



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 6
(IB)-183(PB)/2024

IN THE MATTER OF:

Ambica Enclave Private Limited

.... Petitioner/Applicant

Vs.

Proplarity Infrastructure Private Limited

.... Respondent

Order u/S. 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on 03.07.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Petitioner : Adv. Alok Tripathi

For the Respondent : None

ORDER

1. Mr. Alok Tripathi, Ld. Counsel for the Petitioner appears through VC.
2. This Section 7 Petition has been filed against the Respondent/Corporate Debtor. Notice was ordered to be issued on 22.04.2024. On 01.05.2024, despite notice, none appeared for the Respondent. We, therefore, gave one more opportunity to the Respondent to appear and to file reply and the matter was then listed on 08.05.2024.
3. On 08.05.2024, we passed the following order:

“On perusal of the affidavit of service on DMS, we find that the address of the Corporate Debtor at page 185 (Annexure-P/10) is incomplete. Petitioner is once again directed to serve fresh notice showing the full address of the Corporate Debtor. At request, list the matter on 02.07.2024.”
4. Complying with the above, a fresh affidavit of service has been filed on 19.06.2024. In that, the Ld. Counsel for the Petitioner states that the



service through speed-post was done on the address of the Corporate Office of the Respondent at Proplarity Infrastructure Pvt. Ltd., Ground Floor, Gomtiganj, Sector-J, Sushant Golf City, Sultanpur Road, Lucknow, U.P. – 226030 and that notice has been returned with the endorsement of “no such firm exist on this address”. The notice has also been served on the Registered office of the Respondent at B-238, 2nd Floor, North Ex Mall, East Delhi Prashant Vihar, Delhi, India-110085 available at MCA Portal and that notice has been returned with the endorsement of “left without address”.

5. To prove that the Respondent company exist in this address, the Ld. Counsel for the Petitioner relied upon the earlier proceedings viz. CP No. (IB)-534(PB)/2023, where on notice, the Corporate Debtor appeared through Mr. Ashish Chaudhary, Ld. Counsel who filed his Vakalatnama and the case was dismissed on merits on 13.03.2024. The operative portion of the order reads as follows:

“12. In this case, we find that this entire exercise is only for recovery and is not for the purpose of resolution of the Corporate Debtor. Ld. Counsel for the Corporate Debtor also stated that on earlier occasion, insolvency proceedings were initiated by another Creditor against the Corporate Debtor and it was resolved before the Hon’ble NCLAT. Hence, it is emphatically stated that the company is a solvent company.

13. Accordingly, (IB)-534(PB)/2023 stands rejected in above terms. All the pending IA(s)/CA(s), if any, also stand closed. The File may be consigned to record storage (Final).”

6. Ld. Counsel for the Petitioner also states that he has also attempted to serve the e-mail at the Registered Email-Id of the Corporate Debtor as recorded in the MCA Portal, which has not bounced back.
7. He has also attempted to reach out to the earlier Counsel appeared on behalf of the Respondent/Corporate Debtor who refused on the ground that he has not been instructed.



8. In any event, the effective notice has been made on the Corporate Debtor. Nevertheless, the requirement of the notice is only based on the order of the Hon'ble NCLAT and in addition to the procedure prescribed under the Insolvency & Bankruptcy Code, 2016 which has already been complied with. Hence, it is deemed to be served upon the Respondent, and none appeared.
9. On merits it is pleaded that the factual position as recorded in the order dated 13.03.2024 in CP (IB)-534/2023 with regards to the debt and default is not disputed by the Respondent/Corporate Debtor whereas they have admitted the same. The only ground of objection was that there is no demand made for the return of the amount; hence, there is no debt and default. On this premise, the petition CP (IB)-534(PB)/2023 was dismissed.
10. Now that, the Petitioner has raised the demand notice on 19.03.2024 to the very same address of the Respondent/Corporate Debtor. The demand notice is annexed with this petition at Annexure-P/5(Colly) at Page-142 to 158, for which, according to the Petitioner there is no denial or rebuttal of the demand.
11. In this case, the facts as recorded in the earlier order dated 13.03.2024 passed in CP (IB)-534(PB)/2023, in which Para-1, 2, 3, 5, 6, 7, 8 and 9 reads as follows:
 1. *This petition has been filed under Section 7 of IBC, 2016 by four Financial Creditors against the Corporate Debtor claiming that the Corporate Debtor in this case has enjoyed the benefit of loans raised from four Financial Creditors on different dates and has failed to discharge its liabilities and they are unable to service the debt and there is default. The details of loan are marked as Annexure-P1 (Collectively) which is at page 29-74 of the petition.*
 2. *For the purpose of the present case, we take up the loan agreement of M/s. Divya TIE-UP Pvt. Ltd. dated 13.10.2016. The amount lent to the Corporate Debtor under the various loan agreements is not disputed, so also is the rate of interest @ 30% per annum which is not disputed. Even as of today, the Corporate Debtor does not dispute the balance amount as per their own balance*



