

In the National Company Law Tribunal
Mumbai Bench.

CP No.1340/I&BC/NCLT/MB/MAH/2017

Under Section 7 of Insolvency & Bankruptcy Code 2016

In the matter of

Sanjay Talashi Mamaniya

V/s

GGs Infrastructure Pvt. Ltd.

Heard on 29.09.2017

Order delivered on: 04.10.2017

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

Present : 1. Mr. Sujit Pathak, Advocate.
2. Mr. Dharmesh Vador, Director.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. This is a Company Petition filed in Form No.1 by Sanjay Talakshi Mamaniya, a Financial Creditor, to initiate Corporate Insolvency Resolution Process (CIRP) under section 7 of the Insolvency & Bankruptcy Code 2016 in respect of a Financial Loan against the Corporate Debtor viz. M/s. GGS Infrastructures Private Limited.
2. Brief history of the Financial Debt is as follows :-
3. The Financial Creditor has advanced an amount of ₹9 lakh to the Corporate Debtor on 03.04.2012 as Loan. A Promissory Note dated 09.04.2012 has also been executed and is on record. The payment was effected on 10.04.2012 vide Cheque No.4054803. The Financial Creditor has claimed ₹10,67,235 as on 01.04.2016.
4. The Debt has been confirmed by the Corporate Debtor vide "Confirmation of Accounts" dated 01.4.2017. In the Books of Accounts of the Debtor there is an opening balance as on 01.04.2016 of ₹9,74,115/- which kept on increasing in the following years due to accrual of Interest.
5. A Demand Letter was issued by the Financial Creditor on 04.10.2016 requesting the Corporate Debtor to refund the Loan amount with interest up to 30.09.2016

MK

i.e. ₹9,00,000/- Principal Plus ₹82,350/-, total ₹9,82,350/- within 30 days from the date of receipt of the Demand Letter.

6. The Corporate Debtor expressed his inability to repay the amount of ₹9 lakhs along with interest vide his letter dated 10.10.2017, relevant portion reproduced below

:-

"We are in receipt of the above letter with regards to recall of your loan amount of ₹9 Lakhs along with current interest. You are well aware that we have not been able to pay you interest for the past 6 months due to very slow market conditions. We are also not receiving our payments from our clients on time which has resulted in the delay of servicing your interest. We shall however try our very best to clear your outstanding interest along with your principal amount of ₹9 Lakhs at our earliest."

7. Thereafter the Financial Creditor has sent another letter dated 02.04.2017 requesting the Debtor to make payment of the Loan of ₹9 Lakh with interest calculated up to 31.03.2017, ₹1,64,250/-, total ₹10,64,250/- within 30 days.
8. Vide another reminder letter dated 10.07.2017 to the Corporate Debtor, the Financial Creditor has requested to make a total sum of outstanding amount of ₹10,97,235/- (Principal amount ₹9 Lakhs Plus simple interest of ₹2,19,150/- up to 31.07.2017, less TDS ₹21,915/- = ₹10,97,235/-).
9. Thereafter in reply, the Corporate Debtor informed the Creditor vide their letter dated 20.07.2017 that an amount of ₹30,000/- was being paid through NEFT which shall be adjusted against the "Interest" dues.

FINDINGS :-

10. From the above mentioned documents it is clearly established that the Loan amount of ₹9 Lakhs was accepted by the by the Corporate Debtor from the Financial Creditor and repayment thereof was defaulted on 01.04.2016. As of 31.07.2017, the amount in default is stated to ₹10,97,235/- as discussed above. However, after deducting the payment of ₹30,000/-, the net outstanding in default as mentioned in Form-1 is **₹10,67,235/-**. Since the "Debt" and "Default" are

established, this is a fit case for admitting the Corporate Insolvency Resolution Process against the Corporate Debtor. Accordingly, the Petition is "admitted".

11. The Petitioner has proposed the name of the "Interim Resolution Professional" Mr. Martin S.K. Golla, Reg. No. IBBI/IPA-002/IP-N00095/2017-18/10238, Add: 1704, Tower03, Rehaja Tipco Heights, Rani Sati Marg, Malad (East), Mumbai – 400 097, Email: martingolla@hotmail.com The IRP has also given his consent in Form No.2.
12. Having considered the totality of the circumstances and the Application for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed *supra*, it is hereby pronounced that "Moratorium" as prescribed under Section 14 of the Code 2016 shall come into operation. Since the Application is "Admitted", therefore, this Bench prohibits all of the following viz.:-
 - I (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI Act);
 - (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.
 - (II) That supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - (III) That the provisions of sub-section (1) Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (IV) That the order of Moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

MS

- (V) That the public announcement of the corporate insolvency resolution process shall be acted upon immediately as specified under section 13 of the Code.
13. Accordingly, this Tribunal appoints the said Mr. Martin S.K. Golla, as Interim Resolution Professional to initiate the Insolvency Resolution Process on the above Corporate Debtor forthwith, with the following directions:-
- 13.1. The Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.
- 13.2. The IRP so appointed shall also comply the other provisions of the Code including section 15 of The Code. Further, the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
14. Accordingly, **this CP 1340/I & BC/NCLT/MAH/2017 stood admitted.**
15. The Insolvency Resolution Process is commenced from the date of this order.

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)
Date : 04.10.2017

Sd/-

M. K. SHRAWAT
Member (Judicial)

ug