

**In the National Company Law Tribunal
Division Bench, Chennai**

TCP/70/(IB)/CB/2017

Under Section 7 of the IBC, 2016

In the matter of

M/s. Sri Adinath Enterprises ...Petitioner/Financial Creditor
V/s

M/s. RRP Housing Private Limited ...Respondent/Corporate Debtor

Order delivered on: 29.12.2017

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)
S. Vijayaraghavan, Member (Technical)


For the Petitioners/FC: *Shri. A. Aridas, Advocate*

For the Respondent/CD: *Ex-parte*

ORDER

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

1. Under consideration is a petition filed under section 433(e), 434(1)(a) and 439(1)(b) of the Companies Act, 1956 (the Act, 1956) read with Rule 95 of the Company Court, Rules, 1959 before the High Court, Madras and upon constitution of this Tribunal, the matter has been transferred to this Tribunal and renumbered as TCP No. 70/2017. In view of the provisions of I & B, Code, 2016, this matter is has been dealt under section 7 of the Code, 2016, since the petitioner is claiming to be a financial creditor and the Respondent is a Corporate Debtor.



2. The brief averments made in the petition are that the petitioner Company is a Partnership Firm Viz Sri Adhinath Enterprises (hereinafter called as Petitioner/FC) and having its office suited at New No. 4, Old No. 181, Kodambakkam High Road, Nungambakkam, Chennai – 600 034 and it is a financial creditor of the Respondent Company. The Respondent viz M/s. RRP Housing Private Limited, (hereinafter called as Corporate Debtor) is a company registered under the Act, 1956 having its registered office at RRP Tower, No. 12/6, No. 4, Achuthan Nagar, 1st Street, Ekkattuthangal, Chennai – 600 032 and it is carrying on the business of real estates and construction activities. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

3. According to the petitioner, the Respondent Company has approached the petitioner company for a loan of Rs.1,00,00,000/- and the petitioner Company has sanctioned the said loan amount and after deducting the interest of Rs. 20,00,000/-, Rs. 80,00,000/- was paid to the Respondent Company on 15.05.2015. The loan amount carried an interest of 18% per annum. The said amount was transferred to the accounts of the Respondent Company by way of NEFT. The

Respondent Company had duly executed a promissory note dated 15.05.2015 for Rs.1,00,00,000/-.

4. As on 17.11.2015, the Respondent Company has repaid of Rs.60,00,000/- and a total amount of Rs.44,50,280/- was due (Rs.40,00,000/- Principal + Rs.4,50,280/- towards Interest). The petitioner Company has demanded the due amount vide its notice dated 07.09.2006 and the Respondent Company has issued 4 cheques dated 14.10.2016 each Rs.10,00,000/-. When the cheques were presented to the bank, they were dishonoured for the reason “insufficient Funds”. Since the Respondent Company failed to repay the amount borrowed, the petitioner Company filed the present petition and prayed to appoint an IRP.

5. The matter was taken up for hearing on 21.11.2017, 28.11.2017, 08.12.2017 and on 14.12.2017. The learned Counsel for the Respondent has absented for all the said hearings and after giving ample opportunity to him and since neither the counsel nor the Respondent were present to put forth their submissions, the Respondent was set ex-parte on 14.12.2017. However, the Respondent company has filed its counter and inter-alia submitted that the petitioner Company has sanctioned Rs.80,00,000/- as loan and not Rs.1,00,00,000/- as stated by the petitioner. So far the Respondent

Company has repaid an amount of Rs.60,00,000/- towards the said loan and Rs.20,00,000/- alone is to be paid. The petitioner Company deliberately has presented all the 4 cheques by dating 14.10.2016 for collection. The petitioner was fully aware that the balance in the bank would not be enough to meet the huge amount. Therefore, the Respondent Company/Corporate Debtor prayed for the dismissal of the petition.

6. When the matter was pending for consideration, both the parties sought time submitting that they intending to settle the matter. In the process, the Respondent gave a proposal stating that claim amount will be paid in instalments within 2 years. But the proposal put forth by the Respondents/CD was not accepted by the petitioner and submitted that it is not a fair proposal. Therefore, it was further submitted and recorded, that the efforts put forth by the parties have failed. In the circumstances since the Respondent was set ex-parte, the Adjudicating Authority heard the submissions of Petitioner.

7. Heard. Perused the documents filed by both the parties.

8. It is the version of the petitioner that an amount of Rs.1,00,00,000/- was sanctioned as loan, and after deducting Rs.20,00,000/- towards interest, an amount of Rs.80,00,000/- was paid to the Respondent Company through NEFT. The Respondent

✓

Company has not denied the receipt of the amount at any point of time. The Respondent Company contended that only amount of Rs.80,00,000/- was paid as loan and in turn the Respondent has repaid an amount of Rs.60,00,000/-, and this payment was not denied by the petitioner. The Respondent submitted that only an amount of Rs.20,00,000/- is due to the petitioner Company. As seen the records the Respondent Company has executed a Promissory Note for Rs.1,00,00,000/- on 15.05.2015 and the said document was not disputed at any point of time. Besides, on receipt of the notice dated 07.09.2016, the Respondent Company has issued 4 cheques each for Rs.10,00,000/- (Total Rs.40,00,000/-), however it is contended by the Respondent Company that the cheques were issued for security purpose. It is also stated by the Respondent Company that a total 10 cheques were issued to the Petitioner Company. Therefore, the petitioner has proved the loan transaction of Rs.1,00,00,000/- by placing the Promissory Note dated 15.05.2015 executed by the Respondent and Ten cheques issued by the Respondent Company. Further, there is no meeting point between the parties in settling the dispute. Anyhow, now the present claim is for Rs.40,00,000/- + interest as stated above. In the circumstances and in view of the above

discussions, we conclude that the Respondent has failed to pay its debt and therefore, we are inclined to allow the petition.

9. We appoint Mr. T. R. Ravichandran, as Interim Resolution Professional (IRP) as proposed by the Operational Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form No. 2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I & B Code, 2016 within three days from the date of the receipt of the copy of this order and call for submissions of claim in the manner prescribed.

10. We declare the moratorium which shall have effect from the date of this order till the completion of corporate insolvency resolution process, for the purposes referred to in Section 14 of the I & B Code, 2016. We order to prohibit all of the following, namely:

(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 (54 of 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.

11. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.
13. The Petitioner/FC as well as the Registry are directed to send the copy of this Order to IRP to take charge of the Corporate Debtor's



assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

14. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

15. The address details of the IRP are as follows: -

Shri. Tharuvai Ramachandran Ravichandran
Regn. No: (IBBI/IPA-002/IP-N00241/2017-2018/10692)
3F, Saikiran Apts,
7, kasturibai Nagar, 1st Main Road,
Adiyar, Chennai-600020.
E-Mail- trrassociates@yahoo.in
Mobile No. 9884070424.

S. vijayaraghavan
(S. Vijayaraghavan)
Member (Technical)

K. Anantha Padmanabha Swamy
(K. Anantha Padmanabha Swamy)
Member (Judicial)

TJS