

IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"

CP (IB) No.74/Chd/Hry/2018

Under Section 7 of the
Insolvency and Bankruptcy
Code, 2016.

In the matter of:

Mr. Sandeep Bidani son of
Shri Inder Mohan Bidani,
A-132 (GF) M2K Aura,
Sector 147, Gurugram,
Haryana-122018.

...Petitioner-Financial Creditor

Vs.

Praxis Developers India Pvt. Ltd., having
Its registered office at 128, 129, 1st Floor,
Tower B-3, Spaze-I Tech Park, Sector-47,
Sohna Road, Gurugram, Haryana.

...Respondent-Corporate Debtor

Judgement delivered on:06.07.2018

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member(Judicial).
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)

For the petitioner : Mr. Piyush Bansal, Advocate.

For the respondent : Ex-parte.

Per: R.P. Nagrath, Member (Judicial)

JUDGEMENT (Oral)

This petition has been filed by Mr. Sandeep Bidani, the Financial Creditor in terms of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) to initiate the insolvency resolution process against M/s Praxis Developers India Pvt. Ltd – respondent-corporate debtor for default in payment of the debt. The application has been filed in Form 1 as prescribed in Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the Rules). The respondent was incorporated as a company on 26.09.2013 under the Companies Act, 1956. The registered office of the company is situated at

Praxis
Praxis

Sohna Road, Gurugram in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

2. The petitioner-financial creditor also impleaded the corporate debtor at the other two addresses being those of its Directors but the notice of this petition was directed to be issued to the corporate debtor at its registered office and e-mail address available on the master data available on the portal of Ministry of Corporate Affairs and that is how the parties have been described in the title of this Judgement.

3. The authorised share capital of the respondent-corporate debtor is ₹ 25,00,000 and paid up share capital is ₹ 5,00,000 lacs as is evident from the master data of the respondent (Annexure A).

4. The facts of the case briefly stated are that the respondent-corporate debtor approached the petitioner to invest in the farm house in their project i.e. 'Holiday Farms' situated at Tehsil Jamwa Ramgarh, District Jaipur, Rajasthan (for short, Investment No. 1). The petitioner invested in the farm house bearing No. J-07 Block No. J, having farm land area of approximately 1083.33 sq. yards comprising of farm house area of approximately 1600 sq. ft. The corporate debtor had assured return amount of ₹ 51,023 for a period of 24 months or upto possession of the aforesaid Investment No. 1 including interest after deduction of TDS @ 10% . The petitioner has relied upon Annexure C (colly) which are Receipts of December, 2013, Receipt dated 04.12.2013 and Receipt dated 04.01.2014 regarding deposit of ₹20,00,000, ₹ 5,00,000 and ₹ 5,10,000 respectively with the corporate debtor before allotment.

5. Thereafter, the respondent-corporate debtor issued allotment letter dated 20.02.2014 (Annexure D) in favour of the petitioner for the

aforesaid property. Simultaneously, letter of even date (Annexure E) containing terms and conditions of the booking was issued. It is the case of the petitioner that as per this letter (Annexure E), the respondent-corporate debtor had agreed to pay the assured return to the petitioner in arrears on monthly basis. 24 post dated cheques were handed over to the petitioner, the details of which are given in the lists attached with the letter (Annexure E) containing terms and conditions. These cheques are from 20.03.2014 to 20.03.2015 (page 32 and 34 of the paper book) and the amount of each cheque is ₹40587. Apart from this, there is another list of 11 post dated cheques annexed with the aforesaid letter (at page 33 of the paper book and one cheque as per list at page 34). All these cheques are drawn on Axis Bank.

6. It is further stated that after the aforesaid allotment, the petitioner made further balance payments of ₹13,24,795 on 10.03.2014 and ₹ 4,00,000 on 07.06.2014 towards 'Investment 1'. In this way, total amount of ₹47,34,795/- was advanced by the petitioner to the respondent-corporate debtor.

