

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

**Company Petition No. (IB)-1362(PB)/2018**

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

In the matter of:

ICICI Bank Limited

Applicant/Financial Creditor

Vs

Jyoti Buildtech Private Limited

Respondent / Corporate Debtor

*Judgment delivered on: 06.03.2019*

**CORAM:**

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

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

For the petitioner Mr. Anand Shankar Jha & Mr. Arpit Gupta,  
Advocates.

For the respondent Mr. Tarranjit Singh Sawhney & Dr. Farrukh  
Khan, Advocates.



## **ORDER**

**S. K. Mohapatra, Member**

1. ICICI Bank Limited, claiming as the financial creditor, 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. Jyoti Buildtech Private Limited, referred to as the corporate debtor.
2. The Respondent Company M/s. Jyoti Buildtech Private Limited. (CIN No. U45201 DL1999 PTC 099179) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 06.04.1999 and presently has its registered office at 68/5339, Regharpura Karol Bagh, New Delhi-110005. 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 that Mr. Rishi Thakur working as Legal Manager of ICICI Bank, has preferred the present application on behalf of the applicant for initiation of Corporate Insolvency Resolution Process against the respondent corporate debtor in terms of the provisions of the Code. Mr. Rishi Thakur, being Legal Manager of ICICI Bank has been authorized by the Board Resolution dated 27.10.2017 of the applicant bank to file the present application on behalf of the applicant. A copy of the relevant Board Resolution of the applicant held on 27.10.2017 has been placed on record.
4. The applicant financial creditor has proposed the name of Shri Vijender Sharma, for appointment as Interim Resolution Professional having registration number IBBI / IPA - 003 / IP- N00003 / 2016-17 / 10022 resident of VRSA Insolvency Professionals LLP Building No. 11, 3<sup>rd</sup> Floor, Hargovind Enclave, Vikas Marg, Delhi – 110092. Shri Vijender Sharma has agreed

to accept appointment as the interim resolution professional and has signed a communication dated 01.10.2018 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 Shri Vijender Sharma as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

5. The case of the applicant bank as stated in the application is that through credit arrangement letter dated 06.03.2008 working capital facility amounting to Rs. 250 million (Indian Rupees Two Hundred and Fifty Million) was sanctioned in favour of respondent Corporate Debtor for the purpose of working capital requirements. Subsequently, a bilateral master facility agreement was executed between the applicant and the respondent Corporate Debtor on 18<sup>th</sup> April, 2008 to secure the working capital facility amounting to Rs. 250



Million. A copy of master facility agreement dated 18.04.2008 executed between applicant and the respondent company has been placed on record. Subsequently, the working capital facility was renewed by way of credit arrangement letter dated 25.09.2009 and the master facility agreement was modified by way of letter of amendment dated 25.09.2009. A copy of credit arrangement letters/sanction letters dated 06.03.2008 and 25.09.2009 have been placed on record.

6. In order to secure the working capital facility of 250 Million deed of guarantee was executed by Mr. Charanjeet Singh on 18.04.2008 and by Mrs. Jyoti Sahni on 9.10.2009. Copy of both the guarantee deeds have been placed on record.

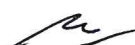
7. Subsequently, the working capital facility was enhanced from Rs. 250 Million to Rs. 400 Million vide credit arrangement letter dated 30.06.2010. A copy of the credit arrangement letter dated 30.06.2010 has been placed on record. In order to secure the enhanced working capital facility of Rs. 400 Million, a Master Facility Agreement dated 15.12.2010 was entered into



between the applicant bank and the respondent Corporate Debtor. A copy of the master facility agreement dated 15.12.2010 has also been placed on record.

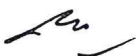
8. As per Clause 2.5 (i) Article II of the Master Facility Agreement dated 15.12.2010, the Corporate Debtor was agreed to pay interest, commission, discount and other charges on the amounts outstanding from time to time under the WC Facilities of INR 400 Million at the rate(s), on the date(s) and in the manner specified in Schedule-I of the Master Facility Agreement or at such rates as may be decided by the Applicant from time to time at its sole discretion.
9. The enhanced working facility for Rs. 400 Million was secured by deed of guarantee dated 15.12.2010 executed by both Shri Harjit Singh Sahni and Ms. Pummy Sahni in favour of the applicant. In addition, M/s. Sahni Agro Private Limited also stood as guarantor vide guarantee deed dated 15.12.2010 in order to secure the enhanced working facility of INR 400 million.

