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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/85/CHE/2021

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. VME Properties Private Limited***

Alchemist Asset Reconstruction Company Limited

A-270, 1st and 2nd Floor, Defence Colony,
New Delhi – 110 024

... Financial Creditor

-Vs-

M/s. VME Properties Private Limited

364, Pillaiyar Koil Street,
Panner Nagar, Mugappair West,
Chennai – 600 037

... Corporate Debtor

Order pronounced on 2nd September, 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : K.S. Viswanathan, Advocate

For Corporate Debtor : Shanmuga Sundaram, Advocate

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

This is an Application filed by **Alchemist Asset Reconstruction Company Limited** (hereinafter referred to as "**the Financial Creditor**") against **M/s. VME Properties Private Limited** (hereinafter referred to as "**the Corporate Debtor**")

under Section 7 of the Insolvency & Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. From Part-I of the Application, it is seen that the Financial Creditor is a Company acting in its capacity as Trustee of Alchemist V Trust. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 19.12.2007 bearing CIN: U45309TN2007PTC065781. The registered office address of the Corporate Debtor as per the Application is stated to be situated at 364, Pillaiyar Koil Street, Panner Nagar, Mugappair West, Chennai – 600 037. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Sapan Mohan Garg, Reg. No. IBBI/IPA/-002/IP-N00315/2017-18/10903; to act as the IRP.

3. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.88,83,68,570/- which is due and payable by the Corporate Debtor. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:



- i. Sanction Letter dated 14.08.2012 issued by UCO Bank;
- ii. Letter of Undertaking dated 29.08.2012 executed by Principal Borrower for a sum of Rs.38.69 Crores;
- iii. Letter of continuity dated 29.08.2012 executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.8.36 Crores;
- iv. Waiver of presentation dated 29.08.2012 for a sum of Rs.8.36 crores;
- v. Demand Promissory Note dated 29.08.2012 executed by the Principal Borrower and Mr. M. Kannan for an amount of Rs.8.36 Crore;
- vi. Deed of Hypothecation of Goods dated 29.08.2012 to secure a Demand Cash Credit executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.8.36 Crores;
- vii. Deed of Hypothecation & Books Debts dated 29.08.2012 to secured demand cash credit executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.8.36 Crores;
- viii. Deed of Hypothecation & Movables Plant & Machinery dated 29.08.2012 to secure Demand Cash Credit executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.19.73 Crores;
- ix. Agreement with the Borrower on Rescheduling / Rescheduling of Term Loan dated 29.08.2012 executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.31.54 Crores;
- x. Agreement with the Guarantors on Rescheduling / Rephasing of term Loan dated 29.08.2012 executed



by Principal Borrower and Mr. M. Kannan and Mr. M. Karthik for a sum of Rs.31.54 Crores;

- xi. Agreement for extension of charge by way of Hypothecation over current assets to secure Non – Fund based facilities dated 29.08.2012 executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.10.60 Crores;
- xii. Composite Agreement for Working Capital for Term Loan facilities and Hypothecation dated 29.08.2-012 executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.28.09 Crores;
- xiii. Omnibus-Counter Guarantee covering several Guarantees dated 29.08.2012 executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.10.06 Crores;
- xiv. Agreement relating to Term Loan dated 29.08.2012 executed by Principal Borrower and Mr. M. Kannan for a sum of Rs.19.73 Crores;
- xv. Guarantee Agreement dated 29.08.2012 executed by the Corporate Guarantor for a sum of Rs.38.69 Crores;
- xvi. Guarantee Agreement dated 29.08.2012 executed by Mr. V. Manickam, Mr. M. Kannan and Mr. M. Karthik;
- xvii. Inter – Creditor Agreement dated 29.03.2012 executed among UCO Bank, FINFUND and Principal Borrower;
- xviii. Assignment Agreement dated 22.03.2016 executed between UCO Bank and Applicant / Financial Creditor;



- xix. Sanction Letter dated 28.03.2018 issued by Applicant in favour of Principal Borrower and Guarantors;
- xx. Decree dated 24.07.2018 issued by the Hon'ble DRT - II, Chennai in favour of Applicant allowing the OA No.115/2014;
- xxi. Default Notice dated 01.01.2020 issued by the Applicant upon the Principal Borrower and the Guarantors;

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor during the year 2008 approached UCO Bank for grant of certain credit facilities for improvement of business and thereafter availed various credit facilities in the form of Term Loan & Cash Credit totally amounting to Rs.24 Crore. Thereafter, it was submitted that in order to create security, the Corporate Debtor had deposited the title deeds in respect of the properties situated at No.124, Valla (A) Village, Sriperumpudur Taluk, Kancheepuram District vide Patta No.2345, lands admeasuring to 8 Acre and 14.25 Cents and thus created equitable mortgage in favour of the UCO Bank.