7. Thereafter, the corporate debtor again approached the petitioner-financial creditor to invest in farm land in the same project called Investment 2. The petitioner had agreed to purchase farm land bearing Farm No. H-09, Block No. H having farm area of approximately 1000 sq. yards and the corporate debtor had agreed to pay the assured return @ 11% per annum on monthly basis. Pursuant to this, the petitioner paid an advance of ₹ 33,00,000 to the corporate debtor towards this allotment and receipt dated 07.06.2014 regarding deposit of this amount is Annexure G issued by the corporate debtor. The allotment letter dated 08.06.2014 for the farm land measuring 1000 sq. yards is Annexure H. The letter containing terms and conditions

*Supra
proposed*

regarding the said allotments is Annexure I. The details of the post dated cheques issued with regard to the assured payment are at Annexure 'A' attached with the document Annexure I. Each of these cheques are for ₹27,225 drawn on Axis Bank.

8. It is further averred that the corporate debtor again approached the petitioner in July, 2014 for facility of a sum of ₹ 1 crore for a period of one year repayable with interest @ 18% per annum. This is referred as 'Investment 3' in the instant petition. The amount of ₹ 1 crore was deposited with the respondent vide cheque No. 826653 dated 17.07.2014 and for that the secured financial agreement dated 19.07.2014 (Annexure J) was executed. The post dated cheques of ₹ 4.5 lacs each were issued in favour of the petitioner which are dated 22.07.2014, 22.10.2014, 22.01.2015 and 22.04.2015 for the interest part of the investment. The respondent also handed over original Title Deeds of two Sale deeds in respect of land comprising of Khasra No. 220/267/5 measuring 1 bigha located in the revenue estate of Village Dhaula Tehsil Jamvaragarh, District Jaipur and Khasra No. 220/267/1 measuring 1 bigha located in the revenue estate of Village Dhaula Tehsil Jamvaragarh, District Jaipur. The amount is stated to have not been returned despite expiry of one year.

9. It is further alleged that as per agreed terms of the understanding, the corporate debtor made payment of the assured return/interest for Investment 1, 2 & 3 till 01.07.2016 and thereafter the corporate debtor started defaulting in payments. It is also stated that the corporate debtor admitted the aforesaid default with regard to the assured return – interest for the period from 01.07.2016 to 30.09.2017 vide letters dated 18.09.2017 which are at Annexures K & L.

10. The petitioner has attached computation chart (Annexure Q) with regard to the amount in default as on 28.02.2018 in respect of all the three Investment. In Part-IV of the chart, the financial creditor has mentioned that total outstanding amount in default in respect of all the three Investments as on 28.02.2018 was ₹ 1,75,82,144.

11. The contents of the application are supported by the affidavit of the petitioner. The petitioner has also filed written communication in Form 2 from Mr. Sudhir Kalra proposing him as the Interim Resolution Professional.

12. When the matter was listed on 03.04.2018, it was noticed that in Col. II of Part-IV of the application in Form 1, the date of default was not mentioned which is mandatory. Notice of this defect was issued to the petitioner who filed fresh Form 1 which is also supported by affidavit of the petitioner filed vide Diary No. 1149 dated 16.04.2018.

13. It is also submitted that at the time of filing of this petition, copy of the same was despatched to the respondent-corporate debtor by Speed Post along with the entire paper book as required in terms of sub-rule (3) of Rule 4 of the Rules. By order dated 03.04.2018, the petitioner was also directed to file the tracking report of the envelope containing the petition and the entire paper book despatched to the respondent-corporate debtor in accordance with the aforesaid Rules. The learned counsel for the petitioner filed his own affidavit dated 16.04.2018 vide diary No. 1149 stating therein that the envelope despatched to the respondent at its registered office was returned and the same was attached with the affidavit. The address mentioned on the envelope is the same as contained in the master data of the company which is also the address of the corporate debtor mentioned in the instant petition.

14. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted. The notice accompanied by the copy of petition was directed to be sent by Speed Post at the registered office address of the corporate debtor as well as at the e-mail address available on the master data. The learned counsel for the petitioner filed his own affidavit of service dated 28.05.2018 vide Diary No. 1833 dated 28.05.2018 and even now the envelope containing the notice accompanied by copy of petition and the entire paper book sent by Speed Post was returned undelivered with the report purportedly made by the postal employee that the 'addressee has left the given address'. Tracking report in this regard is also attached to the affidavit.

