

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I-II

CP(IB) 164 MB 2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

IN THE MATTER OF

**1. Highrise securities and Trading Pvt.
Ltd.**

Through its Directors Mr. Virender Jain
511-B, V/F Jaina Tower-I, Distt. Centre
Janakpuri New Delhi - 110058.

2. Sarvottam Securities Private Limited

**Through its Director Mr. Shree Ram
Yadav**

Unit no. 114, Vardhman Mayur Market,
C.S.C. Mayur Vihar, Phase-3, Kondli
Gharoli, Delhi - 110096

... Financial Creditors

V/s.

1. Vaikunth Townships Pvt. Ltd.

Through its Director

509-510, Navratan Premises, Co-op Society,
69 P D Mello Road, Carnac Bunder,
Mumbai (MH) 400009.

2. Tanuj Agarwal

**Director of Vaikunth Townships Pvt.
Ltd.**

Mittal Castle Flat no. 301796 Bhula Bhai
Desai Road Near Mahalaxmi Temple
Mumbai – 400026.

3. Anu Devi Agarwal

**Director of Vaikunth Townships Pvt.
Ltd.**

Near Shakti Mandir, Jora Phatak Road
Dhanbad, Jharkhand – 826001.

... Corporate Debtors

Order delivered on :- 01.05.2024

Coram:

Hon’ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon’ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Financial Creditor : Adv. Manish Gupta

For the Corporate Debtor : Adv. Rohit Gupta a/w Adv.
Shreyas Lele

ORDER

Per: - Kuldip Kumar Kareer, Member Judicial

1. This Company petition is filed by Highrise securities and Trading Pvt. Ltd. & Ors. (hereinafter called “**the Petitioner**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Vaikunth Townships Pvt. Ltd. (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in

making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 8,04,92,959/-.

The submissions by the Financial Creditor:-

2. The Financial Creditors no. 1 and 2 are private limited company. The Financial Creditors are engaged in the business of Financial Intermediation. The Financial Creditor no. 1 is represented by AR Mr. Virender Jain who is the Director of the company and Financial Creditor no. 2 is represented by AR Mr. Shree Ram Yadav who is also the Director of the Company and both are having full knowledge of the case and also engaged in day to day affairs of the company.
3. The present Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 has been instituted by Director of Financial Creditor no. 1 and Financial Creditor no. 2 and both are duly authorized to sign, verify and file the present application and further to take all necessary action thereto vide resolution dated 25.02.2022 in favour of Mr. Virender Jain i.e. Financial Creditor no. 1 and resolution dated 28.02.2022 in favour Mr. Shree Ram Yadav i.e. Financial Creditor no. 2.
4. Vaikunth Townships Private Limited i.e. Respondent Company the Corporate Debtor is a private limited company incorporated on 17.10.2006 situated at 509-510, Navratan Premises, Co-op Society, 69 P D Mello Road, Carnac Bunder, Mumbai (MH) 400009. The

Respondent company is having paid up capital of Rs. 27,20,000/-.
The Respondent company has been engaged in business of construction.

5. The Corporate Debtor no. 2, approached Mr. Virender Jain Director/AR of Financial Creditor no. 1 on 20.03.2018 for advancing a Loan facility of Rs. 3,70,00,000/- and in the same manner Corporate Debtor no. 2, approached Mr. Shree Ram Yadav Director/AR of Financial Creditor no. 2 on 21.03.2018 for advancing a Loan facility of Rs. 1,10,00,000/- to Corporate Debtor for three years @ 18% p.a. interest and also agreed to pay EMI per month of principal amount along with interest amount.
6. It was also decided between Corporate Debtor and Financial Creditor no. 1 that the per month EMI of principal amount along with interest amount would be Rs. 15,82,778/- to be paid by the Corporate Debtor to Financial Creditor no 1 for 3 years and the per month EMI of Rs. 4,70,556/- to be paid by Corporate Debtor to Financial Creditor no. 2.

