

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, DELHI
BENCH III**

IB-1446/ND/2019 Under Section 7 of
IBC, 2016 r/w Rule 4 of the Insolvency
and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

*In the matter of **Emerald Lands (India) Private Limited***

IL&FS Financial Services Limited

...Financial Creditor

Versus

Emerald Lands (India) Private Limited

...Corporate Debtor

Order delivered on 2nd January, 2020

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
K.K. VOHRA, MEMBER (TECHNICAL)

For Financial Creditor

: Mr. Neeraj Kumar, Mr. Pranav Vyas, Mr.
Shashank Agarwal,
Mr. Satindra Rai, Ms. Aayushi Singh & Ms.
Evneet Uppal, Advocates

For the Corporate Debtor

: Mr. Nitish K. Sharma (Shareholder) & Mr.
Yuvraj Singh (Director), Advocates

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under adjudication is an application bearing No., IB-1446/ND/2019 filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The prayers made are to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz., *Emerald Lands (India) Private Limited*, declare moratorium and appoint Interim Resolution Professional (IRP).

IB-1446/ND/2019
IL&FS Financial Services Limited Versus
Emerald Lands (India) Private Limited

2. Ld. Counsel for the Financial Creditor is present. Ld. Counsel for one of the Shareholders, namely, Silverglades Infrastructure Private Limited is present and the Ld. Counsel for the Lior Shmuel, who is the Director of the Corporate Debtor, is present. The Counsel for the Shareholder has filed an affidavit stating therein that the Corporate Debtor is developing a plotted colony project named the "Imperial Golf Estate" at Village Mullanpur & Talwandi Khurd, opposite, Ferozepur Road, District, Ludhiana, Punjab-142025. It is further submitted that with the lack of quorum in the board of the Corporate Debtor, the Corporate Debtor is not able to manage the project as a going concern.

3. Ld. Counsel for the Director submitted that his client is residing in foreign and not filing any Affidavit as was directed vide Order dated 18.12.2019 and further submitted that this Bench may pass appropriate Order as per the merits of the case.

4. The Ld. Counsel for the Financial Creditor (FC) submits that three Agreements were entered into between the FC and the Corporate Debtor (CD) i.e., 9th of February 2016, 12th of September 2017, and 8th of March 2018 for terms loan of Rs. 130 crores, Rs.20 crores and Rs.10 crores respectively.

5. The Applicant submits that pursuant to the Facility Agreement- I, the FC had disbursed the amount aggregating to Rs.129,99,87,363/- only, pursuant to the Facility Agreement- II, the Financial Creditor had disbursed the amount aggregating to Rs. 20 crores only, and pursuant to the Facility Agreement-III the FC had disbursed the amount aggregating to Rs.6,62,68,191/- only. The proof for disbursement of the amount is placed on record in the shape of Bank Statements, which corroborates with the amount and dates of payments. It is submitted by the Ld. Counsel for the FC that all three loan facilities were availed by the CD for developing the project

i.e, "Imperial Golf Estate" in two phases as reflects from the recital of the Agreements mentioned hereinabove.

6. The re-payment terms recorded in the Agreement provide that the borrower shall duly and punctually re-pay the facilities advanced by the Lender. The Agreement (s) state the sources of payments as follows:

- i) Revenue /operating cash flow from the Project,
- ii) Fund arising through the Equity divestment/quasi equity/debt refinancing
- iii) Divestment/sale of the Project under mortgage with Lender (s)/ security trustee.

7. As per the Terms and Conditions for term loan Facility recorded in Annexure to the offer letter, the borrower was under legal obligation to re-pay the amount in 10 quarterly instalments after a moratorium of 18 months from the date of 1st disbursement. The 1st instalment was due on 30th June, 2017. However, the CD failed to fulfill the obligation in relation to the re-payment of loan facilities as agreed.

8. The Terms and Conditions of the Agreements also define the event of default i.e., the borrower commits the default if he neglects to pay any instalment of interest on the due dates as agreed. The borrower commits default, if he neglects to pay any monthly/quarterly instalment of principal amount on dates as agreed. In terms of the Agreements, the CD has defaulted in re-payment of the loan facilities, availed from the Financial Creditor.

9. In pursuance to the definition of default, and the default committed by the corporate debtor, the FC had sent the notice to the CD on 7th September, 2018 calling upon it to make the due payment within 7 days. The FC declared the CD as Non-Performing Asset, as per the guidelines of the RBI, to which, a response was given by the CD. A rejoinder was sent by the FC on

28.09.2018, reiterating the contents of earlier notice. The CD did not re-pay the loan facilities availed even after receipt of notice from the FC.

10. Having considered the facts and circumstances and the material available on record, there is sufficient evidence to ascertain the default on the part of the CD. The Application filed by the FC is complete in all respect including the name of the IRP. Therefore, the Application is **admitted** and the commencement of the CIRP is ordered, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

11. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit 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 (54 of 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.

12. The supply of essential goods or services of the CD shall not be terminated, suspended, or interrupted during moratorium period. The

provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

13. Mr. Navneet Kumar Gupta is hereby appointed as IRP, as has been proposed by the FC. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. The IRP is directed to take charge of the CD's management immediately including the bank accounts. The IRP is also directed to cause public announcement as prescribed under Section 15 of IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

14. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the CD, its Promoters or any person associated with the management of the CD shall extend all assistance and cooperation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the IBC, 2016.

15. The FC and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.

The e-mail and other details of the IRP are as follows:

Name: Mr. Navneet Kumar Gupta

Registration Number: IBBI/IPA-001/IP-P00001/2016-2017/10009

Address: 5th Floor, Caddie Commercial Tower,

Aerocity, Near Airport,

New Delhi-110037

E-mail: navneetkgupta@gmail.com

IB-1446/ND/2019

IL&FS Financial Services Limited Versus
Emerald Lands (India) Private Limited

Mobile Number: [REDACTED]

16. The Registry is also directed to communicate this Order to the FC, the CD, and the concerned RoC.

17. The Order is dictated and pronounced in the open court. There is no order as to cost.

[REDACTED] -sd-
(K.K. VOHRA)
MEMBER (TECHNICAL)

[REDACTED] -sd-
(CH. MOHD SHARIEF TARIQ)
MEMBER (JUDICIAL)