- sheet. It is also on record that the Corporate Debtor has been paying certain amount of interest prior to agreement. But post agreement, there appears to be no interest paid.
3. Be that as it may, on the basis of these agreements, the Financial Creditor now claims that the Corporate Debtor has defaulted in paying the amount and therefore, Section 7 petition has been initiated...
 4. x x x
 5. According to the Ld. Counsel for the Financial Creditor, the default occurred on 31.03.2018 for which he relied upon the balance-sheet of the Corporate Debtor of the year 2017-18 which is at page 93 of the Petition. It is also pleaded that no further balance-sheet has been filed by the Corporate Debtor. On this premise, Ld. Counsel for the Financial Creditor pleaded that there is admitted debt and there is default as reflected in the balance-sheet and therefore, the present case should be admitted.
 6. Per contra, Mr. Abhishek Anand, Ld. Counsel for the Corporate Debtor referred to one of the loan agreements, more particularly clause 2 (at page 32 of the Petition) which is same in all agreements and the same is extracted below:-
 2. That the parties hereto agree and admit the above outstanding amount of loans and unpaid interest (which is to be treated as part of principal amount of loan) are repayable by the respective Borrowers to the Lender on demand.
 7. Ld. Counsel for the Respondent pleaded that the debt amount taken as loan is not disputed and as reflected in their balance-sheet of 2017-18. However, it is not admitted to reckon the date of default as 31.03.2018 as indicated at page 14 of the petition, since there is no demand in writing by the Financial Creditor at any point of time to which the Financial Creditor fairly stated that there is no demand in writing but they have made oral demands which is outright disputed by the Corporate Debtor.
 8. In the absence of any material to show that there has been a demand and refusal by the Corporate Debtor to pay the amounts in terms of the loan agreement, we can infer that the loan agreement still subsists and the parties may work out the remedies as per the terms & conditions contained in the loan agreement. In this regard, it will be useful to infer Section 3 (12) of the Code which defines default as



“non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be”.

9. *In terms of the agreement, there is no period specified in the loan and therefore the question of the debt becoming due and payable at a particular date has not emerged in the present case.*

12. In the above factual background, there has been a demand made by the Petitioner as indicated above as recorded in Annexure-P/5 which has not been denied by the Respondent/Corporate Debtor. Hence, there is a clear case of debt and default.

ORDER

In the light of the above facts and circumstances, it is, hereby ordered as follows:

- i. The Application bearing **CP (IB)-183(PB)/2024** filed by Ambica Enclave Private Limited, the Petitioner/Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Proplarity Infrastructure Private Limited, the Respondent/Corporate Debtor, is hereby admitted.
- ii. As a consequence of the Application **CP (IB)-183(PB)/2024** being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/Corporate Debtor as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. The Petitioner/Financial Creditor has proposed the name of Mr. **Vinod Kumar Chourasia**, an Insolvency Professional having Registration No. **IBBI/IPA-001/IP-P00100/2017-18/10200**; Registered Address at A-7856, Sector-2, Rohini, New Delhi-110085 and Office at B-022, Pragati Vihar Hostel, Lodhi Road, New Delhi 110003, to **act as IRP**. The proposed IRP has filed his written communication at Annexure-P/11 of the petition, as per



the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The proposed IRP has made the declaration that no disciplinary proceedings are pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. Further, the proposed IRP has disclosed his current assignments and other necessary disclosures have as per the requirement of the IBBI Regulations. Accordingly, the requirements of the Section 7(3)(b) of the Code, has been complied with. Hence, we **appoint Mr. Vinod Kumar Chourasia as the IRP** of the Respondent/Corporate Debtor.

- iv.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v.** During the CIRP period, the management of the Respondent/Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Respondent/Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- vi.** The IRP is expected to take full charge of the Respondent/Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.



- vii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Debtor.
- viii.** The Petitioner/Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- ix.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Petitioner/Financial Creditor, the Respondent/Corporate Debtor, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Respondent/Corporate Debtor and specific mention regarding admission of this petition must be notified.
- x.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- xi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

Shubham Pandya – 03.07.2024