

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

IB/2488(PB)/2019

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of

Debashish Majumdar

---Financial Creditor

Vs.

M/s. M-Tech Developers Private Limited

---Corporate Debtor

Order delivered on: 12.11.2020

CORAM:

SHRI B.S.V PRAKASH KUMAR

HON'BLE ACTG. PRESIDENT

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (TECHNICAL)

For the Financial Creditor/Petitioner: Mr. Kunal Godhwani

& Ms. Maya Gupta, Advocates

For the Corporate Debtor/Respondent: Ms. Varsha Aggarwal, PCS

ORDER

Per: B. S.V. PRAKASH KUMAR, ACTING PRESIDENT

Order Pronounced on: 12.11.2020

It is a Company Petition filed by the Financial Creditor namely

Debashish Majumdar u/s 7 of IBC (the Code) for initiating Insolvency

Resolution Process (CIRP) against the Corporate Debtor namely M/s. M-Tech Developers Private Limited for default in repaying ₹15,00,000 plus interest of ₹2,40,000 as on 03.09.2019.

2. On perusal of the Company Petition, it appears that the Petitioner has made payment of ₹15,00,000 on various dates (₹6,00,000 on 03.01.2014; ₹7,00,000 on 03.01.2014 and ₹2,00,000 on 06.03.2014) to the Corporate Debtor for booking of the flat and in consideration to the same, the Corporate Debtor issued payment receipts no. 7723, 7724 & 8560 on the aforementioned dates. Since there was a delay in completion of the project, the petitioner sent a letter dated 19.05.2018 requesting the Respondent to refund the amount of ₹15,00,000, in response to this, the Corporate Debtor issued a letter dated 28.06.2018 along with the Surrender form and requested the petitioner to submit the said form with relevant documents for refund of the amount, as per the Company policy and the same was performed by the Petitioner on 21.12.2018. Subsequent thereto, the Corporate Debtor, on demand of repayment by the Petitioner, issued Cheque bearing number 726768 of ICCI Bank Ltd dated 26.03.2019, however, it is stated by the Learned



Counsel for the Petitioner that soon thereafter, the Corporate Debtor issued a letter dated 20.03.2019 requesting for non- presentment of cheque and promised to issue Demand Draft in lieu of aforesaid cheque and till date the company has not obliged its promise. Under these circumstances, the Petitioner has filed the present Application against the Corporate Debtor under Section 7 of I&B Code, 2016.

3. In relation to the Corporate Debtor, it is seen from the reply and written submission filed by the debtor company that it has admitted the debt on 03.12.2019, 03.03.2020 & 26.10.2020, however, it is stated in the reply that it is not able to clear the dues outstanding. Hence the Petitioner has proved the 'existence of debt' and 'default' on the part of the Corporate Debtor. The Petitioner has filed the present Petition before this Tribunal on 28.09.2019 and as such the Notification effected in increasing the threshold limit from Rupees One Lakh to Rupees One Crore as on and from 24.03.2020 does not apply to the present case. Further the date of default as mentioned in Part – IV of the Application is stated to be 03.01.2017 and since the default has arisen much prior to 25.03.2020, Section 10A of IBC, 2016



will not come to the aid of the Corporate Debtor in the present case. Under the said circumstances, since the debt and default on the part of the Corporate Debtor being proved and also by looking at the consent given by an Insolvency Professional, we hereby admit this petition by appointing Mr. Rakesh Kumar Gupta (Insolvency Professional) as IRP with a direction to the IRP to compute this claim by deducting the payments made by the Corporate Debtor during the pendency of this Company Petition. The Petitioner shall pay the remuneration of the IRP as well as initial costs to the IRP until constitution of the Committee of Creditors, Accordingly this petition is admitted with the direction as follows:-

I. That Moratorium is hereby declared prohibiting all of the following actions, 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 Securitization 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.

II. That Supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from **12.11.2020** till the completion of the corporate insolvency resolution

process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints **Mr. Rakesh Kumar Gupta**, having Reg.No: [IBBI/IPA-001/IP-P00833/2017-18/11418], 701, Vikrant Tower, Rajendra Place, New Delhi-110008, E-mail: rkg.delhi.ca@gmail.com, Mobile No: 9810016852, as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.



5. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-Sd-

(BSV PRAKASH KUMAR)
ACTNG PRESIDENT

-Sd-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

12.11.2020

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