

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P. NO.IB-694(PB)/2018

IN THE MATTER OF:

L&T Finance LimitedPetitioner

Vs.

Zillion Infraprojects Pvt LtdRespondent

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on: 05.02.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For Petitioner : Mr. Alok Bhachawat & Mr. Shailendra
Singh, Advs.

For Respondent :Ms. Rohit Sharma & Mr. Atul Agarwal, Advs.

ORDER
M.M.KUMAR, PRESIDENT

The Petitioner claiming to be financial creditor has filed the instant Petition 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 Zillion Infraprojects Pvt Ltd. (for brevity the 'corporate debtor'). It is appropriate to mention that the 'financial creditor' is a Non-Banking Finance Company incorporated under the provisions of the Companies Act, 1956.

2. The Corporate Debtor – Zillion Infraprojects Pvt Ltd was incorporated on 19.03.1986 under the provisions of the Companies Act. The identification number of the Corporate Debtor given is CIN U27209DL1986PTC023662.
3. It is submitted by the Petitioner that it had disbursed loans amounting to Rs. 29 Crores vide three separate loan agreements dated 13.11.2014, 06.10.2015 and 06.10.2015 **(Annexure-8(Colly))** to the respondent-corporate debtor.
4. The precise case of the Petitioners is that the total amount in default due to the financial creditor by the corporate debtor is Rs. 23,45,58,486/-. Details regarding the amounts disbursed have been placed on record **(Annexure A-7 (Colly))**.



5. The Financial Creditor has proposed the name of Shri Harish Taneja as the Insolvency Professional with the address House No. 236-L, Model Town, Sonipat - 131001 and E-mail-id - harishtaneja78@gmail.com. His registration number is IBBI/IPA-002/IP-N00088/2017-18/10229. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration (**Annexure A-6**).

6. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the Application the Financial Creditor has mentioned the amount claimed in default and the date of the default.

7. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate that Loan disbursed and the amount claimed to be in default.



8. A reply to the petition is filed by one Mr. Anant Saxena, being the Managing Director and Authorized representative of the Respondent- Corporate Debtor, who has been given authority vide Board Resolution dated 05.07.2018 and also a Rejoinder to the Reply has been filed by the Petitioner-Financial Creditor.

9. In the Reply the Respondent-Corporate Debtor has admitted the disbursement of Loan as per the loan agreements. The Corporate Debtor further admits that it has defaulted in paying the monthly instalments owing to certain contingencies.

10. One of the preliminary objections raised by the Respondent-Corporate Debtor is that the facility agreements entered into with the petitioner-financial creditor provides for an arbitration clause and is secured by both movable and immovable property. In pursuance of the same a petition under the Arbitration & Conciliation Act was filed in the Hon'ble Delhi High Court and the petitioner-financial creditor



had also issued notices under the SARFESI Act for possession of the immovable property.

However the assertions have been controverted and the petitioner-financial creditor has submitted that the initiation or pendency of arbitration proceedings is no bar to file a petition under the Code. Further it is also submitted by the petitioner-financial creditor that it was not allowed entry into the plants to take over the possession of the machinery and that the amount claimed is based on the terms of the Loan Agreement which is calculated in a transparent manner.

11. The Objection raised by the respondent-corporate debtor is not sustainable because the provisions of IBC are to prevail as Section 238 contains an non-obstante clause which is of the widest amplitude. In other words the corporate insolvency resolution process has to be triggered despite the application of any other law. In this regard we draw support from the observation made by the Hon'ble Supreme Court in the case of ***M/s Innoventive Industries Ltd Vs. ICICI Bank and Ors reported in (2018) 1 SCC 407.*** In para 56 the following observations have been made:



“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.”

12. The Respondent-Corporate Debtor admits the disbursement of loan and further states that the current default is due to the non-payment by the concerned Public Sector Undertakings due to breaches by the petitioner-financial creditor.

The assertions made by the respondent-corporate debtor have been denied by the petitioner-financial creditor in Toto. It states that there has been no breach on its part and the corporate debtor is in default as stated by it in para 17 of the reply.

13. Under sub-section 5(a) of section 7 of the code, the application filed by the petitioner financial creditor 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.

13. In view of the above we find that the advancement of loan stand admitted and default on part of the respondent-corporate debtor is established. Even Otherwise there is overwhelming documentary evidence on record which support those findings.

14. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled.

15. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in the case of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB- 1039(PB)/2018).



16. After a conjoint reading of the aforesaid provision 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 name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.

17. As a sequel to the above discussion, this petition is admitted and Shri Harish Taneja is appointed as the Interim Resolution Professional (Details stated in para 5).

18. 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.

19. 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.

20. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Shri 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 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.

21. 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 seven 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/-

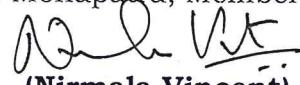
05.02.2019

(M.M.KUMAR)
PRESIDENT

Sd/-

(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

Pronounced under Rule 151 of the NCLT Rules as Sh. S.K. Mohapatra, Member (T) is not holding the Court today.


(Nirmala Vincent)
Court Officer

05.02.2019
(VIDYA)