10. Subsequently, on 17.08.2011 an additional cash credit facility of Rs.20 million was sanctioned in favour of the respondent corporate debtor. Accordingly, the aggregate working facilities were enhanced from Rs. 400 to Rs. 420 million. The working capital facilities for Rs.420 million were renewed and amended by way of credit arrangement letters dated 19.12.2012, 13.01.2015, 28.07.2016, 16.08.2016, 02.09.2016, 19.10.2016 and 24.03.2017.
11. In order to secure the enhanced working facility of Rs. 420 million, a bilateral facility agreement dated 29.08.2011 was entered into between the applicant and the respondent corporate debtor.
12. Besides the respondent corporate debtor executed deed of hypothecation dated 21.12.2012 in favour of applicant, creating charge over the entire corporate debtor's stocks of raw materials, goods-in in process, consumable stores, semi-finished and finished goods, both present and future/for securing the enhanced working facility of Rs. 420 million. The applicant bank shared the charge on parri passu basis with Indian



Overseas Bank. A copy of the deed of hypothecation dated 21.12.2012 has been placed on record. Besides the copy of Form 8 filed with the Registrar of Companies and Certificate of Registration dated 14.01.2013 issued by the Registrar of Companies have also been placed on record.

13. The enhanced working capital facility for Rs. 420 million was also secured by charge over assets of third parties/guarantors, apart from the charge created over the assets of the Corporate Debtor.
14. It is submitted that the Corporate Debtor started defaulting in making payments of the working capital facility from the year 2016 and due to continuous defaults in repayment to the applicant, the amount of the corporate debtor was classified as Non-Performing Asset (NPA) on 31.03.2017 in accordance with the existing RBI guidelines.
15. The applicant in its letter dated 07.07.2017 intimated the respondent company about classification of its account as NPA and also intimated that the total payable



overdue of the company as on 31.03.2012 was Rs. 22,39,06,252.87 Paise.

16. It has been claimed that the respondent corporate debtor is unable and unwilling to pay its dues to the applicant and accordingly, a prayer has been made for initiation corporate resolution process against the respondent company under Section 7 of the Code.
17. It has been stated at Part IV of Form-1 that as on 31.08.2018 total amount of default is Rs. 29,12,75,997,90 paisa along with applicable interests and charges. A tabular computation of default amount has been annexed with the application.
18. The respondent corporate debtor has filed its reply on 16.11.2018. Rejoinder to the reply was filed by the applicant on 10.12.2018.
19. We have heard the learned counsels for the parties and have perused the case records.
20. The various objections raised by the respondent corporate debtor are discussed below.
21. The respondent has submitted that it is not a sick company and is able to pay its debts. It is submitted that



the corporate debtor is a going concern and has also availed credit facilities from Indian Overseas Bank and Bank of India to the tune of Rs. 144 crores (fund based and non- fund based) and the said accounts are completely operative and functional without any blemishes. Respondent has annexed comprehensive list of ongoing projects assigned to it. It is contended that respondent is not a sick company nor is unable to pay its debts nor has been declared as insolvent and therefore there is no requirement for restructuring or winding up of the company.

22. In this regard applicant in its rejoinder has submitted that the assertions of the corporate debtor that it is not a sick company and that there is no requirement of restructuring are misfounded. Applicant has claimed that the corporate debtor is in default of a huge sum of over 29 crores as on 31.08.2018. It is argued that execution of alleged work orders and facilities sanctioned by the other financial institutions has no relevance in deciding admission of the present application, as there



is no specific denial to the existence of default to the applicant bank.

23. If there is a debt and default and application by financial creditor under Section 7 of the Code is complete, Adjudicating Authority is bound to admit the application. Claim of respondent that it is a solvent company is of no ground, once there is default in repayment of the loan to the applicant financial creditor.
24. The corporate debtor has also alleged that excess interest has been charged by the banks and the amount claimed is incorrect. It is pertinent to mention in this regard that dispute over the quantum of default, cannot be a ground for rejection of an application under Section 7 of the Code as the determination of quantum of financial debt is not within the domain of the Adjudicating Authority. In the present proceeding the Tribunal is not supposed to ascertain the quantum of amount of default or to pass a decree as to how much is actually due to the applicant financial creditor. 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.