The details of amount transferred by the Financial Creditor no. 1 into the bank account no. 01011010003489 of the Corporate Debtor maintained with Punjab and Maharashtra Co-operative Bank is as under:-

Date	Amount	RTGS
23.03.2018	50,00,000	Through Cheque no. 000205

23.03.2018	50,00,000	Through Cheque no. 000204
26.03.2018	35,00,000	Through Cheque no. 000221
27.03.2018	85,00,000	Through Cheque no. 000191
28.03.2018	65,00,000	Through Cheque no. 000231
28.03.2018	35,00,000	Through Cheque no. 000232
28.03.2018	50,00,000	Through Cheque no. 000233
31.03.2018	50,00,000	Through Cheque no. 000146
31.03.2018	60,00,000	Through Cheque no. 000145

7. The Corporate Debtor failed to pay monthly instalments to Financial Creditor no. 1 and Financial Creditor no. 2, the Financial Creditor no. 1 sent a legal demand notice dated 01.07.2022 and Financial Creditor no. 2 sent a legal demand notice dated 23.07.2022 which were duly served on Corporate Debtor for payment of principal along with interest amount. The notices were duly served on Corporate Debtor on 04.07.2022 and on 30.07.2022 regarding outstanding amounts. The Corporate Debtor sent replies dated 18.07.2022 and 28.08.2022 through Speed Post simply denying the averments of Legal Notices dated 01.07.2022 and 23.07.2022 without giving any reasons but not denied any loan transaction between the parties.

8. As on date, the Corporate Debtor has not paid the total outstanding amount of Rs. 6,20,66,603/- to Financial Creditor no. 1 and Rs. 1,84,26,356/- to Financial Creditor no. 2. The total outstanding debt on Corporate Debtor against both the Financial Creditors is Rs. 8,04,92,959/-.
9. Hence, the present Company Petition u/s 7 of the Insolvency and Bankruptcy Code, 2016.

The submissions by the Corporate Debtor/Respondent no. 1:-

10. It is submitted that the present Petitioner is liable to be dismissed as it is based on a completely misconceived understanding of the law, particularly Section 7 of the Insolvency and Bankruptcy Code, 2016. Furthermore, as explained in detail in the present Reply, there is no debt owed by Respondent no. 1 to the Petitioners and the present Petition is a grossly mala-fide attempt on the part of the Petitioners to arm-twist Respondent no. 1 into making payment of monies to them. The present Petition, being a gross abuse of the process of law, deserved to be dismissed with exemplary costs for the reasons mentioned below.
11. There is no financial debt owed by Respondent no. 1 to the Petitioners. There was no agreement, whether written or oral, whereby Respondent no. 1 had agreed, in any manner whatsoever, to repay to the Petitioners, the amounts, as claimed to be in default in the present Petition.
12. From a bare perusal of the present Petition, it can be seen that the Petitioners have not disclosed even a single document in support of

the alleged financial debts and understandably so, as there exists no such document.

13. It is outrageous that the present Petition, which contains an elaborate narration of facts, albeit false, is silent on how the debt and default have arisen and fails to disclose any document that corroborates the tall claims of the Petitioner. Besides, the bald statements in the present Petition to the effect that amounts were advanced in 2018 and Respondent no. 1 failed to make payment of an alleged instalment in 2022, there is not a single reasonable whisper in the entire Petition about the nature of this alleged loan transaction.
14. The present Petition has been filed in an entirely incorrect and inconceivable form as a bare perusal of the Petition when compared with Forms 1 and 5 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, shows that the Petition is a mix of the two forms, for reasons best known to the Petitioners.
15. The Petition does not contain a certificate from Information Utility which is a mandatory document for admission of a Section 7 Petition.
16. In Part IV, Items no. 5 which requires the details of the financial contract between the parties, the Petition states that the same is not available. As stated above, such record is not available as it does not exist.
17. In the same series of absurdities, the present Petition was preceded by a Section 8 notice which is not applicable to Section 7 proceedings

under the Code. Oddly, this Section 8 notice has been referred to as a loan recall notice under IBC in the present Petition.

18. The present Petition has, in fact, been filed by two Petitioners joining two completely separate and distinct causes of action. In this matter, two different causes of action cannot be clubbed and combined to file one common petition. There is no similarity in the causes of action and, therefore, they could not have been clubbed to form a single Petition.
19. The Corporate Debtor further submitted that the loan transaction is either one payable on demand in which case, there is a relevance of when the demand is actually made, or one which repayable within the time period agreed at the time of sanction and disbursement of the loan. In the present case, the date of default is on the basis of failure to honour the demand notice which, in turn, is on the basis that there is a failure on Respondent no. 1's part to pay the EMI. There is complete inconsistency in the case sought to be canvassed by the Petitioners. There are no documents otherwise produced to prove the debt and default and hence, the present Petition is liable to be dismissed.

