

**THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH  
AT NEW DELHI**

**Company Petition No. (IB) – 1626 (PB)/2019**

**Under Section 7 of the Insolvency and Bankruptcy Code,  
2016**

In the matter of:

L & T Housing Finance Limited

Applicant/Financial Creditor

Vs

Cosmopolitan Technofab Textiles Private Limited

Respondent/Corporate Debtor

***Judgment delivered on: 05.11.2019***

**CORAM**

**MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT**

**MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)**

For Petitioner: Mr. Abhay Pratap Singh, Mr. Vaibhav  
Singh, Mr. Ashish Mathur Advocates

For Respondent: Mr. Sanjeev Sehgal,  
Mr. Sanjeev Kumar, Advocates.



## **ORDER**

**S. K. Mohapatra, Member**

1. M/s L & T Housing Finance Limited, a non-banking finance company has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s Cosmopolitan Technofab Textiles Private Limited referred to as the corporate debtor.
2. The Respondent Company M/s Cosmopolitan Technofab Textiles Private Limited (CIN No. U18109 DL 2010 PTC 208025) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 08.09.2010 having its registered office at A - 342, Meera Bagh, Paschim Vihar, New Delhi, West Delhi, Delhi - 110087. Since the registered office of the respondent corporate



debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

- 3.** Mr. Ashish Mathur authorized representative and working as Assistant Manager of the applicant company, has preferred the present application on behalf of the applicant financial creditor for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code.
- 4.** It is the case of the applicant that earlier an application under Section 7 of the Code bearing no. (IB)-1578 (PB)/2018 was preferred by the applicant. However, on assurances given by the respondent Corporate Debtor, the aforesaid application was withdrawn on 06.02.2019 as the Corporate Debtor offered its immovable property having address E-



2/13, Krishna Nagar, Delhi-110051 for recovery of the loan amount.

5. It has been submitted in the application that the Financial Creditor took possession of the said property in good faith on the assurances of the respondent that the same is free from all encumbrances. However, when the property was put to auction, the Financial Creditor came to know that the property offered is a disputed piece of land with the North Delhi Municipal Corporation and therefore, the same could not be auctioned.
6. It is alleged that the Corporate Debtor played a fraud on the Financial Creditor and mis-represented to it regarding the legal status of the said property. As the Financial Creditor herein was unable to recover its dues and there being default in repayment, the Financial Creditor has filed the present application under Section 7 of the Code for initiation of corporate insolvency resolution process against the respondent corporate debtor.



- 7.** The brief facts of the case as reflected in the application are that the applicant financial creditor had advanced Loan Facilities for a total sum of Rs. 4,00,00,000/- (Rupees Four Crores Only) by way of two separate Loan Agreements (Rs. 3,53,00,000/- *vide agreement no. DELHL17001407 dated 19.12.2017 and Rs. 47,00,000/- vide agreement no. DELHL18000016 dated 09.01.2018*). The Loan was secured by way of equitable mortgage with the deposit of title documents of the property having address E-2/13, Krishna Nagar, Delhi-110051.
- 8.** It is stated that from the very beginning itself, the Corporate Debtor failed to fulfill its obligations under the Loan Agreements and never adhered to the repayment schedule. The Corporate Debtor defaulted in repayment of the respective Loan Facilities in connection with both the loan agreements.
- 9.** The applicant has relied upon the following securities and other loan related documents executed between the parties in respect of the financial facilities sanctioned to the respondent corporate debtor:



1. *Copy of sanction letter and Loan Agreements no. DELHL17001407 dated 19.12.2017 for Rs. 3,53,00,000/-.*
2. *Copy of Loan offer letter and Loan Agreements no. DELHL18000016 dated 09.01.2018 for Rs. 47,00,000/-.*
3. *Copy of details of the security in terms of the security documents executed by the corporate debtor.*
4. *Copy of Statement of Account of Loan Agreements no. DELHL17001407 along with Loan Foreclosure Letter up to 24.06.2019.*
5. *Copy of Statement of Account of Loan Agreements no. DELHL18000016 along with Loan Foreclosure Letter up to 24.06.2019.*
6. *Certificate under Section 2-A of the Banker's Books Evidence Act, 1891.*
7. *Certificate under Section 65-B of the Indian Evidence Act, 1872.*



8. *Copy of Loan application Form submitted by the corporate debtor with the financial creditor.*

9. *Copy of the non-individual loan applicant details for Loan Agreements no. DELHL17001407 and Loan Agreements no. DELHL18000016.*

10. *Copy of recall letter/ legal demand notice dated 07.06.2018 qua both the loan agreements.*

11. *Copy of latest CIBIL Report of the corporate debtor dated 19.06.2019.”*

**10.** As per part IV of the application, it is claimed that a sum of Rs. 4,80,61,894.78/- inclusive of interest is due from the respondent company as on 10.03.2018 i.e. Rs. 4,22,85,207.37/- for loan agreement no. DELHL17001407 and Rs. 57,76,687.41/- for loan agreement no. DELHL18000016.

