

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-470(ND)/2019

IN THE MATTER OF:

LIC Housing Finance LimitedFinancial Creditor/Petitioner
v.

Durha Vitrak Private LimitedCorporate Debtor/Respondent

**SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

JUDGMENT DELIVERED ON 08.11.2019

CORAM:

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

SHRI S.K. MOHAPATRA
HON'BLE MEMBER (T)

PRESENT:

For the Petitioner: Mr. Sharad Tyagi & Ms. Archana Tyagi,
Advocates

For the Respondent: Mr. Rajat Bhardwaj, Advocate

M.M.KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-LIC Housing Finance Limited has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of Durha Vitrak Private Limited-Corporate Debtor.

2. The Corporate Debtor-Durha Vitrak Private Limited is a company registered under the provisions of the Companies Act, 1956 and was incorporated on 01.08.1986. The identification

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number of the Corporate Debtor is U74140DL1986PTC024992 and its registered office is situated at Plot No. 20, Sector A-7, Narela, Delhi, North West DL-110040.

3. The Financial Creditor had initially proposed the name of Resolution Professional, Mr. Ashok Kumar Juneja to act as Interim Resolution Professional (for brevity 'IRP'). On account of his inability to act as IRP, the Financial Creditor filed an application being C.A. No. 520/C-III/ND/2019 and proposed the name of Mr. Aishwarya Mohan Gahrana with the address D-74-76, 2nd Floor, BK Dutt Colony, New Delhi-110003 to act as IRP. His registration number is IBBI/IPA-002/IP-N00135/2017-2018/10351. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. The details of financial debt advanced by the petitioner-Financial Creditor have been set out in Part-IV of the proforma. The total amount sanctioned & disbursed in various tranches starting from 26.03.2016 to 13.02.2017 is claimed to be INR 33.00 Crores. The amount claimed to be in default and the details of



default have been given in sub para 2 of Part-IV which reads as under:

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURED	<p>The total amount in default due to the Financial Creditor is Rs. 39,97,98,092.27/- (Rupees Thirty-Nine Crores Ninety-Seven Lakhs Ninety Eight Thousand Ninety Two Twenty Seven Paisa) as on January 31, 2019, as per the Quotation for Payment dated January 28, 2019, issued by the Applicant.</p> <p>The first date of default occurred on June 15, 2017. The account has been declared Non-Performing Asset on September 14, 2017.</p> <p>A copy of the quotation for payment dated January 17, 2019 and a table for computation of amount in default as on January 31, 2019 are attached herewith as Annexure 39 and Annexure 40.</p>
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5. The Respondent executed several documents for availing the aforesaid financial assistance from the Petitioner. True Copies of each one of those documents namely, Loan Agreement dated 07.03.2016, Undertaking Cum Indemnity, Demand Promissory

Note, Letter of Continuity for Demand Promissory Note dated 07.03.2016 and Deed of Hypothecation dated 09.03.2016, Deeds of Guarantee dated 12.03.2016 have been placed on record [Annexure-3 to 5 (colly)].

6. The details of the security held by, or created for the benefit of 'financial creditor'-LIC Housing Finance Limited along with copies of declaration cum confirmation for creation of equitable mortgage dated 30.04.2016 & 11.05.2016 (Annexure-7 & 8) on the land and building given and executed by the Directors/Co-Borrowers of the Corporate Debtor in favour of the Financial Creditor have been placed on record.

7. The petitioner has then placed reliance on various reminders, e-mail communications, legal notice dated 20.02.2018, recall notices dated 07.04.2018 & demand notice dated 26.12.2018 issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Corporate Debtor (Annexure-14 to 16, 18, 23).

8. Subsequently a settlement proposal (Annexure-27) for the repayment of the pending dues and regularization of the credit facility account was sent by the Corporate Debtor with its sign and

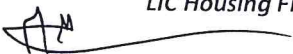
seal to the Petitioner. At this stage it would be profitable to read the repayment schedule which is as under:

Month	EMI Due Month	Amount (all in INR)	Proposed date of payment
July, 18	6/17	50,00,000 (Fifty lac)	On 24 th July 2018
Aug. 18	7/17+8/17	80,00,000 (Eighty lac)	On 24 th August 2018
Sept. 18	9/17+10/17	1,04,00,000 (One Crore four lacs)	On 24 th September 2018
Oct. 18	11/17+12/17	1,04,00,000 (One Crore four lacs)	On 24 th October 2018
Nov. 18	01/18+02/18+03/18	1,04,00,000 (One Crore four lacs)	On 24 th November 2018
Dec. 18	04/18+05/18+06/18	1,04,00,000 (One Crore four lacs)	On 24 th December 2018
Jan. 19	07/18+08/18+09/18	1,04,00,000 (One Crore four lacs)	On 24 th January 2019
Feb. 19	10/18+11/18+12/18	1,04,00,000 (One Crore four lacs)	On 24 th February 2019
March 19	01/19+02/19+03/19	1,04,00,000 (One Crore four lacs)	On 24 th March 2019

