

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

**C.P. (IB) No. 663/MB/2022**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Maheshwari Investors Private Limited**

[CIN: U67120MH1946PTC004728]

...Financial Creditor/Applicant

V/s

**Shree Ahuja Properties & Realtors Private Limited.**

[CIN: U45400MH2007PTC172860]

...Corporate Debtor/Respondent

**Order Dated: 18.05.2023**

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Ms. Jinal Shah Ld. Counsel.

For the Respondent(s) : None.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is an Application being C.P. (IB) No. 663/MB/2022 filed on 15.09.2021 by Maheshwari Investors Private Limited, the Financial Creditor /Applicant, under Section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Shree

Ahuja Properties & Realtors Private Limited., Corporate Debtor.

1.1. The Applicant/ Financial Creditor has claimed that the Corporate Debtor is in default of a sum of Rs. 2,91,00,261/-. The date of default is 08.02.2020.

1.2. On 6<sup>th</sup> June, 2018 Shree Ahuja Properties and Realtors Private Limited ("Corporate Debtor") needed funds for the purpose of fulfilling its obligation towards 'M/s Ahuja Towers Co-Op Housing Society Limited' and vide letter dated 6th June 2018 requested the Financial Creditor for an amount of Rs. 90,00,000/- (Rupees Ninety Lakhs only) as and by way of loan and requested that the loan shall be repaid in full by 31<sup>st</sup> December, 2019.

1.3. Upon the request of the Corporate Debtor, the Financial Creditor Maheshwari Investors Private Limited vide Letter dated 16<sup>th</sup> August 2018 sanctioned a loan of Rs. 90,00,000/- (Rupees Ninety Lakhs only) for a period/tenure from 1<sup>st</sup> September 2018 to 31<sup>st</sup> December 2019 along with interest due thereon at the rate of 12% per annum. Further Interest/Principal Moratorium was granted till 1<sup>st</sup> January 2019.

1.4. On 27<sup>th</sup> August 2018, Financial Creditor and Corporate Debtor entered into a Loan Agreement and Corporate Debtor provided post-dated cheques for interest and repayment of loan amount. On 27<sup>th</sup> August 2018, the Director of Corporate Debtor i.e. Mr. Gautum Ahuja entered into Personal Guarantee Agreement with Financial Creditor.

1.5. The Financial Creditor disbursed the Loan Amount of Rs. 90,00,000 (Rupees Ninety Lacs Only) on 29<sup>th</sup> August 2018 vide RTGS directly into the bank account of 'M/s Ahuja Towers Co-Op Housing Society Ltd. held

with Saraswat Co-operative Bank Limited, Prabhadevi Branch, Mumbai from the bank account of the Financial Creditor held with Kotak Mahindra Bank Limited, Burhani Mahal Near Priyadarshini Park, Mumbai - 400 006.

- 1.6. The Financial Creditor deposited the post-dated cheques for encashment, with its bankers, within its time period. All the cheques were dishonoured on due dates for "Insufficient Funds" On various dates, as per the Loan Agreement Demand Notices were issued by the Financial Creditor.
- 1.7. On 10<sup>th</sup> April 2019, Financial Creditor addressed notice invoking personal guarantee to the Corporate Debtor for an amount of Rs. 25,62,660/- (Rupees Twenty-Five Lakhs Sixty-Two Thousand Six Hundred and Sixty Only) for the period pertaining to January 2019 till March 2019.
- 1.8. On 11<sup>th</sup> December 2019, Financial Creditor addressed notice invoking personal guarantee to the Corporate Debtor for an amount of Rs. 48,62,280/- (Rupees Forty-Eight Lakhs Sixty-Two Thousand Two Hundred and Eighty only) for the period pertaining to April 2019 till September 2019.
- 1.9. On 17<sup>th</sup> January 2020, Financial Creditor addressed notice invoking personal guarantee to the Corporate Debtor for an amount of 23,73,120/- (Rupees Twenty-Three Lakhs Seventy-Three Thousand One Hundred and Twenty Only) along with interest due thereon, for the period pertaining to October 2019 till December 2019.
- 1.10. On 1st October 2020, Financial Creditor addressed notice invoking personal guarantee to the Corporate Debtor for entire loan amount of Rs. 90,00,000/- (Rupees Ninety Lakhs only) along with interest due thereon

for the period pertaining to January 2019 to December 2019.

