

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

Company Petition No. (IB)-1627(PB)/2019

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

In the matter of:

LIC Housing Finance Limited

Applicant/Financial Creditor

Vs.

Victory Infratech Private Limited

Respondent/Corporate Debtor

*Judgment delivered on: **21.10.2019***

CORAM

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

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

For Petitioner: Mr. Sharad Tyagi, Ms. Archana Tyagi, Advocate
For Respondent: None



ORDER

S. K. Mohapatra, Member

1. LIC Housing Finance Limited 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 Victory Infratech Private Limited, referred to as the corporate debtor.
2. The Respondent Company M/s Victory Infratech Private Limited (CIN No. U 70101 DL2011 PTC 215264) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 04.03.2011 having its registered office at 208, Gupta Tower, Azadpur, Azadpur Commercial Complex, New Delhi – 110033. 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. It is appropriate to mention here that despite service as no one appeared on behalf of the respondent, they were proceeded *ex-parte* vide order dated 26.07.2019. However, on the next date of hearing held on 08.08.2019, at the request of the respondent the *ex-parte* order dated 26.07.2019 was recalled and the respondent was afforded opportunity to file reply within 10 days thereof. Subsequently on 04.09.2019 at the request of the respondent another opportunity was afforded to file reply within two days subject to payment of cost of Rs. 10,000/-. Nevertheless, as neither reply was filed nor cost was paid, the right to file reply was closed on 23. 09 2019. Thereafter on 14.10.2019 the petitioner was heard in the absence of the respondent and the order in the matter was reserved.



4. The applicant, LIC Housing Finance Limited through its Chief Manager 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 under the Code. Respondent corporate debtor despite opportunity afforded, neither filed reply nor contested the application.
5. The precise case of the applicant as stated in the application is that M/s VGA Developers Private Limited and the Respondent company M/s Victory Infratech Private Limited had approached the Applicant for availing loan of Rs. 70,00,00,000 /- (Rupees Seventy Crores) for construction of the residential project 'Golf Green Avenue' ("Project") located at Plot No.GH-P4, Jaypee Greens Sports City, SDZ, Sector-25, YEIDA, Noida.
6. The Applicant accepted the loan sanction request of both the Respondent company and M/s VGA Developers Private Limited for Rs. 70,00,00,000 /- (Rupees Seventy Crores) vide a letter dated January



21, 2015 on certain terms and conditions. The Loan sanction letter dated January 21, 2015 has been placed on record.

7. On February 19, 2015, an acceptance letter was issued by M/s VGA Developers Private Limited thereby accepting the terms and conditions of the sanction letter dated January 21, 2015.
8. The sanction letter dated January 21, 2015 was modified by the Applicant on the request of M/s VGA Developers Private Limited and Respondent corporate debtor vide a letter dated March 5, 2015. In terms of the modified sanction letter, M/s VGA Developers Private Limited and the Respondent company were required to provide additional security as may be acceptable to the Applicant.
9. Post sanction of the Loan, the following loan documents were executed by both M/s VGA Developers Private Limited and the Respondent company:



- (i) Loan Agreement dated July 16, 2015, ("Loan Agreement").
- (ii) Hypothecation Deed dated July 16, 2015;
- (iii) Escrow Agreement dated July 16, 2015;
- (iv) Memorandum of entry recording creation of charge over the Property;
- (v) Demand Promissory Note and Letter of Continuity; and
- (vi) In addition, various declarations, affidavits and undertakings as stated in the application were executed.

10. The copy of the Deed of Hypothecation, Escrow Agreement, Demand Promissory Notes, Letter of continuity and other loan documents pertaining to the loan have been placed on record.

11. In addition to the aforesaid loan documents, the following additional securities were created:

- i. Mr. Pramod Goel, Mrs. Savita Goel and Mr. Ashish Goel on behalf of Respondent and M/s VGA Developers Private Limited, gave their personal guarantees by executing Deeds of



Guarantee each dated July 16, 2015 ("Deeds of Guarantee") for securing the aforesaid Loan.

- ii. A memorandum of entry for creation of equitable mortgage over the property admeasuring 10.9498 bighas or 2.73 hectare in the revenue estate of Village Mohariya, Tehsil Neemrana, District Alwar, Rajasthan.

