

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 109/I&BP/NCLT/MAH/2018

(Under Section 7 of the I&B Code, 2016)

In the matter of
S. J. Impex
Sole Proprietary Firm
Mr. Jitendra Mehta, Proprietor
Having its Office at 1401, Raheja
Centre, Free Press Journal Marg,
Nariman Point, Mumbai – 400 021
...Financial Creditor 1

Deven J. Mehta HUF
Having its office at 1401, Raheja
Centre, Free Press Journal Marg,
Nariman Point, Mumbai – 400 021
...Financial Creditor 2

M/s. Ami Impex
Sole Proprietary Firm
Mr. Deven J. Mehta, Proprietor
Having its Office at 1401, Raheja
Centre, Free Press Journal Marg,
Nariman Point, Mumbai – 400 021
...Financial Creditor 3

Mrs. Jyoti J. Mehta
Residing at D3/D4, Amalfi CHS,
L.D. Ruparel Marg, Malabar Hill,
Mumbai – 400 006
...Financial Creditor 4

Nikhil H. Shah HUF
Residing at 315G, New Charni
Road, S. M. Building, 2nd Floor,
Office No.7, Mumbai – 400 004
...Financial Creditor 5

Ms. Simran Nikhil Shah
Residing at A/73, Hira Panna,
Bhulabhai Desai Road, Mumbai –
400 026
...Financial Creditor 6

Mr. Dhir Bijal Mody

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 109/IB/2018

Residing at 315G, New Charni
Road, S.M. Building, 2nd Floor,
Office No. 7, Mumbai – 400 004
...Financial Creditor 7

Mr. Jeet Bijal Mody
Through his constituted Attorney
Mr. Nikhil H. Shah residing at 315G,
New Charni Road, S.M. Building, 2nd
Floor, Office No.7, Mumbai-400 004
...Financial Creditor 8
v/s.

Kavya Build-con Private Limited
CIN: U45200MH2004PTC145368
HAVING IT Registered Office at 2nd
Floor, 99C, Kavya Aura, Sitaram
Ghadigaonkar Marg, Tulsiwadi,
Tardeo, Mumbai – 400 034
...Corporate Debtor

Order Delivered on 31.10.2018

Coram: Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Ms Gulnar Mistry, Advocate a/w, Mr. Rihal Kazi,
Advocate and Kalyani Singh i/b M & M Legal
Ventures

For the Respondent: Khushnuma Khan, Advocate a/w Asfiya Cutchi,
Advocate i/b K. K. Associates

Per V. P. Singh, Member (Judicial)

ORDER

1. It is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (IBC) by S. J. Impex along with seven other Financial Creditors against Kavya Build-con Private Limited, Corporate Debtor, to initiate Corporate Insolvency Resolution Process (CIRP) against the

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 109/IB/2018

Corporate Debtor on the grounds that, as on 31st December 2017, Corporate Debtor has defaulted in making repayment of ₹7,63,81,875/- which is due pursuant to the consent terms dated 01.08.2017 filed between Corporate Debtor and the Financial Creditors in C.P. 1175/(MAH)/2017.

2. For a brief background on this petition, the Financial Creditors had filed C.P. No. 1175/(MAH)/2017 which was listed before this bench and was dismissed as withdrawn on the basis of consent terms agreed and filed between the parties to that petition by an order of this Bench dated 09.08.2017. As recorded in the said Consent Terms that a sum of Rs.9,06,48,750/- is due and payable by the Corporate Debtor to all the Financial Creditors as on 31.07.2017 being the principal advanced and the interest charged upon it at the rate of 24% p.a. The Corporate Debtor had, in the Consent Terms, agreed to repay to said sum in accordance with the schedule of payment annexed to the consent terms. Further, the Corporate Debtor had agreed to pay interest @ 24% p.a. till payment and/or realization by the entire amount set out in Annexure A1 to A8 by each of the Financial Creditor. Also, the parties had agreed that:

"...in the event of two continuous defaults to any of the Financial Creditors of the aforementioned payments as set out in Annexures A1 to A8, the entire sum outstanding to all the Financial Creditors at the time of such default shall become payable immediately and the Corporate Debtor shall be liable to be wound up and the Financial Creditors or any of them shall be entitled to dispose of such of the securities given by the Corporate Debtor and its group entities set out in the Annexures B and C hereto at their sole discretion and appropriate the amounts of sale proceeds towards the amount due and payable herein."

