

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.229/BB/2019
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

&

I.A. No.554 of 2019 in
CP (IB) No.229/BB/2019
U/s 2 of IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

For CP (IB) No.229/BB/2019:

IN THE MATTER OF:

India Infoline Finance Limited
802, 8th Floor, Hubtown Solaris,
N.S Phadke Marg, Vijay Nagar,
Andheri East,
Mumbai- 400069.

- Applicant/Financial Creditor

Versus

Unishire Regency Park LLP
No.42, Castle Street,
Ashok Nagar,
Bangalore-560 025.

- Corporate Debtor

For I.A. No.554 of 2019:

**M/s. Reliance Capital AIF Trustee
Company Private Limited & Anr.**

- Impleading Applicants

Versus

1. India Infoline Finance Ltd.
802, 8th Floor, Hubtown Solaris,
NS Phadke Marg, Vijay Nagar,
Andheri East,
Mumbai – 400 069.

2. Unishire Regency Park LLP
No.42, Castle Street,
Ashok Nagar,
Bangalore – 560 025.

- Respondents



Order Pronounced on: 29th May, 2020

- Coram:**
1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
 2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

- For the Financial Creditor : Shri Lakshmi Iyengar, Sr. Counsel
- For the Corporate Debtor : Shri Harsha, Advocate
- For the Impleading Applicants : Shri Seetharam, Shri G.L. Vishwanath,
Ms. Meena Venugopal, Advocates

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. This Company Petition is filed by India Infoline Finance Limited, a Non-Banking Financial Institution, (the Financial Creditor) against Unishire Regency Park LLP, (the Corporate Debtor) under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating a Corporate Insolvency Resolution process against the Corporate Debtor claiming a default of financial debt of Rs.15,22,13,219/- (Rupees Fifteen Crore Twenty Two Lakh Thirteen Thousand Two Hundred and Nineteen Only) as on 07.03.2019 due and payable to the Financial Creditor under Loan Agreement dated 20.03.2015. The Petition is filed by Mr.Rahul Doshi, authorised by Board Resolution dated 23.04.2019. Copy of the Board Resolution is annexed to the Petition.

2. The facts of the case are that the Financial Creditor extended financial assistance to the Corporate Debtor for the construction and sales activity of residential project 'Unishire Xperience' located at Hennur Road, Bengaluru vide Sanction Letter dated 20.03.2015, by sanctioning a loan amount of Rs.13 Crore only. The Financial Creditor and Corporate Debtor entered into the Loan Agreement dated 20.03.2015 for Rs.13 Crore with rate of interest at 22% payable



on quarterly basis on the last day of each quarter. Copies of the Sanction Letter dated 20.03.2015 and the Loan Agreement are annexed to the Petition.

3. The Designated partners of the Corporate Debtor, Mr. Kirti K Mehta and Mr. Pratik K Mehta, executed Personal Guarantees dated 20.03.2015 in favour of the Financial Creditor. Further, a Mortgage Deed dated 27.03.2015 was also executed by the Corporate Debtor in favour of the Financial Creditor. The Corporate Debtor and its partners have jointly and severally issued Demand Promissory Note dated 20.03.2015 for a sum of Rs.13 Crore. Copies of the Personal Guarantee dated 20.03.2015, Mortgage Deed dated 27.03.2015 and Demand Promissory Note dated 20.03.2015 are annexed to the Petition.

4. The Financial Creditor has annexed the Bank Statement of the Financial Creditor showing the disbursement of Rs.12,15,19,320/- along with a certificate under Banker's Book Evidence Act, 1891. It has also annexed a copy of the Notice dated 07.03.2019 demanding payment of dues of Rs.7,84,23,572/- being the total outstanding loan payments along with default interest of Rs.7,37,89,647/- as on 07.03.2019 under the Loan Agreement dated 20.03.2015.

5. It is submitted by the Financial Creditor that the Corporate Debtor defaulted in repaying the loan amount on 30.06.2015, being the first date of default and thereafter continuously defaulted till 31.12.2016 and hence the petition is filed well within the period of limitation.

6. The Corporate Debtor filed its statement of objections on 17.10.2019 by contending as under:

- a. The Financial Creditor has initiated proceedings under section 138 of Negotiable Instruments Act, 1881 pending consideration before the jurisdictional Court at Mumbai and hence it cannot file the present petition.
- b. The petition has not been filed within the period of limitation as the loan was extended vide loan agreement dated 20.03.2015 and as per the details mentioned in Form 1, the date of default is 30.06.2015 and the petition is filed in the year 2019 which is barred by limitation.