12. It is stated that post execution of the loan documents, a request vide a letter dated July 20, 2015, was made by M/s VGA Developers Private Limited for the disbursement of Rs. 25,00,00,000/- (Rupees Twenty-Five Crores). Hence, the first disbursement of Rs.25,00,00,000/- (Rupees Twenty-Five Crores) was made to the Escrow Account of M/s VGA Developers Private Limited and Respondent by the Applicant on July 20, 2015. M/s VGA Developers Private Limited and Respondent acknowledged the disbursement of Rs.25,00,00,000/- (Rupees Twenty-Five Crores) vide a receipt dated July 20, 2015.



13. Again, a request vide a letter dated August 30, 2016, was made by M/s VGA Developers Private Limited for the disbursement of Rs. 7,00,00,000/- (Rupees Seven Crores). Accordingly, the second disbursement of Rs.7,00,00,000/- (Rupees Seven Crores) was made to the Escrow Account of M/s VGA Developers Private Limited and Respondent by the Applicant on August 30, 2016. M/s VGA Developers Private Limited and Respondent acknowledged the disbursement of Rs.7,00,00,000/- (Rupees Seven Crores) vide a receipt dated August 30, 2016.

14. It is alleged that the Respondent corporate debtor and M/s VGA Developers Private Limited defaulted in payment of EMI in the months of February, 2018, March, 2018 and April, 2018 and thereafter an e-mail dated April 03, 2018 and letters dated April 03, 2018 and April 12, 2018, were sent to Mr. Pramod Goel, Director of Respondent, M/s VGA Developers Private Limited and also to the Surety, by the Applicant, asking for the repayment of the due amount along with interest.



- 15.** Subsequently a meeting was held between the Applicant and the representatives of M/s VGA Developers Private Limited wherein it was assured that they will very soon be making the loan account up to date, but no such payment was made.
- 16.** Thereafter an email was sent by the Applicant to the Director of M/s VGA Developers Private Limited and Respondent, Mr. Pramod Goel, in reply to the abovementioned letter calling upon M/s VGA Developers Private Limited to submit the proposed repayment plan if Project loan is rescheduled as per the request made by it.
- 17.** Further, various reminders and correspondences dated June 25, 2018, July 20, 2018, and July 27, 2018, were sent by the Applicant to the Director of Respondent, M/s VGA Developers Private Limited and Surety, Mr. Pramod Goel and an email dated July 20, 2018, was sent to Respondent and M/s VGA Developers Private Limited stating that Respondent and M/s VGA Developers Private Limited has not paid the outstanding amount since February, 2018, and



that the loan account of M/s VGA Developers Private Limited and Respondent has been declared as NPA. However, Respondent and M/s VGA Developers Private Limited did not pay any amount towards the pending dues.

- 18.** An e-mail was sent to the Applicant by M/s VGA Developers Private Limited on July 27, 2018, stating that they are unable to manage their cashflows and hence defaulted in payment of the outstanding loan. M/s VGA Developers Private Limited also stated that they will make the payment of two outstanding instalments by the end of August, 2018 but no such repayment was made by Respondent.
- 19.** A letter dated August 1, 2018 was sent to the Applicant by VGA in reply to the letter dated July 27, 2018, of the Applicant and requested the Applicant to reschedule the principal loan amount and enhance the moratorium period.
- 20.** Despite repeated persuasions and continuous follow ups there was no positive response from Respondent company, M/s VGA Developers Private



Limited and Surety and accordingly a notice dated October 23, 2018, was sent by the Applicant to the Respondent, M/s VGA Developers Private Limited and Surety, Mr. Pramod Goel, Mr. Savita Goel and Mr. Ashish Goel for dishonor of the cheque bearing no. 000068 dated August 31, 2018 of the amount of Rs 36,00,000 (Rupees Thirty Six Lakhs) issued by M/s VGA Developers Private Limited to the Applicant and for recalling of the entire principal amount along with the interest totaling to Rs 34,35, 26,195/- (Rupees Thirty Four Crores Thirty Five Lakhs Twenty Six Thousand One Hundred Ninety Five) within 15 (fifteen) days from the date of receipt of the notice.

- 21.** It is stated that the Applicant further sent Demand Letters each dated June 22, 2019 to Respondent and Surety to make payment of Rs. 39,77,74,318.00 immediately, failing which, the Applicant will be compelled to initiate legal proceedings or invoke the security provided by the respective parties.