- 1.11. The Financial Creditor invoked Personal Guarantee for repayment of loan for an amount of Rs. 2,91,00,261/- (Rupees Two Crore Ninety-One Lakhs Two Hundred and Sixty-One Only) vide letter dated 12<sup>th</sup> August 2021 which is the total amount due and payable to the Financial Creditor till this day as per the relevant clauses of the Loan Agreement and Personal Guarantee Agreement entered into, for the entire period pertaining to 31<sup>st</sup> January 2019 to 31<sup>st</sup> July 2021, along with interest at the rate of 12% p.a. and Default Penalty at the rate of 2% per month.
2. The Financial Creditor submits that, the court notice sent to the Corporate Debtor was returned with endorsement of postal authority mentioning that the addressee “left” from the address. A personal notice was also issued by the Financial Creditor, even then there was no representation on behalf of the Corporate Debtor. Therefore, this Bench inclined to issue directions to take out substituted service in two daily leading newspapers. Despite paper publication, the Corporate Debtor neither appeared nor filed reply in rebuttal. Therefore, the Corporate Debtor was set *ex-parte* vide order dated 11.01.2023.

*Findings:*

3. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.
  - 3.1. It is clearly evident from the bank Statement that a sum of Rs.90,00,000/- was disbursed as loan on 01.09.2018 and was repayable in 12 monthly instalments of Rs.7,80,000/- each starting from 31.01.2019 and ending on 31.12.2019 the Corporate Debtor has not paid any amount. The applicant has claimed interest on from the date of each instalment following due

accordingly a sum of Rs.2,91,00,261/- has been claimed as in default (which includes interest @ 12 % on the total outstanding). On perusal of Part IV it is noticed that the Corporate Debtor has claimed default as 08.02.2020, however, as per Schedule 3 to the loan agreement annexed with the Petition, which sets out repayment schedule, this bench finds that the date of default is stated incorrectly in the petition and correct date of default as per the documents annexed with petition shall be various dates from 31.01.2019 and ending on 31.12.2019.

- 3.2. On perusal of the records, it emerges that the loan been disbursed as per the said Loan Agreement and the Corporate Debtor has failed to repay the said loan amount; and the Corporate Debtor and the Personal Guarantor has issued post-dated cheques in the name of the Financial Creditor which itself shows admission of liability on part of the Corporate Debtor. Further in the facts and circumstances as set out, the Corporate Debtor is unable to pay off its debts arising and is in default of the amount claimed in the petition.
- 3.3. In view of the above, this Bench is of the view that, Financial Debt amounting of more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, this Bench finds it a fit case for initiation of CIRP in the case of the Corporate Debtor.
- 3.4. The petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and the default exists and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/7 of IBC,2016.

4. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process is initiated against the Corporate Debtor and this petition is **allowed**.

**ORDER**

5. The petition bearing C.P. (IB) No. 663/MB/2022 filed by Maheshwari Investors Private Limited, the Financial Creditor /Applicant, under Section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Shree Ahuja Properties & Realtors Private Limited., Corporate Debtor is **Admitted**.

- 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 Operational 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 Operational 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. The bench hereby appoints Mr. Devang Sampat, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P-00224/2017-2018/10423 Email: [dpsampat@sampatassociates.in](mailto:dpsampat@sampatassociates.in). 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.

- VII. 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.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- IX. The Registry is directed to communicate this Order to the Operational 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.
- X. 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/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**  
**18.05.2023.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**