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 109/IB/2018

3. The present petition being CP No. 109/IBC/NCLT/MB/MAH/2018 was filed by the Financial Creditors because the Corporate Debtor has defaulted in making payment as agreed and scheduled in the consent terms and thereby breached the consent terms that were the basis on which the petition was dismissed as withdrawn. In order to prove the breach of consent terms, the petitioner has attached copy of dishonored cheques along with the acknowledgement receipt from its Bank stating the reason for dishonor as "Funds Insufficient".

4. The Corporate Debtor, in its affidavit in reply, states that the petition has been filed for recovery of an alleged claim *de hors* the necessary proof of existence of the same amounting to travesty and abuse of process of law. According to the Corporate Debtor, it has made regular payments to the applicants as per the time limit agreed in consent terms and specifically paid Rs.3,50,73,250/- till the month of September, 2018 and that now only Rs.5,55,75,500/- is due and repayable. As per the Corporate Debtor, the consent terms provided for payment of the entire amount within a period of three years i.e. till September, 2019 and therefore the petition is premature and filed only to push the Corporate Debtor into insolvency proceedings.

5. The Corporate Debtor has further submitted that the consent terms provided for foreclosure of the entire mortgage property in the event of default and the Corporate Debtor has by its letter dated 22.01.2018 has accorded their consent to sell the securities and recover the debt outstanding as the securities are of more value than the outstanding debt.

6. We have heard the argument of Ld. counsel for both the parties and perused the record.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 109/IB/2018

7. In this case the existence of debt is reasonably evidenced in the consent terms that were also made part of the order of this Tribunal dated 10.11.2017 as well as the averments made by the Corporate Debtor himself regarding the amount of debt outstanding to the Financial Creditor that amounts to admitting the existence of debt. Further the Petitioners have attached various dishonored cheques, along with the acknowledgement receipt from its Bank stating the reason for dishonor as "Funds Insufficient". These cheques are mentioned in the annexures to the consent terms as being post-dated cheques given by the Corporate Debtor to the Financial Creditor for payment of outstanding debt over a period of 26 months. This satisfies the evidence required to prove that the Corporate Debtor defaulted in making repayment to the Petitioners.

8. As to the objection raised by the Corporate Debtor that the consent terms provide for foreclosure of the entire mortgage property in the event of default and that the Corporate Debtor has accorded their consent to sell the securities and recover the debts outstanding, this cannot be a valid ground for not admitting this petition as firstly, the Corporate Debtor has not provided the Financial Creditors with the title deeds of the concerned securities and even if the title deeds were so provided, the Financial Creditors are under no obligation to recover their dues by selling the securities.

9. The Petitioner having proved the existence of debt as well as existence of default. We are of the view that the present case is fit for admission under the Insolvency and Bankruptcy Code, 2016.

10. The Corporate Debtor having named the Interim Resolution Professional with his consent, and there being no disciplinary proceedings against the same.

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 109/IB/2018

11. We hereby admit this petition filed under Section 7 of IBC, 2016, against the corporate debtor for initiating corporate insolvency resolution process against the corporate debtor and declare moratorium with consequential directions as mentioned below:

I. That this Bench hereby prohibits:

- 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.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from 31.10.2018 till the completion of the corporate insolvency resolution process or

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 109/IB/2018

until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Mr. Rajendra Karanmal Bhuta, having Registration Number [IBBI/IPA-001/IP-P00141/2017-18/10305] as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

12. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or whatsapp.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P.SINGH
Member (Judicial)

31th Oct 2018