

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**INTERVENTION APPLICATION NO. 48/MB-IV/2023
IN
COMPANY PETITION (IB) No.312/MB-IV/2023**

Under Section 7 of the IBC, 2016

In the matter of

LIC HOUSING FINANCE LTD.

[CIN: L65922MH1989PLC052257]

...Financial Creditor

v/s.

SHREE SAINATH LAND &
DEVELOPMENT (INDIA) PRIVATE
LIMITED.

[CIN: U45400MH2011PTC212231]

...Corporate Debtor

Order Delivered on: 20.10.2023.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

CP (IB) No.312/MB-IV/2023

For the Financial Creditor:

Mr. Akhil Sarathy i/b Raghawan
Sarathy, Ld. Counsel.

For the Corporate Debtor:

Mr. Akshay Petkar a/w Mr. Vivek
Punjabi and Mr. Pranav Shah, Ld
Counsel.

IA NO. 48/MB-IV/2023

For Intervenors:

Mr. Ranjeev Carvalho a/w Mr. Sachit Bhogale, Mr. Shubham Hundia, Mr. Avesh Ganja, Mr. Sandesh Panchal i/b Adv. Sriraj Menon, Ld. Counsel.

ORDER

Per: Anu Jagmohan Singh, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by LIC HOUSING FINANCE LTD (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of SHREE SAINATH LAND & DEVELOPMENT (INDIA) PRIVATE LIMITED., the Corporate Debtor.

1.1 The petition is filed on 12/01/2023 and the total outstanding amount of Rs. 111,68,55,172.35/- in default (which includes Rs. 95,15,24,467/- as Principal Outstanding Rs. 12,34,79,977.81 as Interest Outstanding as on 01.09.2022 and Rs. 18,86,115.54/- as Additional Interest @ 6% as on 01.09.2022). The date of default as Specified in Part IV of the petition is 01.08.2021. The Corporate Debtor’s loan account was declared as NPA on 03.11.2021.

Submissions of the Financial Creditor:

2. By way of sanction letter dated 20.06.2018, the Financial Creditor at the request of the Corporate debtor and Co-Applicant KBC Global Limited, sanctioned a Loan Facility up to Rs.150,00,00,000/- (Rupees One Hundred Fifty crores) for the purpose of repayment of Principal Component of a previous Tata Capital

Loan availed by the Corporate Debtor and also towards construction and completion of a project named “Hari Nakshatra & Destination One” duly accepted by the Corporate Debtor subject to the terms and conditions contained in the Loan Agreement dated 27.07.2018.

- 2.1. As a security of loan amount disbursed by Financial Creditor for a loan Account No. 600000000092, the present Corporate Debtor, KBC Global Limited and Viva Highways Ltd. have executed in favour of Financial Creditor an Indenture of Mortgage dated 14.08.2018 and has created a Legal/registered mortgage of certain secured assets.
- 2.2. The subject loan availed by the Corporate Debtor is payable with interest at the current rate of 14.10% floating per annum linked to project LHPLR. The Corporate Debtor is also liable to pay additional interest at 6.00% p.a. in view of default in repayment of loan as agreed upon by the Corporate Debtor.
- 2.3. Due to default in repayment, the Financial Creditor had issued a Recall Notice dated 22.11.2021 to the Corporate Debtor calling upon the Corporate Debtor to repay an outstanding amount of Rs. 101,52,47,141.29 as on 22.11.2021. The Corporate Debtor replied to the said Recall Notice by way of its letter dated 03.12.2021 raising issues of withholding of Emergency Credit Line Guarantee Scheme (ECLGS) and COVID 19 regulatory packing which was responded to by Financial Creditor in its letter dated 07.12.2021 clarifying the issues raised.
- 2.4. Additionally, the Financial Creditor has also initiated SARFASEI proceedings against the Corporate Debtor by way of issuance of Section 13(2) Demand Notice dated 03.09.2022.

Submissions of the Corporate Debtor:

3. The Corporate Debtor has filed Affidavit in reply dated 27.07.2023 stating that the Corporate Debtor entered into a Joint Development Agreement dated 26.03.2018 with a company named Viva Highway Limited for the purpose of construction of residential and commercial complexes.
- 3.1. The Corporate Debtor was sanctioned a term loan of Rs.150 Crores by the Financial Creditor by way of sanction letter dated 20.06.2018 at an interest of 12.5% per annum for a period of 60 months for purpose of construction of project namely "Hari Nakshatra and Destination one".
- 3.2. The Corporate Debtor Company was making payments towards the interest regularly and has paid an amount of Rs. 32,15,96,104/- till 06.06.2022.
- 3.3. Due to COVID 19 pandemic the Reserve Bank of India issued a circular dated 27.03.2020 stating that all the Commercial Banks, NBFC's, Financial Institutions were permitted to a grant moratorium of three months on payment of all instalments falling due between 01.03.2020 to 31.05.2020. The said circular dated was extended by another three months i.e. from 01.06.2020 to 31.08.2020.
- 3.4. The Corporate Debtor was granted interest moratorium as per the circular dated 27.03.2020 issued by the Reserve Bank of India but the extension and rescheduling of the Principal payment was not granted which ought to have been granted as per the said Circular.
- 3.5. The Corporate Debtor further states that, Ministry of Finance issued an Emergency Credit Line Guarantee Scheme (ECLGS) by way of Operational Guidelines dated 07.06.2021 wherein, it was stated that borrowers entitled for the said scheme were not supposed to be declared as Non-Performing Assets (referred as "NPA") as on the date of sanction/disbursement of the Loan amount. The Financial Creditor by way of letter dated 03.11.2021 classified the loan account of the Corporate Debtor Company as NPA and also stated that to avail the benefit of ECLGS Scheme, the Corporate Debtor

company was requested to pay the dues towards TDS to the Authorities and that in case of non-payment of TDS amount, the ECLGS Scheme would not be provided to the Corporate Debtor.

Findings:

4. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.

4.1. The bench observes that, the Financial Creditor in Part IV of the application has specified date of default 01.08.2021 and the present petition filed on 12/01/2023 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor.

4.2. As per the material on record, it is observed that, the Corporate Debtor was under an obligation to repay the outstanding amount. The Corporate Debtor in its reply had admitted its liability. The relevant extract of the same is reproduced below:

“...the Corporate Debtor Company by way of a letter dated 03/07/2021 informed the Financial Creditor that due to excavation works at the project and delay from the local authorities in getting approval with respect to blasting activities at the said project and due to non-availability of the labour due to the ongoing pandemic situation there was a delay in the progress of the project which impacted the bookings and cash flow from the said project, which therefore resulted in a delay in the repayment of the loan amount as per the original schedule. However, the Corporate Debtor Company requested the Financial Creditor to extend the tenure of the principle moratorium by 24 months to ensure continuation of the construction activities of the said project.”

The bench notices that, the Corporate Debtor's obligation to repay the Financial Creditor is unequivocal, undisputed and established.

- 4.3. The Corporate Debtor Further submits that, as per the RBI Circular rescheduling of the Principal payment was not granted which ought to have been granted as per the said Circular. This bench observes that, amount payable i.e. the principal amount was not due and payable during the specified period and same was due and payable from 01.08.2021. In that view of the matter, this bench is of the considered view that plea raised by the Corporate Debtor has no substance; hence, the said submission cannot be taken into consideration.
- 4.4. Additional defence taken by the Corporate Debtor was that the Corporate Debtor has asked for a loan amount under Emergency Credit Line Guarantee Scheme (referred as "ECLGS" Scheme) of Rs.18.11 Crores. The Financial Creditor vide letter dated 07.12.2021 informed the Corporate Debtor that to avail the facility of ECLGS Scheme, the Corporate Debtor should pay the dues towards Tax Deducted at Source (referred as "TDS"). This bench observed that, it is the case of Financial Creditor that there is no obligation there cast upon the Financial Creditor to extend the scheme to the Corporate Debtor. Moreover, as statutory dues were pending payment by the Corporate Debtor the benefit was not granted. Therefore, this bench finds no merits in the contention of the Corporate Debtor.
- 4.5. The Tribunal, while adjudicating upon an application for admission into Resolution Process filed by a Financial Creditor, is mandated to ascertain the existence of the debt, and any default in payment of such debt. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and is in default of the amount claimed in the petition.

5. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

IA No 48 of 2023

The petitioner in Intervention Petition is a majority shareholder hence he intended to contest the Company petition. But the Financial Creditor has filed the Company Petition against the Corporate Debtor. This bench feels that, under section 7 of the Insolvency and Bankruptcy Code, 2016 the bench has to look into the debt due default committed by the Corporate Debtor. The dispute between the parties filed under section 241-242 for the share pattern is nowhere relevant to this present application filed by the Financial Creditor u/s 7. Hence, this Intervention Petition has no locus to intervene into section 7 for contesting on behalf of the Corporate Debtor. The decision has to be taken by the Board of Directors of the Corporate Debtor. Therefore, the Intervention Application No. 48 of 2023 in CP 312/2013 is **Rejected**.

ORDER

6. The Petition bearing CP (IB) No.312/MB-IV/2023 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by LIC HOUSING FINANCE LTD (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of SHREE SAINATH LAND & DEVELOPMENT (INDIA) PRIVATE LIMITED., the Corporate Debtor is **Admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) 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;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints **Mr. Manish Motilal Jaju**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P00034/2016-17/10087** and email- **mmjaju76@gmail.com** . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the

IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- (i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (j) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
20.10.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)