

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No.2/Chd/Hry/2021

Under Section 7, of the IBC 2016

In the matter of:

M/s Sunrise Propbuild Private Limited

having its address at

H.No.4-B, Office No.25, 1st Floor,
Ashirwad Complex, Behind Shiva Market,
Pitampura, New Delhi - 110034
CIN: U70101DL2010PTC209976

.....Petitioner-Financial Creditor

Vs.

M/s Kenwood Mercantile Private Limited

having its Regd. Office at

Shop No.6, 2nd Floor, Jagdamba Palace
Near Gurgaon Dreamz Mall,
Old Railway Road Gurgaon,
Haryana - 122001
CIN: U51900HR1995PTC052303

.....Respondent-Corporate Debtor

Judgment delivered on: 30.06.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner/Financial Creditor : Mr. Karan Kaushal, Advocate

For the Respondent/Corporate Debtor : Mr. Reshabh Bajaj, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Sunrise Propbuild Private Limited (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against a M/s Kenwood Mercantile Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Raj Kumar, Authorized Representative of the Financial Creditor and the affidavit verifying the contents of the application is on page 32A to 33 of the petition. The Authorisation by the Board in favour of the applicant is attached as Annexure-1 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure-AB of the petition. The Corporate Debtor is stated to be incorporated on 13.10.1995 and is doing the business in real estate. The company having its registered address at Shop No.6, 2nd Floor, Jagdamba Palace, Near Gurgaon Dreamz Mall, Old Railway Road Gurgaon, Haryana - 122001. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for disposal of the same are narrated hereunder:

3.1 Kenwood Mercantile Private Limited ("Corporate Debtor") had got issued the Letters of Intent dated 03.03.2004 and 19.03.2004 ("Lols") from the concerned Government Department in respect of land owned by the

Corporate Debtor in Faridabad District of Haryana. As per the said Lols, Corporate Debtor was to undertake certain actions to obtain a 'change in land use' permission of the department concerned.

3.2 The Corporate Debtor had to undertake the actions to satisfy the pre-conditions of the Lols and therefore agreed to take financial assistance from Sunrise Propbuild Private Limited ("financial Creditor") in the form of refundable advance for undertaking the said actions for 'change in land use permission' and further to bear the cost and expenses for maintaining the clear and unencumbered possession of the said land.

3.3 Corporate Debtor and Financial Creditor therefore entered into a Memorandum Understanding dated 29.05.2014 ("MoU") to record their said understanding in writing. MoU recorded the arrangement whereby the Financial Creditor and Corporate Debtor were to collaborate, jointly develop or do any other such arrangement, in respect of the said land owned by the Corporate Debtor in Faridabad District of Haryana after the Corporate Debtor obtains the requisite 'change in land use permission'.

3.4 Under the said MoU the Financial Creditor had agreed to give a financial assistance to the Corporate Debtor to a maximum amount of Rs.15,00,00,000/- (Rupees Fifteen Crore only) and during the term of the MoU which was 5 years from the date of the execution, a sum of Rs.12,85,00,000/- (Rupees Twelve Crore Eighty-Five Lakh only) was duly disbursed by the Financial Creditor.

3.5 However, the Corporate Debtor failed to undertake the requisite actions as agreed to in the MoU. The Financial Creditor had several discussions and meetings with the Corporate Debtor, however the actions

under MoU remained unfulfilled and therefore, the Financial Creditor wrote a letter dated 20.07.2018 to the Corporate Debtor to reminding it of its obligations under the MoU to be completed during the remaining term of the MoU.

3.6 Corporate Debtor in response to the said letter issued a reply dated 02.08.2018 thereby stating that it has taken all steps to comply with the conditions for grant of change in land use permission' and will comply with its obligations.

3.7 Corporate Debtor did not make enough efforts and hence failed to fulfil its obligations under the MoU. It further resulted in failure and frustration to achieve the final objective of the MoU viz. execution of possible collaboration, development rights agreements etc. The Financial Creditor therefore in such circumstances, issued a letter dated 11.12.2018 seeking refund of the amount advanced to the Corporate Debtor.

