

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-VI

IB-26/(ND)/2023

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Vani Commercials Limited

Registered Office At: Flat No. 10A, Ground Floor,
Pocket QU, Pitampura,
New Delhi-110034

...Applicant/Financial Creditor

Versus

M/s. Max Heights Township and Projects Private Ltd.

Registered Office At: Unit No. 408, 4th Floor,
RG Trade Tower, NSP
New Delhi-110002

...Respondent/ Corporate Debtor

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

Counsel for Petitioner: Mr. P. Nagesh, Sr. Adv. and Mr.
Kanav Dev Sharma, Adv.

Counsel for Respondent: Mr. Kshitij Sharda

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 07.03.2023

1. This is an application filed by M/s. Vani Commercials Limited to initiate corporate insolvency resolution process ("CIRP") against M/s. Max Heights Township and Projects Private Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 2,51,02,892/- (Rupees Two Crore Fifty-One Lakhs Two Thousand Eight Hundred and Ninety Two) as on 01.10.2022. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Applicant and the Corporate Debtor executed a loan agreement ("Loan Agreement"] dated 01.05.2019, vide which, the Applicant agreed to lend an unsecured loan of an amount

of Rs.2,10,00,000/- (Rupees Two Crore Ten Lakhs) to the Corporate Debtor. The said amount was disbursed in tranches whereof the last tranche was disbursed on 27.05.2019.

- ii. That as per the agreement, the loan amount was due to be paid with interest thereon within 24 months from the date of final disbursement. Accordingly, the due date to pay the outstanding debt was 26.05.2021.
- iii. That in the month of August 2021, the Respondent approached the Applicant with a request to grant additional time to pay the outstanding debt in the backdrop of Covid pandemic.
- iv. That the Applicant acceded to the request of the Respondent however, on a condition precedent that the outstanding debt be converted into secured loan.
- v. That accordingly, a deed of mortgage dated 16.08.2021 was entered into by and between the Applicant and the Respondent whereby, the

outstanding debt was secured by creating a pari passu charge on the current assets of the Respondent.

- vi. That the effect of Mortgage Deed was that the loan of Rs. 2,10,00,000/- was reinstated at Rs. 2,50,00,000/- .
- vii. That as per the Mortgage Deed, the entire loan amount along with interest had to be paid on or before 30.09.2022.
- viii. That despite repeated reminders and loan recall notice dated 04.11.2022, the Respondent has failed to repay the outstanding amount.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- i. That the Applicant which is in the business of disbursement of commercial loans has not annexed any licence or authorisation to operate as an NBFC. Without appropriate licence, the Applicant cannot operate business of disbursing commercial loans and consequentially cannot seek

to maintain any proceedings in respect of such disbursement of loan. Thus, the Applicant cannot seek to maintain the present application in the absence of due authorisation under law.

- ii. That in view of the widespread disruption of business operations due to Covid-19 pandemic, and consequent well recognized financial adversities that arose, further time should be granted to the Respondent to repay the loan especially in view of clause 7 of the Agreement for Working Capital Loan dated 01.05.2019 ("Loan Agreement") which states as under:

"7.FORCE MAJEURE: Any inability to make the payment due by the borrower to the lender because of lack of funds will in no circumstances be treated as an event of force majeure. However, force majeure would continue to include any natural calamity (by whatever name called)"

- iii. That the Respondent, which primarily operates in the field of real estate construction and transactions, is facing a temporary financial crunch due to disruption of business operations and financial flow on account of the Covid-19

pandemic. The Respondent is otherwise a solvent entity and a going concern. Under the circumstances, the Respondent is not liable to be treated as an insolvent entity requiring resolution under the provisions of Insolvency and Bankruptcy Code, 2016.

- 3.** The Applicant has filed rejoinder stating as follows:
 - That the Applicant is a duly registered NBFC, having B-14.03035 as the RBI Registration Number.
 - That the Respondent, in its reply, has admitted the existence of debt; its default; and the Respondent's inability to pay the debt.

- 4.** We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The Applicant has claimed the default on part of the Respondent for an amount of Rs. 2,51,02,892/- (Rupees Two Crore Fifty-One Lakhs Two Thousand Eight Hundred and Ninety Two) as on 01.10.2022.

5. We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on behalf of the parties.

6. The Corporate Debtor has acknowledged the debt in its reply to the present Section 7 Application and submitted that the present state of affairs of the Corporate Debtor are not favourable and they require time to pay the amount to the Financial Creditor. The Corporate Debtor has further stated that as per Clause 7 of the Loan Agreement dated 01.05.2019, he should be granted time to repay the loan amount. However, the loan agreement dated 01.05.2019 was replaced by the Deed of Mortgage dated 16.08.2021 vide which the unsecured loan granted through loan agreement dated 01.05.2019 was converted into secured loan. Therefore, reliance is placed on Clause 1 of the Deed of Mortgage which states as follows:

1. In consideration of the sum of Rs 2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) (inclusive of Principal and Interest), advanced by the mortgagee to the mortgagor the receipt whereof the Mortgagor hereby acknowledges and confirms that the Mortgagor will

repay the said amount along with interest @ 8% p.a. with charges etc. on or before 30th September, 2022 in lump sum. However, the said due date may be extended with the mutual consent of both the parties but the outstanding interest shall be cleared till 30/09/2022.

It is evident from the Deed of Mortgage that the debt became due on 30.09.2022 and the due date was not extended further by the Financial Creditor.

7. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

8. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Varun Goel for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-02165/2020-2021/13339. Mr. Varun Goel has agreed to accept the appointment as the interim resolution professional and has signed a

communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 19.12.2022. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

9. It is thus seen that the requirement of sub-section 5 (a) of Section 7 of the code stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

10. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution

Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Varun Goel has submitted the declaration in Form 2 dated 19.12.2022. The proposed Interim Resolution Professional Mr. Varun Goel has also submitted an “Authorisation for Assignment” dated 21.12.2022 issued by Institute of Insolvency Professionals.

11. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

12. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt

from the corporate debtor and that there has been default in payment of the financial debt.

13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

14. Mr. Varun Goel having registration number IBBI/IPA-001/IP-P-02165/2020-2021/13339 is appointed as an Interim Resolution Professional.

15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1)

(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every

assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding

admission of this petition must be notified to the public at large.

Sd/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

