

In the National Company Law Tribunal
Mumbai Bench.

C.P.(IB)-2668/(MB)/2018

Under Section 7 Insolvency & Bankruptcy Code, 2016

In the matter of

Mr. Qamruddin Faizi : Petitioner/ Financial Creditor
V/s

Kaizen AAC Blocks Private Limited : Respondent/ Corporate Debtor

Heard on : 16.01.2019
Order delivered on: 23.01.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Mr. Chandrakant Mhadeshwar, Advocate.

For the Respondent(s) : 1. Mr. S.I. Khan, Director, Kaizen AAC Block Pvt. Ltd.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition was filed in Form No.1 on 06.07.2018 U/s.7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Qamruddin Faizi, in the capacity of Financial Creditor to initiate Corporate Insolvency Resolution Process against M/s. Kaizen AAC Blocks Private Limited, Thane-400 612, Corporate Debtor to claim an outstanding Financial Debt of ₹52,00,000/- (Principal) Plus Interest ₹21,29,891/-, Total ₹73,29,891/- as on 31st May, 2018.

| Sr. | Date | Amount (₹) |
|-------|-------------|------------|
| 1 | 07-Mar-2015 | 14,50,000 |
| 2 | 19-Mar-2015 | 5,50,000 |
| 3 | 06-May-2015 | 10,00,000 |
| 4 | 07-May-2015 | 15,00,000 |
| 6 | 28-May-2015 | 5,00,000 |
| 7 | 29-Oct-2016 | 2,00,000 |
| TOTAL | | 52,00,000 |

1.1. Calculation of Interest amounting to ₹21,29,891/- is on record.



Submission from the side of the Petitioner

2. The Corporate Debtor Company is in the manufacture of R.C.C. bricks and AAC blocks. The Petitioner paid Share Application money to the Corporate Debtor as under:-

| Date | Rs. |
|------------|-----------|
| 07.03.2015 | 14.5 Lacs |
| 19.03.2015 | 5.5 Lacs |
| 06.05.2015 | 10 Lacs |
| 07.05.2015 | 15 Lacs |
| 28.05.2015 | 5 Lacs |
| 29.10.2016 | 2 Lacs |
| Total | 52 Lacs |

2.1. However, it is alleged that the Shares were not allotted. The Petitioner is also one of the Directors in the Company having 500 shares which is 5% of the total Equity. In the Books of the Debtor Company the amount was treated as 'Loan Liability'.

3. Since the Shares were not allotted for the impugned amount of ₹52 Lakhs *supra*, the Petitioner relied upon the provisions of Section 42(6) of the Companies Act, 2013, reproduced below:-

*42 (1)

(2)

(3)

(4)

(5)

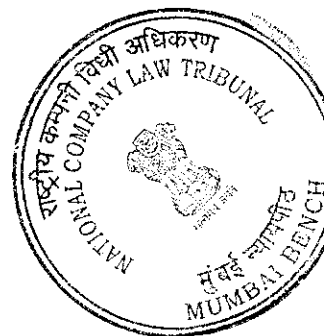
(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities."

3.1. As a consequence, in case of non-allotment of Shares, the amount received to purchase of shares shall bear interest @ 12% per annum, if within 60 days not refunded or fails to repay the Application money.



4. A legal Notice dated 24.06.2017 is also on record, issued by the Advocate of the Petitioner, addressed to the Corporate Debtor and Ors. intimating the defaults such as 'Non-issue of share, Balance sheet, Account, & confirmation of share allotment, & Remuneration and non-informing board meeting and A.G.M. and suppressing the profit of Company and other necessary transaction in respect of Company' in which it is alleged as under:-