25. Needless to say, that 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 or existence of default. What is material is that the default is for 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. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

26. As regards allegation of excessive charging of interest, applicant has stated in its rejoinder that the interest has been charged in accordance with the terms of sanction letter from time to time. It is submitted that the amount claimed in Part-IV of the petition is based on the statement of Account maintained by the Bank in its ordinary and usual course of business and in accordance with the banking systems.



27. Similarly, the objection on the ground of discrepancies in the amount of claim also cannot sustain. The variance in the amount of default is mainly on account of difference of dates. Be that as it may the corporate debtor would be entitled to raise objection of mismatching of dues and excess charging of interest before the resolution professional/ committee of creditors. Adjudicating Authority is only to ascertain the existence of a default and not to adjudicate and crystalize the claim as to how much is actually due and payable. Mere mismatch of the figures and dispute over quantum of default will ipso facto not estop the admission of corporate insolvency resolution process under Section 7 of the Code.

28. It is also the case of the respondent that the account of the corporate debtor has been wrongly declared as NPA. It is alleged that the financial creditor has blatantly failed to adhere to the guidelines issued by the Reserve Bank of India in its Master Circular for classification of the assets.

29. In the rejoinder applicant bank has submitted that the classification of assets i.e. declaration of NPA was done by the financial creditor as per the regulations issued by the RBI. It is further submitted that copy of statement of account along with certificate issued under Bankers Book Evidence Act has been filed with the present application which clearly demonstrates that the account of the corporate debtor has become NPA as on 31.03.2017 and the corporate debtor has failed to regularize its account till date. It has been affirmed that till the filing of the application, the corporate debtor has never denied or disputed classification of its account as NPA.
30. While dealing with application under Section 7 of the Code, it is immaterial to see as to when the account was declared as NPA. In Section 7 application, it is only to be considered as to whether there is a debt due in law and facts and whether there has been a default in paying the financial debt.



31. Hon'ble National Company Law Appellate Tribunal in the Case of *Ranjit Kapoor Versus Asset Reconstruction Company (India) Limited, in company appeal (AT) (Insolvency) no. 410 of 2018* has held that "the provision of NPA relates to SARFAESI Act, 2002 and has nothing to do with Code."
32. Accordingly, the objection of the respondent that the applicant bank has not acted in terms of the circular and guidelines of RBI and has determined the account as NPA illegally; cannot be a ground to reject the application preferred by financial creditors under Section 7 of the Code, there being default in payment of financial debt.
33. Respondent has further alleged that applicant through *mala fide* and mischievous conduct has hampered the progress of the corporate debtor and attempts have been made to strangle the corporate debtor causing immense losses, which have to be compensated by the applicant. It has been emphasized that the respective claims cannot be adjudicated without a proper trial. Respondent accordingly has contended that the present claim cannot be adjudicated before this forum in as



much as there are several triable issues that have arose between the parties due to noncooperation and adamant conduct of the applicant financial creditor.

34. In this regard applicant has submitted in its rejoinder that the contention of the respondent is vague, ambiguous and evasive. It has been denied that neither the bank has acted in violation of banking norms nor it has ever attempted to disturb the operations of the corporate debtor. It is emphasized that the role of lender bank was limited to providing credit facilities to the corporate debtor and it was not in any way involved with the day to day working of the company and therefore the allegations are baseless. Applicant has submitted that the alleged triable issues and unrelated ground cited by the corporate debtor have no relevance in deciding admission of the application under the Code.

35. In the present proceeding under Section 7 (5) (a) of the Code, application of the financial creditor has to be admitted on satisfaction that default has occurred, the application is complete, and that no disciplinary proceeding against the proposed IRP is pending.



Respondent corporate debtor has not disputed that the loan was availed and that loan and security documents were executed. Applicant financial creditor has placed on record renewal of working capital facility letter aggregating to Rs. 420 million dated 21.12.2012, which was confirmed and accepted by the respondent company by affixing its seal and also duly supported by its Board Resolution dated 20<sup>th</sup> December, 2012. The Certificate of Charge created by respondent company under the provisions of Companies Act to secure the loan is also on record. Applicant financial creditor has also filed the relevant statement of account along with certificate under Bankers Book Evidence Act and computation chart detailing the amount of default. Certified copy of statement of account kept during the course of banking business basing on which the claim has been raised, can be termed as sufficient evidence of the financial debt.

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. Respondent corporate debtor has failed to show that there is no debt or default.

37. Hon'ble NCLAT in the matter of Avance Logistics & Trading India Private Limited Vs Bell Finvest (India) Limited, in its order dated 29th November, 2018 passed in Company Appeal (AT) (Insolvency) No. 336 of 2017 has observed that:

“From the ‘I&B Code’, it will be evident that the ‘Corporate Insolvency Resolution Process’ is **not a litigation** and are **not decided by Court of Law**. Now, the ‘Adjudicating Authority’ deals with the matter of insolvency, which in its first stage is required to take steps for ‘resolution’ of the ‘Corporate Debtor’. Therefore, the Adjudicating Authority being not a Court of law and as the **Adjudicating Authority do not decide a money claim or suit.....**

Further, as initiation of ‘Corporate Insolvency Resolution Process’ under Sections 7 or 9 **do not amount to recovery proceedings, the question of deciding the claim, which may include the**



**interest by the Adjudicating Authority does not arise** for the purpose of triggering the ‘Corporate Insolvency Resolution Process’.”  
(Emphasis given)

38. The present proceeding is not a recovery proceeding and no trial is necessary as the Adjudicating Authority do not decide a money claim or suit. It is therefore reiterated that in the present proceeding the adjudicating authority is only required to ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application.
39. Respondent corporate debtor has further submitted that the corporate debtor is in a position and is also willing to settle all the disputes between the parties and pay the financial creditor. The Corporate Debtor time and again has been requesting the Financial Creditor for rescheduling/regularizing the invoked amount of Bank Guarantees including the rate of interest, as applicable for commercial loans but Financial Creditor has neither considered nor responded to any of the said request.



40. In this connection applicant has denied that any efforts were made by the corporate debtor to regularize its account held with the financial creditor. It is alleged that respondent has not placed any document on record to establish that it has ever attempted to regularize the account held with the financial creditor.
41. In this regard it is pertinent to note that in financial transactions, adjustments and compromise are to be left to the parties to settle the matter in their best interest or exigencies of the business. However, in the absence of any binding compromise agreement/ debt restructuring approval, it is beyond the powers of the Adjudicating Authority to defer the prayer of applicant financial creditor for admission of the petition filed under Section 7 of the Code.
42. Needless to say, that time is the essence of the Code. A far strict time frame is expected to be followed by the Adjudicating Authority at every stage of the proceedings. When despite demand there is default in repayment of the loan amount, the applicant gets right to move under the Code. The application under Section 7 is



maintainable once the default is more than one lakh, in view of Section 4 of the Code.

43. 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.

44. 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.

45. 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.



46. In the present case the bank had sanctioned and disbursed the loan amount recoverable with applicable interest by entering into loan agreements with the corporate debtor. The corporate debtor had borrowed the credit facility 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.

47. 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.*

48. 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. **The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application.**” (Emphasis given)*

49. An application of financial creditor 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. It is reiterated that the material on record clearly goes to show that respondent had availed the loan facilities and has committed default in repayment of the huge outstanding financial debt.

50. In the facts, it is seen that the applicant bank 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 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 Interim Resolution Professional. Applicant has placed on record voluminous and overwhelming evidence in support of the disbursement as well as to prove the default. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its



outstanding financial debts from the corporate debtor and that there has been default in payment of the financial debt.

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

52. Shri Vijender Sharma, having registration number IBBI / IPA - 003 / IP- N00003 / 2016-17 / 10022 resident of VRSA Insolvency Professionals LLP Building No. 11, 3<sup>rd</sup> Floor Hargovind Enclave Vikas Marg Delhi – 110092 is appointed as the interim resolution professional.

53. 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.

54. 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.”*



55. 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.

56. 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.

57. 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/- 07.03.2019  
**(M.M. KUMAR)**  
**PRESIDENT**

Sd/-  
**(S. K. MOHAPATRA)**  
**MEMBER (T)**