3.8 The Corporate Debtor however did not issue any refund of the amount and wrote a letter dated 21.01.2019 seeking to resolve the difference through a meeting with the Financial Creditor.

3.9 That after several rounds of negotiations and discussions, a loan agreement dated 04.04.2019 ("Loan Agreement") was executed between the the Parties, whereby the amount of Rs.12,85,00,000/- (Rupees Twelve Crore Eighty Five Lakh only) received as refundable advance was converted into a loan. Further the Corporate Debtor agreed to re-pay the said amount along with applicable interest @12% per annum, as per the terms and conditions agreed thereto.

3.10. In terms of the Loan Agreement the Corporate Debtor had to make the repayments on or before 31.12.2019. In fact, no payments were received by the Financial Creditor.

4. In Part-III of Form No.1, Mr. Ashwani Kumar, Registration No.IBBI/IPA-001/IP-P01015/2017-2018/11666 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 20.01.2021 along with the Certificate of Registration issued by the Indian Institute of Insolvency Professional of ICAI and the certificate of IBBI issued in favour of proposed Interim Resolution Professional i.e. Mr. Ashwani Kumar are attached at Annexure-AC the petition.

5. It is stated in Part-IV of Form No.1 that the petitioner has provided loan amount of Rs.12,85,00,000/-. The total amount claimed to be in default is Rs.14,18,07,671/- (including interest amount of Rs.1,33,07,671/-). Copy of ledger accounts maintained by the financial creditor (Annexure A-4). Copy of the loan agreement (Annexure A-10). Copy of default notice (Annexure A-11).

6. The notice of this petition was issued to the respondent-corporate debtor on 26.07.2021 as to why this petition be not admitted. A reply on behalf of respondent-corporate debtor is submitted vide Diary No.00128/01 Dated 09.03.2021 by Mr. Gauri Shankar, Director of respondent-corporate debtor, affidavit authorizing him on behalf of the respondent is attached at Page No.10-11 of the reply.

7. The corporate debtor through its reply has submitted that the respondent-corporate debtor has faced a financial crisis due to the non-conducive circumstances created by COVID pandemic due to which the Corporate Debtor is unable to pay the debts. It is further submitted that this Tribunal may consider the

difficulty of the answering respondent and its incapacity to pay the liability to the petitioner.

8. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

9. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

10. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 31.12.2019 and the present petition is filed vide Diary No.00128 dated 03.02.2021. Therefore, the present petition is filed within limitation.

11. Another issue for consideration is whether there is default in payment or not. As per Section 7 of IBC which is reproduced below :-

“Section 7 Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with ¹[other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government,] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

²[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project

or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.”

12. It is observed from the record that in the present case, the occurrence of default is evidenced by the copy of the loan agreement and copy of letter issued by the corporate debtor and the account statement of the corporate debtor and the same are attached as Annexure A-10 and Annexure A-12 & A-15 respectively of the petition. The respondent-corporate debtor has also filed a reply wherein it has been admitted that there is default in respect of financial debt and amount mentioned in the petition is due towards the petitioner and shown its incapacity to pay the liability. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Ashwani Kumar has been proposed as Interim Resolution Professional.

13. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ashwani Kumar, and there is nothing adverse against him. In view of the above, we appoint Mr. Ashwani Kumar, Registration No.IBBI/IPA-001/IP-P01015/2017-2018/11666, Email: ashwanikumarsaxena1207@gmail.com, Mobile No.9811798940, the Interim

Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. Accordingly, the petitioner proved the debt and the default, which is more than the threshold limit of one crore. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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.

- (e) It is further directed that 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.
- (f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.”

15. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

16. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to

adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

17. The petition is allowed and admitted accordingly.

18. A copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

June 30, 2022

AV/ASH