In the wake of aforesaid settlement three post-dated cheques (Annexure-28) as a security for the payment of the outstanding amount were given by the Corporate Debtor to the Petitioner. As per the settlement, the Respondent was required to make the first installment of Rs. 50,00,000/- on July 24, 2018 but no amount was credited on the aforesaid due dates. Afterwards on 06.08.2018 a sum of Rs. 34,00,000/- was received by the

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Petitioner through RTGS mode but did not receive the entire amount as per the settlement on July 24, 2018 nor any further amount due was received on subsequent dates. Thus, the Petitioner had no option but to present the aforesaid post dated cheques in the Bank for encashment. However, upon presentation, the said cheques bounced with the endorsement 'insufficient funds' (Annexure-30). Feeling aggrieved, the petitioner served legal notice (Annexure-35) under Section 138 of Negotiable Instrument Act upon the Corporate Debtor and proceedings in that regard are pending adjudication before the Court of Metropolitan Magistrate at Patiala Court, New Delhi.

9. The precise case of the Petitioner thus is that the total amount in default due and payable to the Petitioner by the Respondent-Corporate Debtor as on 31.01.2019 is Rs. 39,97,98,092.27/- (Rupees Thirty-Nine Crores Ninety-Seven Lakhs Ninety Eight Thousand Ninety Two Twenty Seven Paisa).

10. Learned counsel for the Corporate Debtor has advanced numerous arguments to oppose the admission of the petition which are as under: -

1. The authorized representative of the Petitioner who had filed the present petition does not have the requisite

power to initiate the resolution process under Section 7 of the Code. There is no board resolution placed on record and in absence of the same the alleged authorized signatory cannot be said to be authorized to initiate the present proceeding.

2. As per the Code the petition has to file strictly as per the format prescribed under Rule 4 of the Bankruptcy Rules but the petitioner has failed to comply with said requirement and therefore the petition is defective.
3. The petitioner is alleged to have made the payment without there being any proof or supporting document in support of the same.
4. The parties have dispute and there exist a pre-existing dispute between them. The petitioner has initiated proceedings before the various courts and forums which are pending adjudication.
5. The calculations are wrong and false and the same has been done with the sole intention to create fictitious entries without the consent of the Respondent.



11. Having heard learned counsels for the parties at considerable length we find that settlement proposal dated 09.07.2018 (Annexure-27) for the repayment of the pending dues and regularization of the credit facility account was sent by the Corporate Debtor with its sign and seal to the Petitioner. The total amount payable shown is Rs. 11,18,00,000/- which was to be paid on 24th of every month upto March, 2019. In the wake of aforesaid settlement three post-dated cheques (Annexure-28) as a security for the payment of the outstanding amount were given by the Corporate Debtor to the Petitioner. As per the settlement, the Respondent was required to make the first installment of Rs. 50,00,000/- on July 24, 2018 but no amount was credited on the aforesaid dates. Afterwards on 06.08.2018 a sum of Rs. 34,00,000/- was received by the Petitioner through RTGS mode which was far from the amount due as per the settlement on July 24, 2018. Thus, the Petitioner had no option but to present the aforesaid post dated cheques in the Bank for encashment. However, upon presentation, the said cheques bounced with the endorsement 'insufficient funds' (Annexure-30). Feeling aggrieved, the petitioner served legal notice (Annexure-35) under Section 138 of Negotiable Instrument Act upon the Corporate Debtor and



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proceedings in that regard are pending adjudication before the Court of Metropolitan Magistrate at Patiala Court, New Delhi. In any case we are not to determine the amount of unpaid debt (default) and it shall be open for determination by Committee of Creditors.

12. Further in view of the candid admission of debt made by the Respondent in light of the settlement proposal coupled with other documents more particularly 'Charges Registered' obtained from the website of Registrar of Companies confirming creation of mortgage over the properties in order to secure the loan, execution of the loan agreement and further giving the demand promissory notes and issuance of cheques, it stands established that the amount claimed is due and payable.

13. We further find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in our order dated 27.11.2018 rendered in the case of ECL Finance Limited vs. Digamber Buildcon Pvt. Ltd. (IB- 1039(PB)/2018).

14. After a reading of Section 7 of the Code along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred



and the application under sub section 2 of Section 7 is complete. The IRP proposed does not have any disciplinary proceedings pending against him.

15. As a sequel to the above discussion, this petition is admitted and Mr. Aishwarya Mohan Gahrana is appointed as an Interim Resolution Professional.

16. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code.

17. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



18. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to her 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 amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

19. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

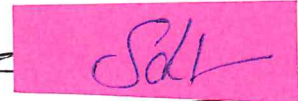
20. Before parting we must notice the complaint made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the

Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.

21. 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, NCR, New Delhi at the earliest 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.



08.11.2019
(M.M. KUMAR)
PRESIDENT



(S.K. MOHAPATRA)
MEMBER (T)

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