metropolitan Magistrate, Saket Court, Delhi and he enclosed the case status as ***Annexure-H at page 57***, which shows that notice/summon was issued against the Corporate Debtor Company.

11. He further submitted that issuance of cheque amounts to acknowledging the liability and in this regard he placed reliance upon the decision of Hon'ble Principal Bench, NCLT New Delhi passed in ***Insolvency Petition No. 26 (ND) of 2017*** on 12th April, 2017 in matter of ***"Prideco Commercial Projects Pvt. Ltd. v Era Infra Engineering Ltd."***

Further the learned counsel also took reliance an also on the decision passed of by the Hon'ble NCLAT (National Company Law Appellate Tribunal, New Delhi) in ***Company Appeal (AT) (Insolvency) No. 623 of 2018*** in matter of ***"Sudhi Sachdev v. APPL Industries Ltd."*** stating that pendency of case under Sec 138 of Negotiable Instruments Act,1881 actually amounts to admission of debt and not an existence of dispute.

12. I have gone through the decisions upon which the petitioner placed reliance and I find that **Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.623 of 2018** in Para 6 of the order dated 13.11.2018 as stated ***"………………… Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act,1881 actually amounts to admission of debt and not an existence of dispute."*** And in the decision of **NCLT Principal Bench, New Delhi in Insolvency Petition 26 (ND) of 2017** of the order dated 12.04.2017 has taken the view that ***"issuance of cheque is acknowledgement of debt"*** and considering the averments made and documents annexed there in this Adjudicating authority directs that the application on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. It further appears that there is default in non-payment of the debt owed by the corporate debtor, applicant has annexed sufficient evidence to show the default on behalf of the corporate debtor. Thus application filed U/S 7 of IBC deserves to be admitted.

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13. The perusal shows that claim is covered within limitation (As per Section 238A of the IB Code) to triggred the Insovency Resolution Process in respect of corporate debtor as the cheques were dishonoured on presentation dated 23.04.2018 and the present petiton under Section 7 is filed on 07.03.2019 are found well within limitation.

14. The Financial Creditor has proposed the name of **Mr Mohit Maheswari, Registration Number IBBI/IPA-002/IP-N00528/2017-18/11575** for appointment as Interim Resolution Professional(IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him.***(Annexed as Annexure K of the application)***

15.There is default in the payment of the financial debt. Therefore, as per section 7(5)(a) of the code, the present application filed U/s 7 of the IB Code is admitted.

16.**Mr Mohit Maheswari, Registration Number IBBI/IPA-002/IP-N00528/2017-18/11575** is appointed as Interim Resolution Professional(IRP). Further, a moratorium under the provision of section13 & 14 of the Code is declared prohibiting the following:

(i) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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(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 Act, 2002(54 of 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.*

It is further directed that:

(i) *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*

(ii) *The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

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17. The IRP shall comply with the Provision of Section 13(2), 15,17 &18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under a provision of section 20 of the Code.

18. The Registry is further directed to communicate the copy of this order to Financial Creditor and Corporate Debtor and IRP through email and speed post.

List on **12.09.2019** for the filing of the progress report.

Date : 28.08.2018

—Sd—

Abni Ranjan Kumar Sinha

(Member Judicial)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

27/08/19

S. A. MEHDI
DESIGNATED REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD U.P.

Compared by me
Shilpi
28/08/19

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