5. Further, it was submitted by the Learned Counsel for the Financial Creditor that on request of the Principal Borrower and the Corporate Debtor, the UCO Bank renewed and sanctioned vide their sanction letter dated 14.08.2012 in and by which the account

of the borrower was restructured on the terms and conditions as mentioned herein below;

CREDIT FACILITIES

NATURE OF CREDIT FACILITIES	SANCTIONED LIMIT (RUPEES IN CRORE)
Cash Credit A/c 01010510000236	8.36
Term Loan A/c 19690610001837	13.00
Term Loan A/c 19690610001844	3.93
Term Loan A/c 19690610001851	2.80
NFB (Non – Based Bank Guarantee)	10.60
Total Exposure	38.69

6. It was submitted by the Learned Counsel for the Financial Creditor that the due repayment of the loan was guaranteed by Mr. V. Manickam, Mr. M. Kannan and Mr. M. Karthik in their personal capacity by executing Agreement of Guarantee dated 29.08.2012 and by Corporate Debtor VME Properties Pvt. Ltd. by executing Agreement of Guarantee dated 29.08.2012 through its authorized signatories for the credit facilities availed by the Principal Borrower. Further it was submitted that the Principal borrower and the Corporate Debtor had also availed credit facilities of USD 4 Million from M/s Finnish Fund for Industrial Cooperation Limited (FINFUND) and as per the Inter Creditor Agreement executed on 29.03.2012, the UCO Bank and the FINFUND would hold a first charge / pari passu over the securities in respect of the facilities granted by them to the tune of Rs.42 Crore and USD 4 Million respectively as mentioned in Schedule 1 of the said Agreement.



7. The Learned Counsel for the Financial Creditor submitted that after availing the said credit facilities from UCO Bank, the Principal Borrower and the Guarantors including the Corporate Debtor, did not satisfactorily maintained the credit facilities extended to them by the UCO Bank and failed and neglected to regularize the account. It was submitted that the UCO Bank on various occasions, demanded repayment of the dues and also sent notice from the Bank and through counsel, all of which remained futile since the Corporate Debtor did not care to repay the amount. Hence, it was submitted that the UCO Bank had filed OA No. 115/2014 before the Debt Recovery Tribunal – II, Chennai for recovery of dues of Rs.37,10,84,132.70/- as on 27.05.2014 including the non – funded facilities.

8. In the meantime, it was submitted by the Learned Counsel for the Financial Creditor that the UCO Bank assigned the loan which was granted to the Principal Borrower and the Corporate Debtor in favour of Alchemist Asset Reconstruction Co. Ltd., the Financial Creditor herein vide Assignment Agreement dated 22.03.2016 under the provisions of the SARFAESI Act, 2002. Thereafter, it was submitted that the Principal Borrower, the Guarantors and the Corporate Debtor approached the Applicant herein for restructuring of the account and the Applicant approved



the restructuring of the account vide its sanction letter dated 28.03.2018 on terms and conditions as mentioned therein.

9. Further it was submitted that in terms of the sanction letter dated 28.03.2018, a joint application was filed by the Applicant and the Principal Borrower along with Guarantors including the Corporate Debtor before DRT – II Chennai in OA No.115/2014 for obtaining a consent decree and the DRT – II, Chennai vide its order dated 24.07.2018 allowed the said Application. However, it was submitted that the Principal borrower was irregular in repayment of the instalments and was paying the instalments with delay. Also the Corporate Debtor was not making any payments since the month of September 2019 and hence it was submitted that the Financial Creditor has declared the said restructuring as failed vide its letter dated 01.01.2020. Under these circumstances, the Financial Creditor has filed the present Application under Section 7 of IBC, 2016 seeking thereof to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

10. The Respondent / Corporate Debtor has filed counter and the Learned Counsel for the Corporate Debtor submitted that the Corporate Debtor has no business operations for the past 4 years due to various factors such as market fluctuations and as such the



Corporate Debtor are not in a position to make the payment at the moment due to global financial crisis owing to Covid – 19 pandemic and the Respondent is making efforts to settle the dues to the creditors but is in dire need of further period of time.

11. Heard the submissions made by the Learned Counsel for the parties. From the averments made in the counter, it is clearly seen that the Corporate Debtor has admitted its liability and has also expressed its inability to pay the outstanding amount which is due and payable to the Financial Creditor. Further, it is also seen that the 'default' which is arising in the present Application has happened much before the advent of Covid – 19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

12. Further, on the aspect of limitation, it is seen that the Corporate Debtor has committed default in repayment of the dues as per the consent decree passed by DRT – II, Chennai on 24.07.2018 and that the Financial Creditor has issued a Loan Recall Notice on 01.01.2020 and if the said date is taken into consideration as the date of default, then the present Application filed under Section 7 of IBC, 2016 before this Tribunal on 12.04.2021 falls well within the period of limitation.



13. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

14. The Financial Creditor has proposed the name of **MR. SAPAN MOHAN GARG**, Reg. No. IBBI/IPA/-002/IP-N00315/2017-18/10903 (email id:- sapan10@yahoo.com) as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 11.01.2022. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.



15. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State



Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

16. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to



- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

17. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

18. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also

be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond