

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

CP (IB) No.1337/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

**SREI EQUIPMENT FINANCE
LIMITED**

[CIN: U70101WB2006PLC109898]

...Financial Creditor/Applicant

V/s

**NIRMAL LIFESTYLE (KALYAN)
PRIVATE LIMITED**

[CIN: U70101MH2007PTC169388]

...Corporate Debtor/Respondent

Order Dated:16.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Rohan Agarwal, Advocate.

For the Respondent(s) : Mr. Gaurav Joshi, Senior Counsel
a/w Ashok Paranjape i/b MDP
Partners.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being CP (IB) No.1337/MB/2020 filed by SREI EQUIPMENT FINANCE LIMITED, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against NIRMAL LIFESTYLE (KALYAN) PRIVATE LIMITED, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Date of Default is 05.02.2020. The Financial Creditor is claiming an amount of Rs. 7,87,50,000 (Rupees seven crore eighty-seven lakh fifty thousand only) as on 07.09.2020 as mentioned in Part -IV of the petition. The petition has been filed on 30.11.2020.
3. The case of the Financial Creditor is as under:
 - a. The Corporate Debtor through Loan Agreement dated 05/08/2019 has availed Financial Assistance from the Financial Creditor for an amount of Rs. 84,23,75,000/- (Rupees eighty-four crore twenty-three lakh seventy-five thousand Only). The aforesaid loan Agreement was to be repaid in 43 instalments within a period of 49 months of which 6 months will be moratorium period which is at Page No. 59-60 of the Petition. The Corporate Debtor further provided a Demand Promissory note dated 15th August 2019 in favour of Financial Creditor.
 - b. The Financial Creditor has registered the charges before the Registrar of Companies for the Securities provided by the

Corporate Debtor with respect to financial assistance provided by Financial Creditor which is annexed as Exhibit 'E' at Page No.62 of the petition.

- c. The Financial Creditor and Corporate Debtor executed between Registered Mortgage Deed dated 18/09/2019 which is annexed as Exhibit 'F' at Page No. 63-271 of Petition.
- d. In order to avail the Financial Assistance a Personal Guarantee was given by Mr. Dharmesh Jain Director of Corporate Debtor to secure the borrowing in respect of Agreement bearing number 179643 which is annexed as Exhibit 'G' at Page No.272 - 283 of Petition.
- e. The First Instalment under the Loan Agreement was due and payable on 5th February 2020, however, the Corporate Debtor failed to make payment as per the loan Agreement. Therefore, the Financial Creditor submits that the date of default in present case is 5/02/2020.
- f. Owing to the default, the Financial Creditor issued Demand Notices dated 06/03/2020, 26/03/2020, 8/05/2020 and 07/09 /2020 has demanded payment towards its outstanding liabilities. Further, by email dated 31/03/2020, the Corporate Debtor requested further moratorium, which was rejected by the Financial Creditor through email dated 9/4/2020.
- g. The Financial Creditor has also placed on record CIBIL report evidencing default on part of Corporate Debtor as Exhibit 'I' at Page No. 285-492 of the Petition.

h. Despite the various approaches made as stated by the Financial Creditor, the Corporate Debtor has categorically failed to remedy its default and repay its debts and therefore, the Financial Creditor has filed a Company Petition under Section 7 of the I&B Code seeking admission for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor.

4. The case of the Corporate Debtor is as under:

- a. The Corporate Debtor submits that, the amounts appropriated in the loan agreement was utilised for the purchase of equipment and construction tools for completion of construction, dressing and levelling on certain properties.
- b. As per the Loan Agreement the 1st instalment became due on 5.02.2020. The Corporate Debtor through its e-mail dated 31.03.2020 requested the Financial Creditor for restructuring the said Loan amount and moratorium on all payments for following six months on account of widespread economic and financial disruptions caused by COVID 19 pandemic and resultant Lockdown.
- c. The said alleged loan has been secured by multiple mortgages/collaterals/securities, which are more accurately described in Exhibit F, G and H annexed to the Petition. In view of the above made submission, the Corporate Debtor has relied upon the Judgment of Hon'ble Supreme Court of India in Transmission Corporation of Andhra Pradesh Limited v.

Equipment Conductors and Cables Limited, 2019 12 SCC 697 at paragraph 15, which is as follows:

“In a recent judgement of this Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited, 2018 1 SCC 353, this court has categorically laid down that IBC is not intended to be substitute to a debt recovery forum.”