15. When the matter was listed on 01.06.2018, this Tribunal passed the following order:-

"Affidavit of service has been filed by the learned counsel for the petitioner by diary No.1833 dated 28.05.2018. It is submitted that the notice was sent by speed post at the registered office of the company available on the Master Data downloaded from the website portal of the Ministry of Corporate Affairs on 13.02.2018. The same has been returned undelivered with the report of Postal Department that the addressee has left the address. While directing issue of notice to the respondent-corporate debtor, it was also directed that notice be sent to the corporate debtor at the e-mail address available on the Master Data of the company. It is stated in the affidavit with the scanned copy of notice and the entire Paper Book was sent to the corporate debtor at the e-mail address of the company available on the Master Data which is attached as Annexure A-2 with the affidavit. Learned counsel for the petitioner further states that as per report at page 10 of this affidavit

Quapn
Pradyumn

the notice sent by e-mail was delivered to the corporate debtor. Therefore, notice is declared to be duly served. There is no representation from the respondent-corporate debtor."

16. The corporate debtor having been declared duly served as directed by this Tribunal and there being no representation from the respondent, we proceed to dispose of the petition ex-parte.

17. We have heard the learned counsel for the petitioner and perused the record carefully. The application under Section 7 of the Code has been filed by the Financial Creditor. The term 'Financial Creditor' is defined in sub-section (7) of Section 5 of the Code as meaning any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

The "financial debt" is defined in sub-section (8) of Section 5 of the Code and the relevant part of the provision reads as under:-

"Financial debt" means a debt along with interest, if any, which is disbursed against consideration for the time value of money and includes the money borrowed against the payment of interest"

18. In the instant case, the amount has been disbursed to the respondent by the petitioner for consideration for time value of the money and it carried the term of payment of interest apart from assured returns.

19. The financial creditor can move an application in the prescribed format for which the compliance is duly made. It is a clear case of the respondent-corporate debtor committing default in respect of the 'financial

*@ verified
Prasanna*

debt'. In order to establish his case, the petitioner relied upon various documents which have been referred to. This will become evident from the issuances of various cheques for payment towards interest as well as assured returns. The learned counsel also referred to copies of various cheques which were issued by the respondent and the same bounced. Memo of dishonoured cheques has been issued by the ICICI Bank where the petitioner-financial creditor is maintaining his account and presented the cheques for payment.

20. The communication by the ICICI Bank dated 17.02.2018 (Annexure N) relating to the cheque dated 15.02.2018 for ₹1crore (Annexure M) states that the cheque has not been realised owing to "account blocked".

21. The learned counsel also refers about the other dishonoured cheques. One of the cheque for ₹ 21,00,000 dated 30.11.2017 is Annexure O which was dishonoured owing to 'insufficient funds' as conveyed to the petitioner-financial creditor by the ICICI Bank vide its communication dated 30.01.2018 (Annexure P). The petitioner filed statement of his account (Annexure F) maintained with Royal Bank of Scotland, Gurgaon from where payments were made to the respondent-corporate debtor on various dates. It is further submitted by the learned counsel for the petitioner that there was an understanding between the parties for which the respondent wrote a letter to the petitioner dated 18.09.2017 (Annexure K) which indicates that the matter with regard to the change of land use was under process and assurance was given that the same will be completed by 31.10.2017. Since the earlier cheque of ₹1crore issued in favour of the petitioner had expired, the respondent issued fresh cheque in favour of the petitioner and apart from that a cheque for delayed interest and assured return was also issued as per the list at Annexure

Atul K. Singh
Advocate

L annexed to this letter. The aforesaid documents are sufficient record of evidence of default of payment in this case.

22. The application filed in Form 1 has been perused and the complete particulars as required have been furnished. Being a financial creditor, the petitioner was also required to propose the name of the Resolution Professional to act as an Interim Resolution Professional in terms of Section 7 (3) (b) of the Code which has been furnished in Form 2 as per Annexure B. Mr. Sudhir Kalra is registered with Insolvency and Bankruptcy Board of India (IBBI) and he has given his consent for being appointed as the Interim Resolution Professional. He has stated that he is not currently serving as Interim Resolution Professional/ Resolution Professional/Liquidator in any proceedings and that no disciplinary proceedings are pending against him with the IBBI or ICAI Insolvency Professionals Agency. A perusal of Form 2 shows that the same is in order.

23. As all the requirements of Section 5(7) and sub-section (3) and (3) of Section 7 of the Code have been fulfilled, we find that the application for initiation of insolvency resolution process against the respondent-corporate debtor deserves to be admitted. Accordingly, the petition is admitted and moratorium in terms of Section 14(1) of the Code is declared as under:-

- (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;