1. My client states that you addressee no 2 to 9 are the director of addressee No. 1 and managing day to day affair of above company . My client further states that you are authorized Signatory of the above said company . My client states that as Records of R O. C. you are responsible and liable for above said company .
2. My client states that addressee above name requested my client to become the director of above said company and acquire the share of company . My client states that as per your request and Rule and Regulation, my client paid a sum of ₹52,00,000/- (Rupees Fifty Two Lakh only) along with requisite application for Issuance/ allotment of share of addressee no 1 as per terms and condition of Companies acts. My client states that but you fails to perform the obligation cost upon you. My client states that allotment/ Issuance of Share should be completed within 60 days . My client states that failing which / and or non -compliance above condition, you are liable to be prosecuted for civil as well as criminal prosecution as you are the Directors of the above company. .My client states that company act provided under section 42 (10) of the companies Act 2013 that non compliance Company and its Directors and officers who are in default shall be liable to pay penalty which may extend to the Amount involved and / or Two Crores, whichever is higher . My client states that neither you allot / Issue share of company nor refunds the money. My client states that on behalf of company you have Issue letter confirming my client as director of the above said company but facts remain that after Issuance of confirmation dated 31/12/2106 (sic) neither you Issue notice informing my client about meeting nor Monthly Remuneration fixed of my client . My client states that till today you have not comply the obligation cost upon.
3. My client states that you have violated the Rule and Regulation Of Companies act .My client further states that you have suppressed the information ,Account and Meeting of company from my client and not paid anything . My client states that as per law companies shall refunds all monies of the subscribes with interest at the rate of 21% p.a. from the date of application .Under the facts and circumstance states above you bound to repay the share application money paid to you against which no allotment is yet made together with applicable interest .
4. My client states that 18th November 2014 you have appointed my client as Additional Director .My client further states that vide letter dated 31st December 2015 company informed my client that my client appointed as director Company i.e. M/S KAIZAN AAC BLOCKS Pvt. Ltd. in A.G.M. Held on 30th December 2015 , but facts remain that till today neither you inform my client about meeting nor you have fixed my client Remuneration. My client states that till today my client not received any single correspondence about meeting .A. G.M. , Boards Meeting nor received any Balance Sheet ,account statement of company .My client states that under section 173 Of Companies Act 2013 you supposed to hold the Board Meeting every Financial year and you are bound to Issue Notice of Meeting to director and shareholder's. My client states that non -compliance of requisition U/S 173 companies act Company and its Directors shall be liable for penalty A sum Of Rs.25,000/- for each default. My client states that till today you have not issue notice / intimated about Board meeting ,hence you are liable such penalties and prosecution . My client states that you have also fails to comply requisition provided under section 96, 111 and 111(5) of the Companies Act My client states that you are liable to face the consequence as provided U/S 96, 111, and 111(5) of the Companies Act .
5. My client states that you have not circulated annual Account .Balance Sheet , director reports , Auditors Reports and not intimated my client about any meeting. My client states that you have also not disclosed about cost utilization , Fixed assets ,Fixed Capital and cost incurred and other details of the company to my client. my client state that as per R.O.C. Records capital of Company as on date is only 1,00,000/- (Rupees one Lakh only) however facts remain that you have taken ₹ 52,00,000/- (Rupees Fifty Two Lakh only) from my client for allotment of share .My client states that records of R.O.C. and your conduct and actions of works contradicts each other.
6. My client states that my client has written various letters including letter dated 15/07/2016, 02/10/2016, 21/11/2016 and 15/02/2015 calling upon you to comply the requisition call therein but facts remain that neither you comply requisition call therein nor you have reply the same. My client states that my client has also sent compliant through E-mails but no response reason best known to you.
7. My client states that inspite of various correspondence neither you disclosed the cost of project along with complete details & justifications nor status report of project undertaken by company and nor status of company. My client states that circumstance and conduct indicate that you hare violating



Rule and Regulation of companies act, and for the above acts, dereliction of duty, obligation you are liable to be prosecuted and face the consequence My client states that you your conduct indicate that you are cheating my client and intending to miss-appropriate the money of my client .

Under the above said facts and circumstance my client instructed me to call upon you which I hereby do and call upon you kindly comply the requisition mentioned herein above failing which my client constrain to proceed against all of you before R.O.C , law enforcing agency and competent authority as advise which please note , entirely at you cost and consequence."