- c. The amount of default as mentioned in the Petition is incorrect as the amount demanded in the Notice dated 07.03.2019 and the Petition are different although the petition is filed immediately after the Notice.
 - d. The Financial Creditor granting loan to Corporate Debtor for Construction projects should comply with the RERA provisions and the loan ought to be restructured.
 - e. The Financial Creditor has valuable security above 2 times higher than the debt amount.
7. The Financial Creditor filed its Rejoinder dated 08.11.2019 in response to the objections raised by the Corporate Debtor. It states that the petition is well within the period of limitation as there were continuous defaults from 30.06.2015 to 31.12.2016 and relied upon the Notice dated 07.03.2019 issued by the Financial Creditor to establish the same. Further the contention of the Corporate Debtor that the petition is filed based on the Indenture of Mortgage Deed dated 20.03.2015 is denied by the Financial Creditor stating that the Petition is filed on the basis of Sanction Letter Loan Agreement dated 20.03.2015, which is the basis of the financial debt.
8. The Financial Creditor states that the contention of the Corporate Debtor that the Financial Creditor has already filed petition under section 138 of the Negotiable Instruments Act, 1881 before the jurisdictional Magistrate Court in Mumbai, Maharashtra is untenable as proceedings under section 138 of the Negotiable Instruments Act 1881 are criminal proceedings and the same do not preclude the Financial Creditor from filing an application under the code seeking initiation of corporate insolvency resolution process against the financial default.
9. The Financial Creditor submits that the contention of the Corporate Debtor that the Financial Creditor has valuable security of over 2 times the debt amount has no bearing on the matter. Further the contention of the Corporate Debtor that the Financial Creditor must comply with the obligations under the Real Estate (Regulation & Development) Act, 2016 is denied by the Financial Creditor stating



that all such obligations under the aforesaid Act would be that of the developer and can never be imposed on a lender.

10. The Financial Creditor filed Memo dated 05.08.2019 annexed copy of NeSL Report dated 18.07.2019 as a record of default.

11. It is seen that an **I.A No.554 of 2019** has been filed on 16.10.2019 by Reliance Capital AIF Trustee Company Private Limited and another, being impleading applicants seeking impleadment of the Applicant as Corporate Debtors in the above matter and permit them to contest the matter on the ground that the Applicants being Debenture Holders in the Corporate Debtor Company, have provided financial assistance for a sum of Rs.126 Crore to the Corporate Debtor and its group of companies for completion of construction projects.

12. It is further submitted by the Impleading Applicants that prior to granting financial assistance to the Corporate Debtor, a 'No due Certificate' was obtained from all the financial creditors including the present Financial Creditor. The NOC issued by the Financial Creditor clearly states that outstanding amount of Rs.40 Crore is fully repaid with interest and there are no dues outstanding from the Corporate Debtor. Copy of NOC dated 02.07.2015 is annexed to the Application. The Applicants have also annexed copy of Discharge Deed dated 24.07.2015 to the Application. The Applicants submit that they have got exclusive first charge over the properties of the Corporate Debtor. Hence, the Applicants are necessary parties for the above application for proper adjudication of the application.

13. Heard Ld. Senior Counsel, Shri Lakshmi Iyengar, for the Financial Creditor, Shri Harsha, learned Counsel appearing for the Corporate Debtor and Shri Seetharam, Shri G.L. Vishwanath, Ms. Meena Venugopal, learned Counsels for the Impleading Applicants.

14. We have carefully perused the pleadings of the parties and the extant provisions of the Code and the Rules framed on the issue.



15. At the very outset we make it clear that the proceedings u/s 7 of the Code are summary proceedings where a debt and default are to be ascertained, but no detailed investigation or enquiry is warranted. As regards initiation of CIRP, the Hon'ble NCLAT vide order dated 15th May, 2017 passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017 in the case of M/s. Innoventive Industries Limited vs. ICICI Bank & Anr. has dealt with the issue of admission of a Petition filed under Section 7 of the Code, under Paras 55 to 58, which are extracted below:

"55. Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B Code, the trigger for filing of an application by a financial creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:

- i. *"record of the default" recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. *The name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. *Any other information as may be specified by the Board.*

56. The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As per sub-section (4) of Section 7 of the I&B Code:

"(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)."

57. Sub-section (5) of Section 7 of the I&B Code provides for admission or rejection of application of a financial creditor. Where the



Adjudicating Authority is satisfied that-.....the documents are complete or incomplete.

58. The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'."

16. The Hon'ble Supreme Court upheld the above judgement in Civil Appeal Nos.8337-8338 of 2017 vide judgment dated 31st August, 2017. The Hon'ble Supreme Court has adverted to Section 7, at para 28, which reads as under:

"28. When it comes to financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from



the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

17. In view of the scope available to us, on the facts of the instant case, from a perusal of the copy of Certificate of Registration of the Financial Creditor NBFC, copy of Loan Agreement dated 20.03.2015, Bank statement of IIFL along with the certificate under Bankers' Book Evidence Act, 1891 it is more than clear that the Financial Creditor has provided financial assistance to the Corporate Debtor and there exists a financial debt within the meaning of Section 5(8) of the Code of 2016, having been disbursed against the consideration for the time value of money, as per the terms of the Loan agreement, i.e. money borrowed against the payment of interest.

