

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.189/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Moonbeam Advisory Private Limited

19/2 PoorvaPunya,
Model House, 4th Street,
Basavanagudi,
Bangalore – 560 004.

- Petitioner/Operational Creditor

Versus

M/s. Samruddhi Realty Limited

No.1, Tate lane, 2nd Floor,
Richmond Road Cross,
Bangalore – 560 025.

- Respondent/Corporate Debtor

Date of Order:16th April,2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Jacob Alexander
For the Respondent : Shri Abhijit Atur

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.189/BB/2018 is filed by **M/s. Moonbeam Advisory Private Limited**(Petitioner/Operational Creditor) u/S 9of IBC, 2016, R/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of

M/s. Samruddhi Realty Limited (Corporate Debtor) on the ground that the Corporate Debtor failed to pay an outstanding amount of Rs.1,73,41,155/- (Rupees One Crore Seventy Three Lakh Forty One thousand One hundred and Fifty Five only) which includes principal and interest.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
 - 1) M/s. Moonbeam Advisory Pvt. Ltd (herein after referred as Petitioner/Operational Creditor) is engaged in rendering services of facilitating funding for corporate entities, which are in need of the same.
 - 2) M/s. Samruddhi Realty Limited (herein after referred as Respondent/Corporate Debtor) was incorporated on 28.11.2003 under the Companies Act, 1956. Its Nominal Share Capital Rs. 20,00,00,000/- (Rupees TwentyCrore only) Paid up Share Capital Rs.10,09,44,000/- (Rupees Ten Crore and Nine Lakh Forty Four Thousand only).
 - 3) The Corporate Debtor engaged the services of the Operational Creditor inter alia for arranging finance for its residential projects, new projects as well as takeover of old projects and executed a mandate letter ("Mandate Letter") dated March 08, 2016 in favour of the Operational Creditor herein. Fee agreed by the Corporate Debtor to be paid to the Operational Creditor for arranging finance was a sum equivalent to 1.75% of the transaction amount + applicable service and cess thereon.
 - 4) In terms of the agreement between the parties, the Operational Creditor facilitated the funding in favour of the Corporate Debtor from M/s. Essel Finance for a sum of Rs.75,00,00,000 (Rupees Seventy Five Crores.



- 5) The Corporate Debtor, hence became due and liable to pay the Operational Creditor, an amount of Rs.1,31,25,000 (Rupees One Crore Thirty One Lakhs Twenty Five Thousand). Accordingly, the Operational Creditor raised invoices on the Corporate Debtor as follows: i) Invoice No.BNG/035/2016-17 dated 1st December, 2016 for Rs.86,25,000 and Invoice No.BNG/040/2016-17 dated December 22, 2016 for Rs.64,68,750, in all for a total amount of Rs.1,50,93,750/- (Rupees One Crore Fifty Thousand Ninety Three Lakh Seven Hundred and Fifty only).
- 6) Towards payment of the sum of Rs.86,50,000/- as per invoice dated December 1, 2016, the Operational Creditor, at the request of the Corporate Debtor, agreed to more liberal payment terms and accept payment in three tranches of Rs.25,00,000/- (excluding applicable taxes).
- 7) The Corporate Debtor agreed, acknowledged and admitted its liability to pay the Operational Creditor, the said sum. Towards part payment of the sums due to the Operational Creditor and in acknowledgment of the debt due, the Corporate Debtor paid the Operational Creditor a sum of Rs.15,00,000/- by way of NEFT Transfer on 06.12.2016 to the Operational Creditor's Current Account No.0004509242. No payment has been made thereafter.
- 8) Out of the total amount of payable, the Operational Creditor has till date received only the amount of Rs.15,00,000/- despite trying its best to liberalise payment terms of the Corporate Debtor.
- 9) Thereafter the Corporate Debtor again acknowledged its liability to pay the Operational Creditor, the balance sum of



Rs.1,35,93,750/- vide email dated November 19, 2016 and sought time there for. However in spite of acknowledging the liability of payment of the principal balance of Rs.1,35,93,750/- vide several email and letter, and despite assurances, reassurances, discussions and agreed liberalisation of payment terms by the Operational Creditor, the Corporate Debtor miserably failed and neglected to make payment of the balance amount of Rs.1,35,93,750/- excluding the interest @ 18% p.a. from the date of due till actual realization of the said sum.

- 10) Since the Corporate Debtor have failed to make an outstanding amount, the Operational Creditor has issued demand notice dated Nil by demanding to pay the outstanding amount, failing which the present petition is filed by seeking to initiate CIRP.
3. Heard Shri Jacob Alexander, learned Counsel for Petitioner; Shri Abhijit Atur, learned Counsel for Respondent and Shri Hemang Rawal, Director of Corporate Debtor, party-in-person. We have carefully perused the pleadings of both the parties and extant provision of the Code.
4. Shri Jacob Alexander, learned Counsel for Petitioner, while reiterating various averments made in the pleadings, as briefly stated supra, has further submitted that the instant Company Petition is filed in accordance with law, there is an admitted debt and default in question and the same is not in dispute, and a qualified Resolution Professional namely Shri Surender Devasani, bearing Registration No.IBBI/IPA-001/IP-P00775/2017-2018/11348 is proposed to appoint him as Interim Resolution Professional, who has filed Written Communication dated 15.04.2019 in a prescribed forum by inter alia declaring that he is qualified to be appointed as such, not undergoing any disciplinary case etc. Therefore, it is urged the



Tribunal to admit the instant Company Petition by initiating CIRP as prayed for.