- d. The Corporate Debtor submits that, by virtue of Sec 10-A of Insolvency and Bankruptcy Code this petition is liable to be dismissed at the outset for being in violation of Section 10-A of the IBC, 2016.
- e. In view of the above made submission, the Corporate Debtor has relied upon the Judgment of Hon'ble Supreme Court of India in the matter of *Ramesh Kymal v. Siemens Gamesa Renewable Power Private Limited*, Civil Appeal No.4050 of 2020, passed its judgement dated 09.02.2021 wherein it held at the paragraph No.23 as follows:

“Adopting the construction which has been suggested by the appellant would defeat the object and intent underlying the insertion of Section 10A. The onset of the Covid-19 pandemic is a cataclysmic event which has serious repercussions on the financial health of corporate enterprises. The Ordinance and the Amending Act enacted by Parliament, adopt 25 March 2020 as the cut-off date. The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP "for the said default occurring during the said period". The expression "shall ever be filed" is a clear indicator that the intent of the legislature is

to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25 March 2020 for a period of six months, extendable up to one year as notified. The explanation which has been introduced to remove doubts places the matter beyond doubt by clarifying that the statutory provision shall not apply to any default before 25 March 2020. The substantive part of Section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of the CIRP in respect of a corporate debtor for a default occurring on or after 25 March 2020; the embargo remaining in force for a period of six months, extendable to one year. Acceptance of the submission of the appellant would defeat the very purpose and object underlying the insertion of Section 10A. For, it would leave a whole class of corporate debtors where the default has occurred on or after 25 March 2020 outside the pale of protection because the application was filed before 5 June 2020.”

- f. The Corporate Debtor while explaining the inordinate delay in completion of project and the severe prejudice caused to home buyers said that the same was because the Hon'ble Finance Minister announced that the Union Cabinet had cleared a proposal to setup a “special window” in the form of an Alternate Investment Fund (AIF) to provide debt financing for completion of stalled housing projects. The details of the same are placed at page 3 of the Written Submissions of the Corporate Debtor.

- g. The Corporate Debtor further submits that the documents were insufficiently stamped and the Financial Creditor has failed to pay the adequate stamp duty on the said Loan Agreement.
 - h. The Corporate Debtor submits that the Financial Creditor has charged exorbitant and unreasonably high rate of interest and the same has been tabulated in Exhibit -“J” of the petition.
 - i. The Corporate Debtor further states that present petition was barred under section 11(a) and Section 25(2)(b) of the Code. The Corporate Debtor has relied upon the Judgment of Hon’ble Kolkata Bench in CP No.294/2021 in Reserve Bank of India v. SREI Equipment Finance Limited it has been held that Hon’ble Tribunal has permitted the initiation of CIRP against the same Financial Creditor.
 - j. The Corporate Debtor further states the Financial Creditor agreed to advance a loan amount of Rs.2,25,00,000/- to one Sujyoti Developers Private Limited (SDPL) which is the sister concern of Nirmal Lifestyle Limited and the Corporate Debtor. The Financial Creditor issued a sanction letter dated 15.06.2020 in favour of SDPL sanctioning the same loan amount.
5. Both the Financial Creditor and Corporate Debtor have submitted their Written Submissions and the same have been duly considered.

Findings/Observations:

6. We have heard the submissions made by the counsel on both the sides and perused the records.

7. We have prudently gone through the pleadings available on record and observed that:

a. It is clear from the records that the Corporate Debtor in its reply has at para 6 has acknowledged the debt which was due and payable to the Financial Creditor.

8. The Financial Creditor has given the details of amount in default which is as under:

Contract No.179643

Sr. No	Contract No.	Amount claimed to be in default	Date on which default occurred	Days of Default
1	179643	12,50,000	05.02.2020	215
2	179643	1,00,00,000	05.03.2020	186
3	179643	1,12,50,000	05.04.2020	155
4	179643	1,12,50,000	05.05.2020	125
5	179643	1,12,50,000	05.06.2020	94
6	179643	1,12,50,000	05.07.2020	64
7	179643	1,12,50,000	05.08.2020	33
8	179643	1,12,50,000	05.09.2020	02
	Total (Rs)	7,87,50,000		

Although from the petition, pleadings made and arguments extended by the Counsel of both the sides, it is observed that the defaults in Loan account under Contract No.179643 at Serial No 1 and 2 are dated 05.02.2020 and 05.03.2020 and the remaining defaults were on or after 05.04.2020 which comes under section 10A of the IBC 2016 which cannot be considered as default. Hence, the bench is of considered view that the actual default made by the Corporate Debtor is Rs.1,12,73,387 along with interest. Therefore, it is a fit case for Admission of the Corporate Debtor into Insolvency, because Debt and Default is established and the amount of Debt is more than threshold limit i.e. Rupees One Crore. The

application is complete and has been filed under the proper form. Hence, the Application filed by the Financial Creditor is hereby deserves to be admitted.

9. The Applicant has proposed the name of Mr. DilipKumar Natvarlal Jagad, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00233/2017-2018/10462] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being **C.P. (IB) No. CP (IB) No.1337/MB/2020** filed by SREI EQUIPMENT FINANCE LIMITED, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against NIRMAL LIFESTYLE (KALYAN) PRIVATE LIMITED, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **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. The Financial 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).
- VI. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VII. That this Bench hereby appoints Mr. DilipKumar Natvarlal Jagad, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00233/2017-2018/10462] as an 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.
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- IX. 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/-
Kishore Vemulapalli
Member (Judicial)
16.06.2022

Sd/-
Rajesh Sharma
Member (Technical)