**11.** On the ground of default in repayment of huge outstanding amount, the applicant has prayed for



initiation of corporate insolvency resolution process against the respondent company by admitting the present application.

- 12.** The respondent corporate debtor has filed its reply on 06.08.2019. Rejoinder to the reply was filed by applicant on 16.08.2019.
- 13.** We have heard the learned counsels for the parties and have perused the case records.
- 14.** It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,

  - a) Financial creditor
  - b) Operational creditor, and
  - c) Corporate debtor itself.
- 15.** The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code, an application could be





maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.

**16.** The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code and precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the consideration for time value of money.

**17.** In the present case applicant L & T Housing Finance Limited had sanctioned and disbursed the loan amount recoverable with applicable interest by entering in to loan agreements with the corporate debtor. The respondent corporate debtor had clearly acknowledged disbursement of the loan amount against payment of interest. The loan agreements placed on record show that the loan was recoverable with interest as agreed between the parties. There is no dispute that the loan was disbursed against the consideration for time value of money with a clear commercial effect of borrowing. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest. In



that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant can clearly be termed as '*Financial Creditor*' so as to prefer the present application under Section 7 of the Code.

**18.** The application filed by the applicant financial creditor under sub-section 5 (a) of Section 7 of the code, has to be admitted on satisfaction that:

- I. *Default has occurred.*
- II. *Application is complete, and*
- III. *No disciplinary proceeding against the proposed IRP is pending.*

**19.** The applicant financial creditor has filed the present application under Section 7 of the Code in the requisite FORM-1 to initiate Corporate Insolvency Resolution Process against the respondent Corporate Debtor. Form-1 filed under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. It is seen that the applicant has furnished the required information and other facts including loan documents



in support of outstanding debt and default. The applicant has annexed to the application detail particulars of 'financial debt' including loan documents, records and evidence of default as required under subsection 3 (a) of Section 7 of the Code. On a bare perusal of the Form reveals that the same is complete in all respect and there is no infirmity in the same.

**20.** Sub-section (3) (b) of Section 7 further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Harish Taneja, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-N00088 / 2017-18 / 10229 residents of 236-L, Model Town, Sonipat – 131001, Haryana with email - id [harishtaneja78@gmail.com](mailto:harishtaneja78@gmail.com). Mr. Harish Taneja agreed to accept the appointment as the interim resolution professional and has signed a communication dated 10.06.2019 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy



(Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. He has enclosed the copy of Certificate of Registration dated 23.05.2017 issued by IBBI. In addition, further necessary disclosures have been made by Mr. Harish Taneja as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

**21.** It is accordingly seen that the present application filed under Section 7 of the Code is complete and there is no disciplinary proceedings pending against the proposed interim resolution professional.

**22.** With regard to occurrence of default; it is seen that applicant had sanctioned loan facilities to the corporate debtor by way of two separate loan agreements in the following manner:

Loan Account No. DELHL17001407= Rs. 3,53,00,000

Loan Account No. DELHL18000016= Rs. 47,00,000

Total= Rs. 4,00,00,000



**23.** The respondent corporate debtor accepted the loan facilities and executed loan agreements in respect of both the loan facilities, out of which a sum of Rs. 3,46,39,629/- was transferred to Tata Capital to foreclose the loan account of the corporate debtor. Therefore, the respondent corporate debtor had an obligation to repay the loan facilities to the applicant financial creditor. It is placed that the corporate debtor paid only one installment towards loan account no. DELHL17001407 and for the loan account no. DELHL18000016 paid a sum of Rs. 39,298/- which is the interest for the month of January 2018. Thereafter the corporate debtor has been in default since February, 2018.

**24.** It is pertinent to note here that at page 5 of the reply respondent corporate debtor admitted its liability to pay the debt and submitted that *'The corporate debtors communicated this to the applicants and asked for some time to repay the monthly dues as the accounts have been frozen and the Corporate Debtor cannot do anything about it.'* It is thus seen that



respondent corporate debtor has admitted in its reply that it asked for some time to repay the monthly dues.

**25.** Be that as it may, the applicant has placed on record various loan documents, relevant statement of accounts duly certified, security documents, loan application and Board Resolution of the respondent company and latest CIBIL report dated 19.06.2019 in support of its claim of outstanding financial debt and default.

**26.** It is thus seen that the applicant has placed various documents in relation to the disbursement of the loan. The materials on record and the loan documents clearly depict that the loan was sanctioned, disbursed and the loan agreements were properly executed. Respondent company has not disputed that no payment has been made after February, 2018. The admission of the respondent seeking time to repay the dues and the relevant certified statements of accounts placed on record, clearly depict occurrence of default in repayment of the loan amount to the applicant financial creditor.