5. The Petitioner has submitted a Letter dated 08.09.2017 purportedly written by the Corporate Debtor addressed to the Registrar of Companies, Mumbai in reply to their Letter No. ROC(M)/IPC/APD/100022514/L-1/7277 dated 23.08.2017. In Para 3 of the said Letter, the Respondent has stated as under:-

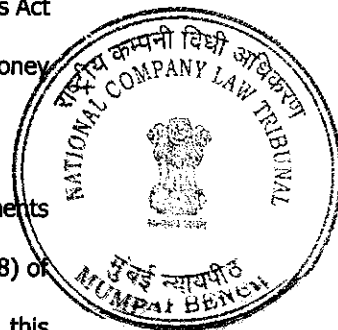
"3. That it was not just the Complainant, but there were other four persons with whom the First Promoters have entered into the same arrangement for making them Director and Shareholder of the Company, albeit at different point of time, and with varied percentage of shareholding and amount of loan to be given by them. And like the Complainant, all other four persons were also made the Directors of the Company and they also became the shareholders in the Company by way of transfer of shares from the First Promoters of the Company and not by any further issue of shares by the Company. The Company or its Board had never made any offer for share in the Company to the Complainant or any third party, so all allegations by the Complainant that he has paid ₹52.00 Lac as share Application Money to the Company and the Company has failed to issue the Shares against the said Share Application Money are absolutely baseless and are after thought. The amount of ₹52.00 Lac given by the Complainant to the Company was a part of overall understanding of the Loan amount to be given by him to the Company, as agreed between him and the First Promoters of the Company "

FINDINGS

6. Examined certain vital facts such as appearance of ₹52.00 Lakhs in the books of accounts of the Debtor Company under the Head of "Unsecured Loan" as per Balance Sheet drawn as on 31st March, 2017.

6.1. Another important aspect is the applicability of Sec.42(6) of Companies Act wherein it is provided in the Statute itself that after lapse of prescribed time, the money shall be treated as a "Deposit", if shares are not allotted and advance not refunded.

6.2. In the light of the above discussion and on due perusal of the documents annexed, the Debt is to be qualified as "Financial Debt" as defined under section 5(8) of Insolvency & Bankruptcy Code, 2016. As a result, the Financial Creditor has filed this



Application for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

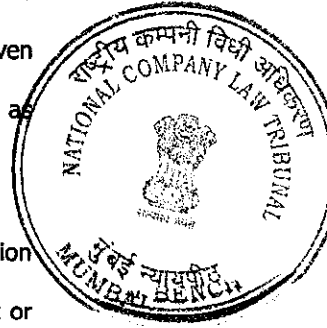
7. Since this is a Petition of "Financial Creditor", therefore, the Insolvency Process shall commence as prescribed under Section 7 of IBC, 2016. The occurrence of "default" is established. The Financial Debtor has not raised any "dispute" nor attended the hearing to represent his side. It appears that the Respondent Debtor has nothing to say in its defence.

8. Having considered the totality of the facts and circumstances mentioned above that the Debt in question is a 'Financial Debt' and that the occurrence of 'default' is recognized, hence considering the state of affairs mentioned *supra* the Petition under consideration deserves to be "Admitted".

9. The Petitioner / Financial Creditor has proposed the name of the IRP CA Mr. Manoj Kumar Jain, Address : 11, Friends Union Premises CSL, 227, P. D'Mello Road, 2nd Floor, Fort, Mumbai – 400001, Email address: manojj2102@gmail.com, Registration No. : IBBI/IPA-001/IP-P00535/2017-18/10960. The proposed IRP has furnished the requisite Certificate on Form No.2 that no Disciplinary Proceedings is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.

10. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. The appointed IRP shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

11. It is hereby pronounced that the "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor



must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

12. Accordingly, this **C.P.(IB)-2668/(MB)/2018** stood "Admitted".

13. The Corporate Insolvency Resolution Process is hereby declared commenced from the date of this Order.

Date : 23.01.2019

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Sd/-
M.K. SHRAWAT
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 11/2/2019.



Assistant Registrar
National Company Law Tribunal Mumbai Bench

