

**NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH  
SPECIAL BENCH, COURT No. II**

\*\*\* \*\*

**[CP (IB) 4464/(MB) of 2019]**

\*\*\* \*\*

**Gajendra Investment Ltd.**

**V/s.**

**Satara Property Developers Pvt. Ltd.**

\*\*\* \*\*

**Dated 10<sup>th</sup> August, 2020**

The work of the Tribunal has been closed due to Covid-19 pandemic as per letter dated 22.03.2020 and subsequent follow up orders of the Principal Bench, National Company Law Tribunal. The Principal Bench vide Notice dated 15.06.2020, constituted this Bench for hearing of the urgent matters through Video Conference (VC).

The matter is taken up on Video Conference. The Learned Counsel Mr. Aziz Khan, Mr. Anagh Pradhan & Mr. Gamanjit Singh Sethi on behalf of the Petitioner and Learned Counsel Mr. Vishesh Kalra for the Respondent are present. The Judgment is pronounced through Video Conference (VC). The CP (IB) 4464(MB) of 2019 is admitted.

**Sd/-  
MEMBER JUDICIAL  
(Janab Mohammed Ajmal)**

**Sd/-  
MEMBER TECHNICAL  
(Ravikumar Duraisamy)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, SPECIAL BENCH, COURT No. II**

**CP (IB) 4464/MB/2019**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**Gajendra Investments Limited**  
...Financial Creditor

Versus

**Satra Property Developers Private  
Limited**  
[CIN: U51900MH2000PTC126260]  
...Corporate Debtor

**Order Delivered on 10.08.2020**

***Coram:***

**Hon'ble Member (Judicial) : Janab Mohammed Ajmal**  
**Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy**

***Appearance: (through video conferencing)***

For the Financial Creditor : Mr. Pradeep Sancheti, Senior  
Advocate, i/b Divya Shah  
Associates.

For the Corporate Debtor : Mr. Vishesh Kalra, Advocate,  
i/b Vidhii Partners

*Per: Ravikumar Duraisamy, Member Technical*

**ORDER**

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by Gajendra Investments Limited, a part of Shah Group ("the Financial Creditor"), duly represented by Mr. Shreyans J. Shah, Whole Time Director, on the basis of Resolution passed at the Board Meeting dated 03.05.2019 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Satra Property Developers Private Limited, ("the Corporate Debtor"), a subsidiary of Satra Properties (India) Limited.
2. The Corporate Debtor is a Private Company (CIN: U51900MH 2000PTC126260) limited by shares and incorporated on 01.05.2000 with the Registrar of Companies, Maharashtra, Mumbai. Its Registered Office is at Upper Basement, Link Corner Mall, off Linking Road, Bandra West, Mumbai, Maharashtra 400050 within the jurisdiction of this Bench.
3. The present petition was filed on 10.12.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.15,76,00,000/- (Rupees fifteen crores seventy six lakhs only) as principal between September, 2017 and September, 2018 along with

interest @ 9% per annum from the date of disbursement until 18.10.2019 a sum of Rs. 2,87,29,774/- (Rupees two crores eighty seven lakhs twenty nine thousand seven hundred and seventy four only) and thereafter @ 9% per annum amounting to Rs.23,23,884/- (Rupees twenty three lakhs twenty three thousand eight hundred and eighty four only) on default amount from 18.10.2019 till the date of filing this Petition, with further penal interest @ 9% per annum till the date of realization of the claims of the Financial Creditor. The date of default is stated to be 18.10.2019. The total amount of claim payable by the Corporate Debtor to the Financial Creditor towards the loan taken is Rs. 18,86,53,658/- (Rupees eighteen crores eighty six lakhs fifty three thousand six hundred and fifty eight only). Due to ongoing relationships between the Financial Creditor and the Corporate Debtor, the Financial Creditor periodically lent various amounts at the request of the Corporate Debtor.

4. The case of the Financial Creditor is as follows: -

(a) The Financial Creditor had lent amount aggregating to Rs. 15,76,00,000/- (Rupees fifteen crores seventy-six lakhs) to the Corporate Debtor in 11 (eleven) instalments between September 2017 to September, 2018. The amount of Rs. 15,76,00,000/- (Rupees fifteen crores seventy-six lakhs) being

the principal amount lent as loan to the Corporate Debtor  
disbursed on various dates is detailed as under:-

Sr.No.	Date of Payment	Amount (Rs.)
1.	29.09.2017	8,78,00,000
2.	13.10.2017	1,00,00,000
3.	17.10.2017	1,00,00,000
4.	20.12.2017	1,70,00,000
5.	28.12.2017	1,00,00,000
6.	12.03.2018	50,00,000
7.	13.03.2018	50,00,000
8.	14.03.2018	1,00,00,000
9.	15.03.2018	20,00,000
10.	19.09.2018	5,00,000
11.	25.09.2019	3,00,000
Total		15,76,00,000

(b) The copies of entries in a Bankers Book in accordance with the Bankers Book of Evidence Act, 1891 of Kotak Mahindra Bank dated 08.05.2019, has been placed at **Exhibit 'C'** at p 28. Copy of the Kotak Mahindra Bank Statements reflecting the disbursed amounts has been placed at **Exhibit 'D' Colly** at pp. 29-37.

(c) Particulars of the claims as on 10.12.2019 have been placed at p.38 (Exhibit 'E') of the petition.

- (d) E-Mail dated 25.09.2018 sent by the Corporate Debtor to the Financial Creditor mentions as to the Interest and applicable TDS under Section 194(a) of the Income Tax Act on the amount advanced by the Financial Creditor wherein the Interest amount is calculated at 9% p.a. has been placed at **Exhibit 'F'** at pp. 39-40.
- (e) Copy of the Demand Notice dated 12.10.2019 by the Financial Creditor to the Corporate Debtor has been placed at **Exhibit 'G'** at pp. 41-47.
5. National e-Governance Services Limited (NeSL) report dated 29.06.2020 has been placed on record at the time of hearing on 06.07.2020. The Audited Financial Statement for Financial Year 2017-18 placed by the Financial Creditor at the time of hearing demonstrating the 'Borrowings' of the Corporate Debtor for the year under the head 'Current Liabilities' specifically Note. 5 stating that the unsecured loan taken by the Corporate Debtor are repayable on demand.
6. Judgment dated 21.07.2017 placed on record at the time of hearing passed by Hon'ble National Company Law Appellate Tribunal in Nikhil Mehta & Sons vs. AMR Infrastructure (relevant paras. 6,11,17,18 and 22-25) stating that if an amount is paid for interest and against the consideration for time value

of money, the same would be a 'financial debt' for that purposes of the Insolvency and Bankruptcy Code, 2016.

7. The Financial Creditor has proposed the name of **Mr. Devarajan Raman**, Registration No. IBBI/IPA-02/IP/N00323/2017-2018/10928, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
8. Mr. Vishesh Kalra, Advocate appeared on behalf of the Corporate Debtor and made his submissions. In its reply dated 04.03.2020, the Corporate Debtor has set up the following defence: -
  - (a) The Petition does not disclose any Financial Contract for Loan which is a prerequisite and a *sine qua non* for claiming as a Financial Creditor and filing a Petition under section 7 of the Code. (para 6 (a) at page 3 of the Reply);
  - (b) The Financial Creditor places a Demand letter dated 12.10.2019 calling upon the Corporate Debtor to repay the purported claims cannot in any manner describe as a loan. (para 6 (a) at page 3 of the Reply);

- (c) Further, a conjoint reading of the email dated 25.09.2018 by the Corporate Debtor to the Financial Creditor cannot in any manner construe to be a Financial Contract. (para 6(a) at page 3 of the Reply);
- (d) That the Documents produced by the Financial Creditor do not specify in any manner liability of a Loan in favour of the Financial Creditor, not the quantum of the Loan alleged and also not the manner in which the loan ought to be paid. Further, The Corporate Debtor submits that the Financial Creditor has these components of loan transactions to be showed are only through the letters of the Financial Creditor which have already been denied by the Corporate Debtor and the Financial Creditor has failed to show any Financial debt arising out of a Financial Contract. (para 6 (c) at page 4 of the Reply);
- (e) Further, The Corporate Debtor submits that the Financial debt do not fall within the definition of 'claim' as defined under section 3(6) of the code and also the word 'debt' as defined under section 3 (11) of the code as they are not backed by any document falling under the above definitions. (para 6 (d) at page 4 of the Reply);
- (f) The Petitioner does not come within the meaning of 'Financial Creditor' defined under section 5(7) of the Code as



no financial debt is due to it. In the absence of the financial debt, the Petitioner cannot be treated as the Financial Creditor. The Corporate Debtor further submits that at no point of time there was any loan transaction between the Financial Creditor and the Corporate Debtor and the monies advanced by the Financial Creditor were towards Project Finance (in Ghatkopar) and the same was repayable on the completion of the said project and the project having not been completed as on date does not give any cause of action to the Financial Creditor. (para 6(f) at page 5 of the Reply);

- (g) Further, The Corporate Debtor submits that by virtue of Form 1, which is the form for filing an application under Section 7 of the code requires to produce the Financial Contract. In the present case as there is no Financial Contract, the application under Section 7 of the Code does not survive. (para 6(i) at page 5 of the Reply);
- (h) The Corporate Debtor submits that it is mandatory for the Financial Creditor to prove a Financial Debt is also evident from the fact for the purpose of filing records with the information utility i.e. National e-Governance Services Limited, which the Financial Creditor has not placed on record. (para 6(j) at page 6 of the Reply);

- (i) Further, The Corporate Debtor submits that the Corporate Debtor has undergone a change and new Shareholders have stepped in place of the original Shareholders. That attempts were made to trace any Financial Contract between Corporate Debtor and the Financial Creditor but no documents were traced. (para 7 at page 6 of the Reply);
  - (j) The Corporate Debtor submits that it is the case of the Financial Creditor that the loans were purported to be given under an oral agreement and the Financial Creditor has failed to explain the basis of the oral agreement. The Financial Creditor has also failed to prove that the loan is purportedly to be repayable on demand. (para 8 at page 6 of the Reply);
  - (k) Further, the Corporate Debtor submits that mere depositing of monies in the account of the Corporate Debtor by the Financial Creditor cannot be the ground for admitting the Petition. (para 9 at page 6 of the Reply);
5. The Financial Creditor has filed its Rejoinder dated 27.06.2020 to the Reply of the Corporate Debtor which states as follows: -
- (l) The Financial Creditor submits that mere change in the Shareholding of the Corporate Debtor is irrelevant to the fact that the 'financial debt' has been incurred by the Corporate

Debtor. The Corporate Debtor has admitted the receipts of the various amounts of the loan and the Corporate Debtor is evading to reply under the guise of the change of Shareholding. (para 3 at page 3 of the Rejoinder);

- (m) That the Audited Balance Sheet of the Corporate Debtor filed with the Registrar of Companies (ROC) reflects that the unsecured loans are repayable on demand. (para 4 at page 3 of the Rejoinder);
- (n) The Financial Creditor further submits that the loan advanced to the Corporate Debtor carries interest which reflects from the e-mail dated 25.09.2018 (Exhibit F of the Petition) wherein the amount is calculated at 9% per annum and the same is not disputed by the Corporate Debtor. (para 5 at page 3 of the Rejoinder);
- (o) The Financial Creditor submits that the assertion of loan amount received were towards the project finance and were not repayable on demand as said by the Corporate Debtor is false and incorrect. (para 6 at page 4 of the Rejoinder);
- (p) The Financial Creditor further submits that the Corporate Debtor has failed to make payment of the outstanding loan despite multiple demand notices sent. (para 7 at page 4 of the Rejoinder);

6. We have heard the arguments of both sides and perused the records.
7. This Adjudicating Authority vide its Order dated 29.06.2020 had given an opportunity to the Financial Creditor and the Corporate Debtor to explore the possibilities of settlement but the parties did not reach to any settlement.
8. We had also sought the Corporate Debtor's response to the NeSL Report dated 29th June 2020 and was adjourned the hearing from 06.07.2020 to 09.07.2020. However, on 09.07.2020, the Corporate Debtor submitted that it has no comment on the record of default by Corporate Debtor.
9. It is noted that the Corporate Debtor vide its Affidavit in Reply dated 04.03.2020 has admitted that the loan was advanced by the Financial Creditor towards project finance and were payable on completion of the project. But the Audited Financial Statements of the Corporate Debtor for Financial Year 2017-2018 demonstrates under the heading of 'Current Liabilities' the unsecured loan taken by the Corporate Debtor 'other loans' or 'loans from related parties', are repayable on demand. Further CD takes contrary stand such as mere depositing of monies in

the account of the Corporate Debtor, repayable only after completion of the project.

10. It is noted that the Email dated 25.09.2018 along with the table annexed sent by the Corporate Debtor to the Financial Creditor placed on record by the Financial Creditor wherein it mentions the amount of interest and applicable TDS under Section 194(a) of the Income Tax Act. Also, in the Table under the heading 'FY 2017-18' annexed to the Email of 25th September 2018 demonstrates that the interest payable by the Corporate Debtor to the Financial Creditor was Rs. 55,72,159/- and the TDS to be deposited was 10% of that amount, being Rs. 5,57,216.4 and the interest amount of Rs. 55,72,159 was calculated on the basis of 9% interest of the loan amount.
9. Upon perusal of records, this Bench is of the considered opinion that the Financial Creditor have advanced the Loan to the Corporate Debtor. To substantiate the same, the FC also submitted Kotak Mahindra Bank letter dated Fur08.05.2019 and Account statements. The Financial Statements for FY 2017-2018 of the Corporate Debtor itself shows that the loan is payable on demand. The Information Utility, NeSL report dated 29.06.2020 has been placed on record. The Demand letter dated 12.10.2019 clearly states that the loan shall be repaid on demand with interest @9%

p.a. Further in Section 7 petition demand notice is not required however in this case the FC had issued demand notice before approaching this Tribunal. The Corporate Debtor also failed to produce any document in support of its claim that monies advanced by the FC in the project to be repaid after completion of the project in Ghatkopar.

11. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC therefore, the default stands established. The application made by the Financial Creditor is complete in all respects as required by law therefore there is no reason to deny the admission of the Petition. In view of the above, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

12. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP(IB)-4464/MB/2019** filed by **Gajendra Investments Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Satra**

**Property Developers Private Limited [CIN: U51900MH2000PTC126260], the Corporate Debtor, is admitted.**

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

- (c) Notwithstanding the above, during the period of moratorium: -
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



- (f) **Mr Devarajan Raman**, Registration No. IBBI/IPA-02/IP/N00323/2017-2018/10928, having address at 12, ICT SQ, R.A. Kidwai Road, Matunga, Mumbai - 400019 [email: [devarajan.raman@gmail.com](mailto:devarajan.raman@gmail.com)], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees three lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These

expenses are subject to approval by the Committee of Creditors (CoC).

- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal **within seven days** from the date of receipt of a copy of this order.

**Sd/-**  
**JANAB MOHAMMED AJMAL**  
**MEMBER (JUDICIAL)**

**10.08.2020**

A.M.

**Sd/-**  
**RAVIKUMAR DURAISAMY**  
**MEMBER (TECHNICAL)**