

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 112
(IB)-281(PB)/2019

IN THE MATTER OF:

BDR Finvest Pvt. Ltd.

v.

Ninex Developers Ltd.

Applicant/petitioner

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 25.07.2019

Coram:

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

SH. S.K MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Petitioner

For the Respondent

Mr. Sanjay Goswami, Adv.

Mr. Datta, Mr. Vivek Malik, Mr. Vivek Sinha &

Mr. Kartikeya Jain, Adv.

ORDER

M.M. KUMAR, PRESIDENT

A compromise deed was admittedly entered between the parties arriving at an amicable settlement on 27.04.2019 which became the basis of the order dated 02.05.2019 in disposal of the petition when we passed the following order:-

“There is an amicable settlement between the parties and final details have now been worked out. According to the amicable settlement, the post-dated cheques have been issued which are finally to be paid by September, 2019.

In view of the above, the petition is dismissed as withdrawn on the basis of compromise with liberty to the petitioner to file an appropriate application, in case the terms of the settlement are violated.

The application stands disposed of.”

2. On account of non-compliance with the terms of the amicable settlement the present application (CA-1245(PB)/2019) has been filed seeking revival of CP. No. (IB)-281(PB)/2019. Mr. Goswami, Ld. Counsel for the applicant-petitioner has argued that the post dated cheques were issued against the payment of the claim made by the petitioner dated 16.06.2019 and the following cheques were dishonoured:-

Time Schedule	Amount repayable in Rs.	Total outstanding post payment (Rs.)
15/04/2019 till 15/06/2019	NIL as moratorium period of two months agreed by both the parties	16,86,09,298/-
Ch. No. 203202 dated 16/06/19 for the period 16/06/19	2,10,00,000/-	14,76,09,298/-

to 15/07/19		
Ch. No. 203203 dated 25/06/19 for the period 16/06/19 to 15/07/19	2,10,00,000/-	12,66,09,298/-
Ch. No. 203204 dated 16/07/19 for the period 16/07/19 to 15/08/19	2,10,00,000/-	10,56,09,298/-

3. The petitioner has filed the instant application for revival of the petition and has also been placed on record the Bank memos.
4. Notice of the application was issued.
5. Mr. K. Datta, Ld. Counsel for the non applicant-corporate debtor has not been able to controvert the fact that the post dated cheques as detailed in the preceding para were dishonored. However, in a separate application CA-1399(PB)/2019 an attempt has been made to explain as to how cheques were dishonored and certain developments post settlement are sought to be relied upon. However, a perusal of the averments made in the application do not controvert the basic substantive fact that the post dated cheques were dishonored and the proceedings in respect of associate companies were to the knowledge of the respondent-corporate



debtor on or before 27.04.2019 when compromise was entered into. Therefore, we are unable to persuade ourselves to accept the submission made by Mr. K. Datta, Ld. Counsel. It is well settled that once a cheque has been dishonored then the amount sought to be paid is acknowledged and the default also stand established. In that regard we may place reliance on the judgement of Hon'ble Appellate Tribunal in the case of **Sudhi Sachdev vs. APPL Industries Ltd. [Company Appeal (AT) (Insolvency) No. 623 of 2018] vide order dated 13.11.2018.**

6. In view of the above we revive the proceedings in CP. No. (IB)-281(PB)/2019. The default stands established and there is no reason to deny the admission of the petition. It is needless to say that if any payment has been made that will be looked into by the Resolution Professional. CS Mr. Vekas Kumar Garg, having registration no. IBBI/IPA-002/IP-N00738/2018-2019/12291 with the Address:- D-4 B, First Floor Ramprastha, Near Raghunath Temple, Ghaziabad (Uttar Pradesh) -201011, is appointed as IRP who has filed his declaration in accordance with Rule 9 of



Adjudicating Authority Rules and he is to act as an IRP by performing all his duties.

7. As a sequel to the above discussion we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied as discussed in detail in our Order dated 27.11.18 rendered in the of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB-1039(PB)/2018). All requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled and accordingly the present petition is admitted.

8. 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 and a surety in a contract of guarantee to a corporate debtor. 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.

9. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.

10. We direct the Financial Creditor to deposit a sum of Rs. 1 Lac with the Interim Resolution Professional namely CS Vekas Kumar Garg 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 amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

11. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the

knowledge within a period of one week from the admission of the petition to the IRP as is obligatory under Section-19 of the Code, otherwise coercive steps to follow.

12. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.

13. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than three days from today.



A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

(M.M. KUMAR)
PRESIDENT

Sd/-

(S.K MOHAPATRA)
MEMBER (TECHNICAL)

25.07.2019
Ritu Sharma