

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-1018(MB)/2021

Under Section 7 of the IBC, 2016

In the matter of

Praful Satra

...Financial Creditor

v/s.

MD Development Private Limited

...Corporate Debtor

Order Pronounced on: **24.03.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Ms. Rima Desai a/w Ms. Krushi N Barfiwala and
Ms. Divyanshu Gupta i/b Parinam Law Associates,
Advocates.

For the Respondent : Mr. Prakhar Tandon i/b Mr. Agam H. Maloo, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Praful Satra** (hereinafter called "the Financial Creditor") on 12.10.2021 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **MD Development Private Limited**

(hereinafter called “Corporate Debtor”) on the ground that the Corporate Debtor is liable to pay ₹1,84,57,850/- (Rupees One Crore Eighty-four lakh Fifty-seven thousand Eight hundred Fifty only) to the Financial Creditor as he defaulted in making repayment of the Loan amount of ₹1,84,57,850/- indebted to this Financial Creditor in relation to the loan availed. The date of default is 27.08.2021 as confirmed by the Financial Creditor through an additional affidavit filed on 02.03.2023. However, the date of demand notice is 26.08.2021

1.1. The Corporate Debtor is a Company incorporated on 07.05.2007 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number is [CIN: U45200MH2007PTC170644]. Its registered office is at F-89, Prime Mall, Irla Society Road, Vile Parle (W), Mumbai – 400 056. Therefore, this Bench has jurisdiction to deal with the present petition.

2. The Financial Creditor submits that **MD Development Private Limited** (Corporate Debtor) (formerly known as *Satra Property Development Private Limited*) approached **Praful Satra** (Financial Creditor) and requested for financial assistance as the Corporate Debtor was in urgent need of funds for its construction and real estate business. The Financial Creditor extended interest-free loan for a sum of ₹9,37,52,350 (Rupees Nine Crore Thirty-seven Lakh Fifty-two Thousand Three Hundred Fifty only) during the period from 02.05.2018 to 05.03.2019 with a condition that the amount is repayable on demand.

- 2.1 The Financial Creditor further submits that the Corporate Debtor repaid a total sum of ₹7,52,94,500/- to the Financial Creditor during the period from 05.03.2019 to 15.06.2021 leaving a balance sum of ₹1,84,57,850/- (Rupees One Crore Eighty-four Lakh Fifty-seven Thousand Eight Hundred Fifty only) as outstanding payable to the Financial Creditor.
- 2.2 As the Financial Creditor required the money back, has made several calls but the Corporate Debtor did not make the repayment of balance due amount, therefore, the Financial Creditor issued a demand notice on 26.08.2021 to the Corporate Debtor calling upon the Corporate Debtor to repay the outstanding debt amount of ₹1,84,57,850/- (Rupees One Crore Eighty-four Lakh Fifty-seven Thousand Eight Hundred Fifty only) immediately. However, the Corporate Debtor neither repaid the balance due amount payable nor replied to the demand notice. Therefore, the Financial Creditor filed the present Petition to initiate CIRP against the Corporate Debtor.
- 2.3 The Financial Creditor has attached Accounts Confirmation from 01.04.2018 to 31.03.2021 as well as Auditor's Report for the years 2018-2019 and 2019-2020 with the Petition. Also filed copy of the Ledger Account of the Corporate Debtor maintained by the Financial Creditor. In addition, the Financial Creditor has attached copies of entries in Bankers Book in accordance with The Bankers Books Evidence Act, 1981 (A8 of 1891).
3. The Corporate Debtor in its reply filed on 18.01.2022 denied any amount payable to the Financial Creditor and submitted that the Petition is entirely false, frivolous, untenable and vexatious and therefore, is not maintainable.

The Corporate Debtor further stated that the Financial Creditor has not referred any correspondence between them and no authenticating proof provided in the Petition against the claim made by the Financial Creditor. The Corporate Debtor contented that since the Financial Creditor has not provided any documents to substantiate the claim made by the Financial Creditor, the Petition should be dismissed.

4. We heard both Counsel and perused the material available on records.

4.1 We find that the Applicant has filed confirmation of accounts for the year 2018-19, 2019-20 and 2020-21 duly signed by the Corporate Debtor. The said statement confirms outstanding of ₹2,13,57,850/- as on 31.03.2021. The Applicant has also filed copy of financial statement of the Corporate Debtor for the year ended 31.03.2020 which shows an outstanding balance of ₹8,42,37,350/- payable as on 31.03.2020 to the applicant and this amount tallies with the balance shown as per confirmation of balance for the year 2019-20. Accordingly, we do not find any merit in the Corporate Debtor's submission that no amount is payable to the applicant. Further, the applicant has furnished a certificate from his banker i.e. ICICI Bank certifying payment to the Corporate Debtor.

4.2 Though there is no agreement showing when this amount was payable, we find that the Corporate Debtor has stated in its audited financial statement as 'loan repayable on demand'. In other words, loan was repayable on demand. We find that applicant has issued notice dated 26.08.2021 asking the Corporate Debtor to pay forthwith outstanding loan amount of ₹1,84,57,850/- being amount outstanding on that date. Accordingly, the

amount claimed to be in default became due and payable on receipt of the said demand notice. The applicant has also furnished proof service of the said notice and Corporate Debtor has not denied service of this notice.

4.3 As regards interest-free loan, we find that the Hon'ble Supreme Court has considered "*whether interest free term loan are financial debt?*" in the case of "*M/s. Orator Marketing Pvt. Ltd. Vs. M/s. Samtex Desinz Pvt. Ltd.*" (2021) *ibclaw.in* 68 SC, it was held that –

"21. The definition of 'financial debt' in Section 5(8) of the IBC has been quoted above. Section 5(8) defines 'financial debt' to mean "a debt along with interest if any which is disbursed against the consideration of the time value of money and includes money borrowed against the payment of interest, as per Section 5(8) (a) of the IBC. The definition of 'financial debt' in Section 5(8) includes the components of sub-clauses (a) to (i) of the said Section.

22. The NCLT and NCLAT have overlooked the words "if any" which could not have been intended to be otiose. 'Financial debt' means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof 'financial debt' includes any amount raised under any other transaction, having the commercial effect of borrowing.

....."

4.4 In view the above, we find that interest-free loans are financial debts; a sum of ₹1,84,57,850/- is due to the applicant as financial debt and the said amount was not paid by the Corporate Debtor when called upon to pay vide notice dated 26.08.2021. Accordingly, the said debt is in default also. Since the amount claimed in default exceeds ₹1.00 Core i.e. minimum threshold limit under section 4 of the Code, we feel that this case deserves to be admitted.

4.5 The Financial Creditor has proposed the name of Interim Resolution Professional as Mr. Sandeep Kumar Agarwal, having IBBI registration No. IBBI/IPA-001/IP-P01135/2018-19/11828, address: 523 Pocket E Mayur Vihar Phase 2, Delhi 110091, email: ipsandeepagarwal@gmail.com

4.6 This Application bearing **C.P.(IB)-1018/MB/2021** filed under Section 7 of I&B Code, 2016, presented by **Praful Satra**, Financial Creditor against **MD Development Private Limited**, Corporate Debtor for initiating Corporate Insolvency Resolution Process is hereby **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this 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 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 the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.

VI. That this Bench appoints Mr. Sandeep Kumar Agarwal, a registered insolvency resolution professional having Registration Number IBBI/IPA-001/IP-P01135/2018-2019/11828 as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

4.7 The Registry is 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. Compliance report of the order by designated Registrar is to be submitted today.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**KISHORE VEMULAPALLI
MEMBER (JUDICIAL)**