**27.** It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

**28.** Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

*"Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application."*

**29.** An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least Rs.1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application



to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

**30.** It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that the respondent corporate debtor defaulted in repayment of the loan facilities availed in terms of the loan agreements.

**31.** Before parting with the matter, various objections raised by the respondent corporate debtor are discussed below.

**32.** The main contention of the respondent is that the applicant financial creditor has already taken the possession of the mortgaged property of the corporate debtor and the value of the property is more than the loan amount.

**33.** In this respect applicant has submitted that the Financial Creditor took possession of the said property in good faith on the assurances of the





respondent that the same is free from all encumbrances. However, the Financial Creditor came to know that the mortgaged property is a disputed piece of land and actually is the property of the Municipal Corporation of Delhi. It is stated in the rejoinder that the applicant cannot sale a land owned by the Government.

- 34.** Be that as it may the respondent corporate debtor has defaulted in making repayments to the applicant since February 2018. At page 5 of the reply respondent corporate debtor has conceded that *'The corporate debtors communicated this to the applicants and asked for some time to repay the monthly dues as the accounts have been frozen and the Corporate Debtor cannot do anything about it.'* The applicant has contended in its rejoinder that *'the respondent corporate debtor has not paid a single penny to the applicant since February 2018.'* It is thus seen that respondent corporate debtor has admitted in its reply that it asked for some time to repay the monthly dues. Once there is a debt and default and the application



is complete the Adjudicating Authority is bound to admit the application.

**35.** Section 7 application filed under the Code is an independent proceeding, which has nothing to do with the pendency of proceedings under SARFAESI Act, 2001 or proceedings under Enforcement Directorate. Insolvency and Bankruptcy Code, 2016 is a special law having an overriding effect on any other law as mandated under Section 238 of the Code. The statutory rights of the applicant financial creditor satisfying the requirements of Section 7 of the Code to trigger Corporate Insolvency Resolution Process cannot be defeated on the ground of pendency of such proceedings.

**36.** Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 187 of 2017 decided on 14.11.2017 with regard to pendency of SARFAESI proceedings has observed as follows:

*“6. It was next submitted by the counsel for the appellant that action under 34(4) of the SARFAESI Act, 2002 had already taken by the*



*bank, but that cannot be a ground to reject an application under Section 7.”*

**37.** Similarly, in the case of M/s Innoventive Industries Ltd. V. ICICI Bank and Ors. reported in AIR 2017 SC 4084, Hon’ble Supreme Court has also held at para 56 that:

*“The non-obstante clause, in the widest terms possible, is contained in Section 238 of the Code, so that any right of the corporate debtor under any other law cannot come in the way of the Code”.*

**38.** In view of the above discussion, the other objection raised in regard to pendency of proceedings in different forums is no bar for initiation of Corporate Insolvency Resolution Process under Section 7 of the Code in view of the overriding effect given to the provisions of Section 238 of the Code.

**39.** It is also pertinent to note that the ‘*issue of earlier loan taken from Tata housing*’ is irrelevant for adjudication of the present application. Similarly Adjudicating Authority is not supposed to ascertain



the quantum of amount of default actually due to the financial creditor. Adjudicating Authority is only to ascertain the existence of a default and not the exact amount due. What is material is that the default is much above the threshold limit of Rs. 1 Lakh.

**40.** Once the record is complete, Code is to be triggered if there is a default of more than Rs. 1 lakh. The 'Corporate Debtor' can only point out that the debt may not be due in a sense it is not payable in law or in fact. The respondent has not taken plea that the amount is not payable in law or in fact. Once there is a debt and default, the Adjudicating Authority has no option but to admit the application filed under Section 7 of the Code, when it is complete.

**41.** In the facts it is reiterated that the applicant financial creditor clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditor had disbursed various loan facilities to the respondent corporate debtor and the respondent has availed the loan and committed default in repayment of the



financial debt. There has been admission of nonpayment of monthly dues. Moreover, a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. Applicant has placed on record adequate and convincing evidence in support of the disbursement of debt as well as to prove the default.

**42.** As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

**43.** Mr. Harish Taneja having registration number IBBI / IPA-002 / IP-N00088/ 2017-18 / 10229 residents of 236-L, Model Town, Sonipat – 131001, Haryana with email - id harishtaneja78@gmail.com is appointed as the interim resolution professional.

**44.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days



as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

**45.** We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Harish Taneja to meet out the expenses 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 needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per rules and shall be paid back to the Financial Creditor.

**46.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section



14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(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 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.”*

**47.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

**48.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate





Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- 49.** Directions are also issued to the ex-management of the respondent corporate debtor to provide all documents belonging to the corporate debtor and



lying in their possession and also to furnish every information in their knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

- 50.** The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Sd/-

**(M.M. KUMAR)**  
**PRESIDENT**

Sd/-

**(S. K. MOHAPATRA)**  
**MEMBER (T)**