5. Shri Abhijit Atur, learned Counsel for Respondent, has inter alia submitted that they have filed Affidavit dated 25.03.2019 of Shri Hemang Deepak kumar Rawal and Shri Ravindra Mallikarjunappa Madhudi, Director of M/s.Samruddhi Realty Limited (Corporate Debtor) by inter alia stating that the Corporate Debtor is under financial stress and is not in a position to pay the amount as claimed by the Operational Creditor. Therefore, they do not have any objections for admission of the present Petition for initiating Corporate Insolvency Resolution Process. They have also filed latest financial position on the total liabilities as on February 28, 2019, the statement of liabilities are as follows:

| STATEMENT OF LIABILITIES AS ON 28TH FEBRUARY 2019 AS PER BOOKS | |
|--|----------------------|
| 1.Institutional Borrowings | Amount in INR |
| - Essel Finance Advisors and Managers LLP | 7458,67,322 |
| - Bajaj Finance Limited | 699,23,746 |
| - India bulls Housing Finance Limited | 1356,86,562 |
| 2.Unsecured Loans | 1368,58,222 |
| 3.Advances from Customers | 5295,42,618 |
| 4.General Creditors | 859,42,355 |
| 5.Statutory & Other Current Liabilities | 364,17,465 |
| TOTAL | 17402,38,290 |



SAMRUDDHI REALTY LIMITED
Balance Sheet as at March 31, 2018

| Particulars | Note No. | As at March 31, 2018 | As at March 31, 2017 | As at April 01, 2016 |
|-----------------------------------|----------|-----------------------|-----------------------|-----------------------|
| 1 Assets | | | | |
| Non-Current Assets | | | | |
| (a) Property, Plant and equipment | 3 | 34,93,440 | 92,47,826 | 1,40,65,544 |
| (b) Other Intangible Assets | 4 | 16,29,912 | 27,31,020 | 31,43,444 |
| (c) Financial Assets | | | | |
| (i) Investments | 5 | 1,41,532 | 1,41,532 | 1,41,532 |
| (d) Deferred tax assets (net) | 6 | 47,06,681 | 43,69,638 | 46,93,931 |
| (e) Other non-current assets | 7 | 14,20,16,795 | 18,28,67,449 | 17,01,84,990 |
| Total Non-current Assets | | 15,19,88,360 | 19,93,57,465 | 19,22,29,441 |
| Current Assets | | | | |
| (a) Investors | 8 | 2,00,19,99,518 | 1,14,18,19,654 | 84,22,30,909 |
| (b) Financial Assets | | | | |
| (i) Trade receivables | 9 | 24,16,93,157 | 39,53,71,647 | 23,06,41,650 |
| (ii) Cash and bank balances | 10 | 40,40,943 | 10,04,12,204 | 12,73,12,616 |
| (iii) Other financial assets | 11 | 61,348 | 2,28,29,097 | 1,52,18,807 |
| (c) Other current assets | 12 | 4,03,85,009 | 8,03,16,383 | 6,02,06,446 |
| Total Current Assets | | 2,28,81,79,975 | 1,74,07,48,385 | 1,27,56,10,428 |
| TOTAL ASSETS | | 2,44,01,68,335 | 1,94,01,05,850 | 1,46,78,39,869 |

He further submits that another CP(IB)No.124/BB/2018 is filed by M/s. Indiabulls Housing Finance Ltd. against the Corporate Debtor, by claiming an outstanding amount of 13,57,01,569.88/- (Rupees Thirteen Crore Fifty Seven Lakhs One Thousand Five Hundred and Sixty Nine Eighty Eight paisa only) which is pending on the file of this Tribunal.

6. The above facts clearly show that the instant Company Petition is filed in strictly in accordance with provisions of Code, admittedly there is a debt and default in question, due notice was given to the Corporate Debtor for payment of outstanding amounts. And **Shri Surender Devasani, bearing Registration No.IBBI/IPA-001/IP-P00775/2017 2018/11348** is suggested to appoint him as IRP and he has also filed his written consent communication in Form



No.2 dated 16.04.2019, by inter alia, stating that he is a qualified Resolution Professional having **Regn.No. IBBI/IPA-001/IP-P00775/2017-2018/11348**, and there are no disciplinary proceedings pending against him with the IBBI or The Indian Institute of Insolvency Professional of ICAI (IIPI), with Enrolment No.IP/P-00775; he is not currently serving as an interim resolution professional/resolution professional/liquidator. Therefore, we are of prima facia view that he is provisionally eligible to be appointed as IRP in the instant case.

Therefore, we are of the considered view that the instant case is fit case to admit by initiating CIRP against the Corporate Debtor, appointing IRP, Moratorium etc., as per provisions of the Code.

7. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, U/s 9(5)(i) and other extant provisions of the IBC, 2016, the following orders are passed:

- 1) CP(IB)No.189/BB/2018 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Samruddhi Realty Limited, Corporate Debtor;
- 2) **Shri Surender Devasani, bearing Registration No.IBBI/IPA-001/IP-P00775/2017-2018/11348**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 3) The following moratorium is declared prohibiting 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;
- 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;
- e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
- f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator as also not applicable to surety.
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.



- 4) The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) IRP is further directed to strictly adhere time schedule as mentioned under the Code. And he is directed to file progress reports from time to time to the Tribunal.
- 6) Post the case for submission of report of the IRP on **30.05.2019.**


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi