



**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 132/Chd/Hry/2022  
Under Section 7 of the  
Insolvency & Bankruptcy  
Code, 2016**

**In the matter of:**

**Capriso Finance Limited**

R/o 4/9, Asaf Ali Road

Darya Ganj, New Delhi-110002

...Petitioner/Financial Creditor No. 1

**Siri In Fin Lease Pvt. Ltd.**

R/o 4/9, Asaf Ali Road

Darya Ganj, New Delhi-110002

...Petitioner/Financial Creditor No. 2

Vs.

**Trishul Dream Homes Limited**

At Post- Kheri Kalan, Sector-84

Near Appejay School, Faridabad

Haryana-121002

...Respondent-Corporate Debtor

**Judgment delivered on: 16.06.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Petitioner-Financial Creditor : Mr. Rakesh Kumar, Advocate

For the Respondent-Corporate Debtor : Mr. Abhishek Anand, Advocate  
Mr. Sajal Jain, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**JUDGMENT**

The present petition has been filed by **Capriso Finance Limited and Siri In Fin Lease Pvt. Ltd.** (hereinafter referred to as 'Financial Creditors') through Mr. Pradeep Kumar Jain under Section 7 of the Insolvency and Bankruptcy Code,



2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Trishul Dream Homes Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Pradeep Kumar Jain with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 15.03.2007 incorporated under the Companies Act, 1956. The company has its Registered Office at: At Post- Kheri Kalan, Sector-84, Near Appejay School, Faridabad, Haryana-121002, CIN No.U70102HR2007PLC048290. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-A-1 of the petition.

3. The brief facts of the case are that the Corporate Debtor is dealing in the real-estate business and had been carrying on the development of Trishul Dream Homes. The Financial Creditors are non-banking financial companies and carry on the business of providing financial services including loans. In December 2018 Corporate Debtor approached Financial Creditor for financial assistance The petitioner provided financial assistance and dispersed the amount of Rs. 2,83,50,000/- (Rupees Two Crore Eighty Three Lakh Fifty Thousand only). The financial creditors acquired shareholding (petitioner no. 1- 7.5% and petitioner no. 2- 2.2%) in corporate debtor from shareholders, who could not continue with ventures for financial reasons. The Corporate Debtor has taken similar loans from other entities. They stopped construction from December 2019. Due to default in the completion of the project, the corporate debtor is in litigation with home buyers and other financial creditors. The Financial Creditors issued a letter dated



21.05.2020 demanding corporate debtor to return its financial debt with interest @ 18% p.a. On 05.08.2022, the financial creditor issued legal notice demanding payment, however, the corporate debtor failed to return the financial debt.

4. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs. 4,59,47,208.68 (Rupees Four Crore Fifty Nine Lakhs Fourty Seven Thousand Two Hundred and Eight Paise Sixty Eight Only) and date of default as mentioned in petition is 12.04.2022. However, 02.12.2019 can also be taken as date of default as last loan of Rs. 5,00,000 was transferred. Copy of the Bank Statement reflecting the transfer of loan (Annexure A-2) and legal notices (Annexure A-3 and A4) are attached with the petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary No. 00728/1 dated 02.11.2022. The reply was filed vide Dairy No. 00728/2 dated 07.12.2022 wherein it is stated that in December 2018 petitioner no. 1 approached the corporate debtor to be a channel partner for the project and to invest for its early completion. The revenue was to be shared as per mutual understanding. Petitioner no. 1 invested Rs. 1,95,50,000/- on various dates for the completion of the project and petitioner no. 2 invested Rs. 88,00,000/- for the completion of the project. Petitioners vide letter dated 21.05.2020 requested to pay outstanding dues. The petitioners stated that the investment amount of Rs. 1,95,50,000/- and Rs. 88,00,000/- were advanced as loans at interest @ 18% p.a. The petitioners are not financial creditors of the corporate debtor and have no locus to file the present petition. The petitioners have failed to place on record evidence to show the existence of debt or default on the part of the corporate debtor. The petitioners have failed to place on record any financial contract with



the corporate debtor. Petitioners have only annexed bank statements to show the amount was deposited without placing on record any evidence to show the amount was dispersed. The petitioners have failed to prove any default on the part of the corporate debtor. as the amount invested cannot be considered as a loan. There is no debt owed by corporate debtor to petitioners.

6. The rejoinder was filed by petitioner-financial creditor vide Diary No. 00728/3 dated 22.12.2022 wherein it is stated that the nature of the transaction between the parties falls under the purview of Section 5(8) of Insolvency and Bankruptcy Code, 2016. On 31.03.2019, the corporate debtor made a payment of Rs. 75,000/- towards interest on the outstanding loan. However, as per form 26AS of the company, Corporate Debtor under Section 194A only paid tax deducted at source (TDS) on the interest of Rs. 25,000/-. The Corporate Debtor has acknowledged the loan provided by the petitioner and has mentioned in their balance sheet for the year ending 31.03.2021 under head long-term borrowings and shareholding of the petitioner under the head equity and liabilities.

7. The short written submissions are filed by the petitioner-financial creditor vide Dairy No. 00728/4 dated 19.04.2023 and by the respondent by Diary No. 00728/06 dated 24.04.2023.

8. We have heard the learned counsels for the petitioner as well as the respondent and have also perused the record carefully.

9. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—  
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*



10. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default as mentioned in petition is 12.04.2022. However, 02.12.2019 can also be taken as date of default as last loan of Rs. 5,00,000 was transferred. The present petition is filed vide Diary No. 00728 dated 25.04.2022 and was refiled on 12.05.2022. Therefore, the present petition is filed within limitation.

11. Another issue for consideration is whether there is default in payment or not. It is observed from the record that in the present case, the default is evidenced by the Bank Statement reflecting the transfer of loan (Annexure A-2), and legal notices (Annexure A-3 and A4). As per the financial records, it is evident that an amount of Rs. 4,59,47,208.68 (Rupees Four Crore Fifty Nine Lakhs Fourty Seven Thousand Two Hundred and Eight Paise Sixty Eight Only) is still pending which amounts to default when the corporate debtor avoided the payment of outstanding amount despite repeated requests by the petitioner-financial creditor. Thus, the petitioner has proved the debt and the default, which is above threshold limit.

Although, it is pleaded on behalf of respondent-corporate debtor that in December 2018 petitioner no. 1 approached the corporate debtor to be a channel partner for the project and to invest for its early completion. The revenue was to be shared as per mutual understanding. However, there is no cogent and convincing evidence placed on record in support of this plea which is otherwise not tenable.

12. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Ajay Kumar Agarwal has been proposed as Interim Resolution Professional (IRP).



Form 2 dated 15.04.2022, Form B wherein his AFA Certification is valid upto 02.12.2022 has been submitted alongwith certificate of registration issued by the Insolvency and Bankruptcy Board of India has been submitted. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Ajay Kumar Agarwal, there is nothing adverse against him and his AFA Certification is valid upto 30.11.2023. In view of the above, we appoint Mr. Ajay Kumar Agarwal, Registration No. IBBI/IPA-002/IP-N00608/2018-2019/11859 Email: [cs.aaa.2014@gmail.com](mailto:cs.aaa.2014@gmail.com) ,Mobile No.9883362775, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Ajay Kumar Agarwal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution



Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are



maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The



Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.
  
- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and



ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

13. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.



- f) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

14. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

15. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

16. This petition is admitted accordingly.

-sd-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

June 16, 2023

PKA/TB

-sd-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**