

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

CP/946/IB/2018

Under Section 7 r/w rule 4 of the IBC, 2016

In the matter of M/s. Viprah Technologies Limited

M/s. Actioncor Consultants Private Limited

---Financial Creditor

V/s

M/s. Viprah Technologies Limited

---Corporate Debtor

Order delivered on: 29.07.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

For the Financial Creditor: *Shri. Sanakaranarayanan, Sr. Advocate*
For Shri. Anant Merathia, Advocate
Ms. Poornima, Advocate

For the Corporate Debtor : *Shri. Pawan Jabakh, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in the Open Court on 18.07.2019

It is a Company Petition filed u/s 7 of the Insolvency and Bankruptcy Code (the "Code") against the Corporate Debtor for initiation of Corporate Insolvency Resolution Process (CIRP) on the

ground the Corporate Debtor defaulted in repaying ₹ 5,63,17,951 as on 30.11.2017.

2. On perusal of this Petition and on hearing the arguments of the Financial Creditor counsel, it is understood that this Financial Creditor relied upon an Investment Agreement dated 14.07.2010, to say that money has been paid as a loan to the Corporate Debtor through its Directors, therefore the Corporate Debtor, having come out from the BIFR proceedings on 1st December, 2016 by way of abatement, is bound to repay the loan availed by the Corporate Debtor along with interest. The counsel has further stated that on Demand Notice dated 05.12.2017 demanding the Corporate Debtor to repay the same to the Applicant, for there being response denying to repay the same on the ground that the Corporate Debtor is not bound to repay this loan to the Financial Creditor, this Applicant has initiated this proceeding against the Corporate Debtor.

3. As against this argument, the Corporate Debtor counsel has stated that the Investment Agreement dated 14.07.2010 shown by the Financial Creditor counsel has not been executed by the Corporate

Debtor, indeed it is an agreement, in which the Promoter-Directors of the Corporate Debtor and a person namely, Khodadad Khushroo Marodian (KKM) signed as reflected in Page 19 of the Application which is as follows:-

"This Tripartite Agreement made and executed on this 14th day of July 2010 by and between (1) Mrs. Sujatha Ananth (Maiden name Sujatha Krishnan) wife of Mr. Coimbatore Krishnan Anantha Subramanian (hereinafter referred to as "Sujatha" which shall include her heirs and nominees); (2) Mr. Coimbatore Krishnan Anantha Subramanian, the promoter shareholder and Managing Director of Viprah Technologies (hereinafter referred to as "CKAS" which shall include his heirs and nominees). Both the above mentioned persons are residing at No.8, Kalpatharu, 87 Santhome High Road, R.A. Puram, Chennai 600 028, India - BOTH of the FIRST PART. (3) Mr. Khodadad Khshroo Moradian son of Khushroo Boman Moradian (hereinafter referred to as KKM which shall include his nominees and assigns including Actioncor Consultants Private Limited, an Indian company in which KKM is a promoter Director) residing at 145 Avenue De Malakoff, Paris 75116, France of the SECOND PART - Hereinafter referred to collective as "Parties".

Preamble:

(A) Sujatha is the owner of 1.3 acres property bearing SF No.79/5 village no. 46 at Thekkalur (the property) adjacent to

Viprah Technologies Limited, an unlisted public limited company incorporated under the Companies Act, 1956 (hereinafter referred to as "VIPRAH). The copy of the title deed of the Property is as per enclosed Annexure-I.

(B) Coimbatore K Anantha Subramanian is the promoter shareholder and Managing Director of VIPRAH holding 4,060,000 equity shares of Rs.10 each and 1,000,000 Redeemable Cumulative Convertible Preference Shares of Rs.10 each. VIPRAH is currently registered with the Board for Industrial and Financial Reconstruction (BIFR) as a sick industrial company since 2006 and the registration case number being 75/06 and AAIFR appeal reference number being 150/10.

(C) CKAS has represented to KKM that VIPRAH's Net Worth as defined under the Sick Industrial Companies Act (SICA) with KKM's cash infusion of Rs.124 lakhs as well as in view of the negotiations he has conducted and concluded with creditors, shall become positive and sufficient to get out of BIFR with the submission of Debt Rehabilitation Scheme (DRS) as per SICA Act with the support of the Operating Agency appointed by the BIFR. The infusion of Rs.124 lakhs shall be used to pay off the debts to the secured creditors as per the disbursement schedule shown in Annexure II hereto. With the Net Worth becoming positive, CKAS would initiate steps to deregister VIPRAH from the BIFR.

(D) CKAS has approached KKM for financial assistance and accommodation which KKM is willing to provide under certain conditions subject to adequate security being provided by way of pledge of the Title deeds of the property to KKM by Sujatha as detailed hereafter and with certain representations and warranties by CKAS.

(E) Both Sujatha and CKAS have represented and warranted to KKM that apart from the current Mortgage of the property to the State Bank of India, Sujatha's title to the property is free and from any charges, encumbrances and liens whatsoever. Sujatha further represents and warrants that there are no other persons including her legal heirs or any other creditors that will raise any claims in respect of the said property. Therefore though money was invested with the Corporate Debtor, for there being no promise from the Corporate Debtor to repay this loan, whatever terms and conditions entered between the parties in that Investment Agreement will not be binding upon the Corporate Debtor, henceforth, the Corporate Debtor counsel says that this Petition will not lie against the Corporate Debtor.

(F) CKAS has further informed to KKM that the BIFR in its last order dated 11th March 2010, has issued orders to IDBI-BIFR Cell (the OA) to explore schemes to have a change in the management of VIPRAH and ordered publications in newspapers in this regard. CKAS has filed an appeal to stay the order subsequently. CKAS has attended the AAIFR hearing held on 2nd

July 2010 and has now got time until August 18th for filing an affidavit that shall enable the negation of the BIFR directives. CKAS confirms that once the investments are made by KKM as per the schedule in Annexure II there would be change of status of VIPRAH.

Now in consideration of the above, the Parties hereby agree as follows:

1. *On execution of this agreement, KKM shall cause a Demand Draft of ₹11 lakhs in favour of the State Bank of India (SBI) payable at the Coimbatore Branch and a second cheque of ₹5 lakhs payable to Bank of India to be made out for the VIPRAH account. CKAS accompanied by KKM's representative shall go to the State Bank of India Office in Coimbatore, to deliver the DD, and take simultaneous delivery of the title deeds of the property pledged with them, and hand over the same along with appropriate document to KKM.*
2. *CKAS shall provide SBI's in principle confirmation in writing before the preparation of the DDs, subject to KKM providing a bank statement on the availability of funds".*
4. On hearing the submissions of either side with regard to proof of existence of debt obligation against the Corporate Debtor, the Financial Creditor, on the first count, has to prove that debt

obligation is in existence between the Financial Creditor and the Corporate Debtor as defined in Section 3 (11) of the Insolvency and Bankruptcy Code, which is as follows:

“Debt means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt”.

5. Since it has been said that debt means liability or obligation in respect of a claim which is due and payable, unless the Corporate Debtor created debt obligation upon itself, though in this case money has gone to the Corporate Debtor on the obligation provided by some third party, this Financial Creditor cannot proceed against the Corporate Debtor on the premise money has gone to the Account of the Corporate Debtor, therefore it has to repay because the corporate debtor has never agreed to repay this impugned loan amount. That apart, this Financial Creditor is also not a party to the Investment Agreement dated 14.07.2010.

6. It is also pertinent to refer to Regulation 8 of CIRP Regulations saying that Financial Creditor is bound to place records disclosing financial contract supported by financial statements as

evidence of the debt. For there being no financial contract between the Financial Creditor and the Corporate Debtor, I am of the opinion that this Financial Creditor has failed to adduce evidence before this Bench proving that debt is in existence between the Financial Creditor and the Corporate Debtor as envisaged in the definition given in Insolvency and Bankruptcy Code.

7. By looking at the document i.e. the Investment Agreement, it is clear that this Financial Creditor has provided money to the Corporate Debtor, when it was in SICA, looking at the promise made by the Promoter-Directors of the company, not by the promise made by the Corporate Debtor. Therefore, today, even if it is assumed that this Financial Creditor is entitled to proceed on behalf of KKM, then also, since the suspended directors, in their individual capacity, have given obligation to repay the loan amount, this Financial Creditor cannot proceed against this Corporate Debtor on the assumption that debt obligation is in existence as against the Corporate Debtor.

8. It is not the case of the Financial Creditor that this debt is shown in the records of the Corporate Debtor and the documents

reflecting financial agreement entered in between the parties being lost, thereby debt showing in the books of the Corporate Debtor will amount to an obligation and proof against the Corporate Debtor owing to the obligation emanated from the transaction documents misplaced or lost.

9. It is the case of the Financial Creditor that this debt is in existence against the Corporate Debtor because money has come to the Account of the Corporate Debtor, therefore though the suspended directors executed Investment Agreement in their individual capacity stating that they would repay the loan, the Corporate Debtor has to repay the same to the Financial Creditor. Besides this, the Corporate Debtor is not even a party to this proceeding. Even if any over lapping Clause has come in the invest agreement between the third parties saying that the Corporate Debtor would repay the loan, that will never be binding on the Corporate Debtor as long as promise has not been made by the Corporate Debtor.

10. In view of the same, this Bench having come to a conclusion that debt obligation is not in existence against the Corporate Debtor in the Investment Agreement executed between KKM and the directors of the Corporate Debtor in their individual capacity, therefore Company Petition is liable to be dismissed.

11. Accordingly, this CP/946/IB/2018 is hereby dismissed.

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

KNP/TJS