18. On a perusal of the Demand Promissory Note issued by the Corporate Debtor in favour of the Financial Creditor for Rs.13 Crore and the Demand Notice dated 07.03.2019 demanding payment of loan amounts along with the reply filed by the Corporate Debtor, and the Independent Auditor's Report for year ending 31.03.2017 showing secured loan from the Financial Creditor, it is clear that there is default in the repayment of the debt, within the meaning of section 3(12) of the Code. It is not the case of the Corporate Debtor that there is no debt, or that the



debt has been repaid. The only issue raised by the Corporate Debtor is merely that the amounts claimed by the Financial Creditor in the Petition are in excess. Neither the debt nor the default have been denied. Further, the Corporate Debtor has only raised the issue of limitation, but since we find that it is a case of continuing default, its argument fails. Further, criminal proceedings under section 138 of Negotiable Instruments Act, 1881, non-joinder of parties and compliance of RERA provisions are not only an after-thought but also have no bearing on the proceedings under section 7 of the Code of 2016, which is a self-contained Code and these are independent proceedings.

19. We also find that there is not only an existing debt and default, but that, as observed from the Corporate Debtor's Independent Auditor's Report, the Company has lost its substratum and its net worth is eroded, showing negative balances. The relevant para of the Report containing the opinion of the Independent Auditor based on the records and the Financial Statements of the Corporate Debtor, is extracted herein below:

"Financial statements indicate that the company has accumulated losses as at the balance sheet date and its net worth has been fully eroded. The financial statements have been prepared on a going concern basis notwithstanding accumulated losses as at the balance sheet date".

20. It is seen that the Corporate Debtor has filed its Statement of Solvency in Form 8 along with the Independent Auditor's Report for year ending 31.03.2017 which records that the LLP has not made any profits and the Reserves and Surplus of the Corporate Debtor reflected in the Financial Statement shows negative balance. The Corporate Debtor has failed to file Audited Financial Statement for the year ending 2018 and 2019 to establish the fact that the Corporate Debtor is solvent.

21. Further, on perusal of the NeSL Report dated 18.07.2019 showing that the Corporate Debtor has defaulted in repayment of the financial debt. It is



established that the Corporate Debtor is in default of an amount higher than the minimum required for the initiation of CIRP.

22. As regards I.A No.554/2019 filed by the Applicants seeking to be impleaded, the same has been considered. We find no merit in the same. The present petition is an independent proceeding, initiated on account of the debt and default having occurred vis a vis the Loan Agreement dated 20.03.2015, entered into between the Financial Creditor and the Corporate Debtor, and initiated on account of the Petition filed by the Financial Creditor in the instant case. Any claim by any other party cannot be entertained in this petition. Further, the claim made by the Applicants in the IA, if correct, only reinforces the conclusion drawn above that the Corporate Debtor has lost its substratum and its ability to pay its debts and is a fit case for triggering a Corporate Insolvency Resolution Process. The Applicants in the IA can submit their claims, if any, before the IRP, as appointed by this Adjudicating Authority, once CIRP is ordered, who will consider all aspects brought before him by different category of Creditors. The **IA No.554 of 2019** is accordingly disposed of with these remarks.

23. We are of the considered opinion that the instant application is filed strictly in accordance with the extant provisions of the Code and the debt and default are established by the Financial Creditor by submitting substantial evidence in support of the claim. It is therefore, a fit case for initiating CIRP.

24. The Financial Creditor has also suggested a qualified Resolution Professional, namely Shri Vijayakumar Subramaniam Varun, having Registration No. [IBBI/IPA-002/IP-N00290/2017-18/10848], who also filed written Consent in Form-2 dated 29.02.2019 and necessary declaration of his being qualification for being so appointed. Therefore we are of the prima facie opinion that said IRP is eligible to be appointed as IRP in this case. Hence, the instant Company Petition is fit case to admit by initiating CIRP appointing by IRP, and declaring moratorium etc. in respect of the Corporate Debtor.

25. In view of the above facts and circumstances of the case, which satisfy the provisions of the Code of 2016, and the test laid down in the above cited case,



by exercising the powers conferred on this Adjudicating Authority, u/s 7(5)(a) and other extant provisions of the Code of 2016, we hereby admit C.P. (IB) No. 229/BB/2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, with the following consequential directions:

1. **Shri Vijayakumar Subramaniam Varun**, bearing Regn. No. **[IBBI/IPA-002/IP-N00290/2017-18/10848]**, who is a qualified Insolvency Professional, is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor namely Unishire Regency Park LLP to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
2. The following moratorium is declared prohibiting all of the following, namely:
 - a. the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor /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;
 - 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. 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;
 - f. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with



- any financial sector regulator and a surety, if any, in a contract of guarantee to a Corporate Debtor;
- g. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
3. The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
4. The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
5. Post the case for report of IRP on **15th July 2020**.

Further, I.A. No.554 of 2019 in CP (IB) No.229/BB/2019 is also disposed of as above.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

Apama