IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

C.P. No. 3794/IBC/MB/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Central Bank of India
Nariman Point Branch
Corporate Office: Chandermukhi Building, Nariman Point, Mumbai-400021

.....**Financial Creditor**

Vs

M/s Neptune Developers Limited
(CIN: U70102MH2004PLC147510)
Registered office at: 4th Floor Neptune Magnet Mall, Near Mangatram Petrol Pump, LBS Road, Bhandup (W), Mumbai- 400078
Project Site at:
Neptune Swarajya, Ambivili, Kalyan, Maharashtra

.....Corporate Debtor

Order delivered on: 16.07.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant: Adv. Ms. Rathima Maravaraman

For the Respondent: Mr. Akshay Patil

Per: Shri H.V. Subba Rao, Member (Judicial)

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ORDER

1. This Company petition is filed by Central Bank of India (hereinafter called "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Neptune Developers Limited (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 185,35,24,319/- (Principal amount 80,89,09,406/- plus Interest 104,46,14,913/-).

3. The brief facts of the case are as follows:-

   i. The Financial Creditor filed an application bearing no. 4086 dated 24.10.2018 under Section 7 of the Insolvency and Bankruptcy Code against the Corporate Debtor herein for initiating Corporate Insolvency Process as the Debtor has defaulted to pay to the Applicant Bank the debt of an amount of Rs. 189,05,51,264/-

   ii. The Financial Creditor further submitted that before the admission of the said application, the Corporate Debtor has approached the Financial Creditor for settlement of their dues. Accordingly, the compromise proposal submitted by the Corporate

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Debtor was accepted by the applicant Bank vide sanction letter dated 28.01.2019 on the following terms and conditions;

a. Total compromise amount Rs. 93.18 Crores
b. Upfront payment: 10% of the compromise amount
c. Time frame for the payment of rest of compromise amount: within 90 days from the date of sanction (18.01.2019).

iii. Further, as per the compromise proposal sanctioned, the Corporate Debtor has to pay to the Financial Creditor upfront payment of 10% of the compromise amount (Rs. 9.3 Crores) and the balance amount has to be paid by the Corporate Debtor within the duration of 90 days from the date of sanction (i.e. on 18.04.2019) and the settlement had been arrived at, the matter was withdrawn on 31.01.2019.

iv. The Corporate Debtor has paid the upfront amount of Rs. 10.00 Crores to the Financial Creditor but thereafter Corporate Debtor has failed to pay any amount. The 90 days period has already expired and the Applicant Bank has already rescinded their compromise proposal vide their letter dated 17.06.2019.

v. As on 13.08.2019, the Corporate Debtor has to pay to the Financial Creditor an amount of Rs. 185,35,24,319/- (Rupees One Hundred Eighty Five Crores Thirty Five Lakhs Twenty Four Thousand Three hundred and nineteen only). The Financial Creditor is filed the present petitioner under Section

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7 of the code as the Corporate Debtor had defaulted in payment their dues to the financial creditor.

Findings

1. The Corporate Debtor, except putting up appearance through Shri Akshay Patil, advocate even did not chose to file any reply in the above matter. The above Company Petition is nothing but a second round of litigation. The earlier company petition bearing no. 4086 of 2018 was withdrawn by the applicant on account of OTS (One Time Settlement) sanctioned to the Corporate Debtor. Except paying upfront amount of 10 crores, the Corporate Debtor did not adhere to the compliance of the remaining terms of the OTS despite availing nearly two years' time.
2. Thus, the debt and default are admitted in this case and the debt is also within limitation. The application is complete in all respects and the Financial Creditor also suggested the name of Mr. Vijay Pitamber Lulla as Interim Resolution Profession along with his consent letter in Form II. Thus, the present Company Petition satisfies all the necessary legal requirements for admission.
3. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -3794(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Neptune Developer Limited.
b. This Bench hereby appoints **Mr. Vijay Pitamber Lulla**, Insolvency Professional, Registration No: IBBI/IPA-

001/IP-P00323/2017-18/10593 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 costs 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.

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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.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)

Certified True Copy
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Dy. Registrar
National Company Law Tribunal, Mumbai Bench