
(2021) 09 NCLT CK 0017
In the National Company Law Tribunal
Case No : C.P. No. 4443/IBC/MB/2019

Radha Madhav Investments Pvt. Ltd.	APPELLANT
Vs	
VGS Realty Construction Private Limited	RESPONDENT

Date of Decision : 07-09-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 7, 13, 14(1), 31(1), 33

Citation : (2021) 09 NCLT CK 0017

Hon'ble Judges : H.V. Subba Rao, Member (J); Chandra Bhan Singh, Member (J)

Bench : Division Bench

Advocate : Shyam Kapadia, Rohit Gupta

Final Decision : Disposed Of

Judgement

H.V. Subba Rao, Member (Judicial)

1. This Company petition is filed by Radha Madhav Investments Pvt. Ltd. (hereinafter called "Financial Creditor") against VGS Realty Construction Private Limited (hereinafter called "Corporate Debtor") for ordering Corporate Insolvency Resolution Process for an unresolved Financial Debt of Rs.20,73,81,096/- . This petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The brief facts of the petition are that the Financial Creditor advanced following Inter Corporate Deposits which were utilized by the Corporate Debtor:

- i. 1st ICD disbursed on 04 January 2019 for INR 3,00,00,000/-
- ii. 2ND ICD disbursed on 05 January 2019 for INR 2,00,00,000/-
- iii. 3rd ICD disbursed on 08 January 2019 for INR 3,00,00,000/-
- iv. 4th ICD disbursed on 10 January 2019 for INR 2,00,00,000/-
- v. 5th ICD disbursed on 15 January 2019 for INR 3,00,00,000/-

- vi. 6th ICD disbursed on 17 January 2019 for INR 2,00,00,000/-
- vii. 7th ICD disbursed on 22 January 2019 for INR 2,00,00,000/-
- viii. 8th ICD disbursed on 06 February 2019 for INR 2,00,00,000/-

3. In token of the receipt of the above deposits the Corporate Debtor executed the Inter Corporate Deposits receipts on the respective dates for the respective amounts. Subsequently, the Corporate Debtor committed default in repayment for which the Financial Creditor filed present Company Petition claiming a sum of Rs. 19 Crores as principal amount and 1,73,81,096/- accrued interest as on 31.03.2019 as per the contractual rate of interest.

4. The Corporate Debtor filed affidavit in reply dated 12.03.2020 virtually admitting the debt and default. The Corporate Debtor contends that the Financial Creditor invoked personal guarantees of the Guarantor of filing summary suits pending for disposal before the High Court of Bombay. The Corporate Debtor further contended in the affidavit in reply that the documents relied upon by the Financial Creditor were not properly stamped as per the requirement of Maharashtra Stamp Act and as such the said documents is unenforceable in the eye of law. Thus, the Corporate Debtor filed a routine reply without raising any substantial legal pleas.

FINDINGS

1. Heard the arguments on both sides and perused the record. Mr. Rohit Gupta learned counsel appearing for the Corporate Debtor during the course of the final hearing fairly admitted the averment of Inter Corporate Deposits and also the default committed by Corporate Debtor. The only submission of Mr. Rohit Gupta is that the above Company Petition was filed by the Financial Creditor as if the Inter Corporate Deposits were advanced by the Financial Creditor in 2019 which is not correct even according to own documents relied upon by the Financial Creditor and the said Inter Corporate Deposits were in fact issued in 2018 and therefore the above Company Petition is defective and needs to be rectified. In order to substantiate his

point of argument he also invited the attention of this Tribunal to the various Demand Promissory Notes executed by the Corporate Debtor in 2018 annexed by the Financial Creditor to the above Company Petition.

2. The Financial Creditor annexed Inter Corporate Deposits dated 04.01.2019 for an amount of Rs. 3,00,00,000/-, 05.01.2019 for an amount of Rs. 2,00,00,000/-, 08.01.2019 for an amount of Rs. 3,00,00,000/-, 10.01.2019 for an amount of Rs. 2,00,00,000/-, 15.01.2019 for an amount of Rs. 3,00,00,000/-, 17.01.2019 for an amount of Rs.2,00,00,000/-, 22.01.2019 for an amount of Rs. 2,00,00,000/-, 06.02.2019 for an amount of Rs. 2,00,00,000/- to the Company Petition respectively. Since the Corporate Debtor is not disputing receipt of consideration under the above referred Inter Corporate Deposits receipts executed in 2019 basing on which the above Company Petition was filed, the

claim cannot be rejected on the above argument of Mr. Rohit Gupta unless the Corporate Debtor establish that no amount is due under the above Inter Corporate Deposits executed in 2019. In fact, the Corporate Debtor did not raise the above plea anywhere in affidavit in reply filed by him. Even otherwise as per the law laid down by the Hon'ble Supreme Court in Dena Bank Vs C. Shivakumar Reddy and Anr. that the Financial Creditor in order to file an application under Section 7 of the Code in statutory Form-1 is required only to fill in the particulars as specified in the various column of the form and there is no scope of elaborate pleadings.

3. As stated above the debt and default is not in dispute and the above Company Petition is being filed on 19.12.2019 itself is well within limitation. Since the debt and default are clearly established and the debt is also within limitation, this Bench is left no other option except to admit the above Company Petition.

The Financial Creditor has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary requirement for admission.

4. In view of this, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the above Company Petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -4443(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against VGS Realty Construction Private Limited.

b. This Bench hereby appoints Mr. Vinodkumar Pukhraj Ambavat, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00420/2017-18/10743 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

M.A. 321/2020

In view of the admission of the above Company Petition and declaration of moratorium, the interim relief of restraining the respondent from alienating the assets of the Corporate Debtor without permission of this bench vide order dated 28.01.2020 in above M.A. 321 of 2020 merges with the moratorium and accordingly the above M.A. 321/2020 also disposed of.