- 22.** As per part IV of the application it is claimed that a sum of Rs. 40,13,89,812.00 along with interest is due from the respondent company as on 08.07.2019.
- 23.** It is alleged that despite an admitted liability and knowledge of the debt, respondent corporate debtor and M/s VGA Developers Private Limited have failed and neglected to release the payment or any part thereof to the applicant.
- 24.** The applicant has submitted that the Respondent corporate debtor failed to clear the outstanding dues and did not adhere to the terms and conditions of the loan agreement. On the ground that huge loan amounts are outstanding and as respondent corporate debtor has committed default in repayment of the financial debt, it is prayed for initiation of corporate insolvency resolution process against the respondent company by admitting the present application.



25. 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.

26. 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.

27. 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.



28. In the present case applicant LIC Housing Finance Limited had sanctioned and disbursed the loan amount recoverable with applicable interest by entering in to loan agreements with the corporate debtor amongst others. The corporate debtor had clearly acknowledged disbursement of the loan amount against payment of interest as agreed between the parties. 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.

29. 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.*

30. The applicant 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 shows that the required information and other facts as prescribed have been furnished. 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.



31. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Aishwarya Mohan Gahrana, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-N00135/ 2017-18 / 10351 resident of D-74-76, 2nd Floor, BK Dutt Colony, New Delhi - 110003 with email - id aishwaryam_gahrana@yahoo.com. Mr. Aishwarya Mohan Gahrana has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 05.07.2019 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. In addition, further necessary disclosures have been made by Mr. Aishwarya Mohan Gahrana as per the requirement of the IBBI Regulations.



Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

- 32.** 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.”

- 33.** 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 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.



34. It has been shown that the first disbursement of Rs.25,00,00,000/- (Rupees Twenty-Five Crores) was made to the Escrow Account of M/s VGA Developers Private Limited and the Respondent corporate debtor by the Applicant on July 20, 2015. M/s VGA Developers Private Limited and the Respondent corporate debtor acknowledged the disbursement of Rs.25,00,00,000/- (Rupees Twenty-Five Crores) vide a receipt dated July 20, 2015. Similarly, the respondent corporate debtor has clearly acknowledged the subsequent disbursement of Rs.7,00,00,000/- (Rupees Seven Crores) vide a receipt dated August 30, 2016 duly stamped and signed by the respondent company.

35. 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. The applicant has placed on record Deed of Hypothecation, Escrow Agreement, Demand



Promissory Notes, Deed of guarantee and other loaning documents in support of its claim. Applicant has further relied upon the letter dated 30.01.2018 requesting for reschedulement of the loan. Applicant has also relied upon the dishonoured cheque including the return memo which *inter alia* reveals that huge debts are outstanding to the applicant and that default has occurred in repayment of the outstanding financial debts.

36. 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.

37. With regard to the joint and several liability of the respondent company, the Loan Agreement dated July 16, 2015 has been relied upon where in the respondent company has been termed as 'Co-borrower'. The loan agreement further shows that VGA and respondent are collectively referred as the 'Borrowers' and individually as '*the Borrower and Co-Borrower*'. That apart according to the Clause 2.6 (e)



of the Loan Agreement dated July 16, 2015, VGA and Respondent Company owe an amid liability to make repayment of the loan amount to the Applicant jointly and severally. The relevant text of clause 2.6 (e) of the Loan Agreement dated July 16, 2018 envisages as follows;

"2.6 (e) The Borrowers undertake and warrant that the Borrowers shall be jointly and severally, liable to make Repayment to Lender in terms of this Agreement or any other agreement executed by the Borrowers in terms of this Agreement."

38. In view of the joint and several liability of the respondent corporate debtor, it is open for the applicant lender to proceed against the respondent company alone in respect of the outstanding financial debt.

39. The corporate debtor is entitled to point out to the Adjudicating Authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim is not due i.e. it is not



payable in law or in fact. However, despite service and several opportunities respondent preferred not to file reply and to remain absent during final hearing. The claim of the petitioner thus remained undisputed.

40. 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 had joint and several liability towards the loan facilities availed and there has been default in repayment of the outstanding loan amount to the applicant financial creditor.

41. In the facts it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditor had disbursed various loan facilities and the respondent in the capacity of co-borrower has committed default in ensuring repayment of the outstanding financial debt. On 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. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

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. Aishwarya Mohan Gahrana having registration number IBBI / IPA-002 / IP-N00135/ 2017-18 / 10351 resident of D-74-76, 2nd Floor, BK Dutt Colony, New Delhi - 110003 with email - id aishwaryam_gahrana@yahoo.com is appointed as an 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. Aishwarya Mohan Gahrana 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 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.


(S. K. MOHAPATRA)
MEMBER (T)


(DR. DEEPTI MUKESH)
MEMBER (J)