FINDINGS

20. We have heard the Counsel for the parties and have gone through the records.
21. During the course of arguments, the Counsel for the Petitioner has argued that Petitioner no. 1 advanced a loan of Rs. 3.70 crores to the Corporate Debtor for a period of three years. The loan was repayable by way of monthly installment of Rs. 15,82,778/-. The Counsel for

the Petitioners have further pointed out that the Petitioner no. 2 also advanced a sum of Rs. 1.10 crores to the Corporate Debtor on 31.03.2018 on similar terms and conditions.

22. Counsel for the Petitioners have further contended that the Corporate Debtor failed to pay any amount towards interest or principal. Accordingly, demand notices dated 01.07.2022 and 23.07.2022 were issued by the Petitioner nos. 1 and 2 respectively calling upon the Corporate Debtor to pay outstanding dues. But despite the receipt of notices, the amount was not repaid, and further the date of notices has been claimed to be the date of default. Counsel for the Petitioners has further contended that from the averments made in the Petition and the documents relied upon by the Petitioners, it is evident that the loan of Rs. 3.70 crores and Rs. 1.10 crores was advanced by the Petitioners in respect of which default has been admitted by the Corporate Debtor and further that the Petition is well within the period of limitation and, therefore, the Petition deserves to be admitted.
23. On the other hand, Counsel for the Corporate Debtor has argued that the Petition is devoid of any merit and dismissed.
24. Ld. Counsel for the Corporate Debtor has argued that no loan agreement or any other document evidencing the grant of loan has been placed by the Petitioners and, therefore, it is not established that any loan covered under the definition of financial debt was advanced to the Corporate Debtor and on this ground alone, the Petition is liable to fail. The Ld. Counsel for the Corporate Debtor has further argued that prior to the filing of the present Petition, the Petitioner served a notice dated 01.07.2022 u/s 8 of the IB Code, 2016 which is

supposed to be served prior to filing a Petition u/s 9 of the IB Code, 2016 and, therefore, even the notices dated 01.07.2022 and 23.07.2022 are bad in the eyes of law and are of no consequence.

25. The Ld. Counsel for the Corporate Debtor has further argued that the Petition is barred by limitation. In this regard, it has been pointed that allegedly, the loans were advanced in the year 2018 whereas the present Petition has been filed in October, 2022 which is beyond the period of three years and, therefore, the claim is time barred.
26. Ld. Counsel for the Corporate Debtor has further argued that the debt and default has also been wrongly claimed by the Petitioners being 01.07.2022 or 23.07.2022 on the basis of the demand notices which are otherwise illegal and invalid having been served u/s 8 of IB Code, 2016 and, therefore, the Petition is liable to be dismissed.
27. We have considered the aforesaid contentions raised by the Counsel for the parties and have also carefully gone through the records.
28. There is no dispute with regard to the fact that no loan agreement was executed at the time the loan was agreed to be advanced by the Petitioners to the Corporate Debtor. However, to prove the disbursement of the loan, the Petitioners have relied upon statements of accounts which show that Petitioner no. 1 disbursed an amount of Rs. 3.70 crores to the Corporate Debtor through RTGS between 23.03.2018 and 28.03.2018. Similarly, it is evident from the statement of accounts placed on record that Petition no. 2 transferred an amount of Rs. 1.10 crore through RTGS on 31.03.2018 to the Corporate Debtor. Therefore, the disbursement of alleged loan stands proved on record from the statements of accounts.

29. It has been vehemently argued by the Counsel for the Corporate Debtor that the Petitioners have not been able to establish the nature of the loan and it does not stand proved on record that the aforesaid amounts were advanced as financial debt to the Corporate Debtor. No doubt, there is no loan agreement executed between the parties but, in our considered view, execution of loan document is not a *sine qua non* for establishing the existence or advancement of a financial debt. Once it was proved on record that money was transferred to the Corporate Debtor, the onus stood shifted to the Corporate Debtor to explain as to for what other purpose the said money was received by the Corporate Debtor if it was not received as financial debt or a loan. However, the Corporate Debtor is completely silent in the reply about the purpose for which the money was received from the Financial Creditors. Here it is pertinent to mention that the Corporate Debtor responded to the demand notice and in the reply dated 25.08.2022 it has simply been stated that the demand notice is void ab initio. The receipt of the amount has not been disputed. It has simply been stated that no debt is due or payable. On the contrary, as stated above, it is evident from the statements of account that the money was duly transferred by way of RTGS to the Corporate Debtor. Even in the demand notice, it has been categorically stated by the Financial Creditors that the loan was advanced for a period of three years and the applicable rate of interest was 18 percent per annum. In reply to the notice, these facts have not been denied specifically by the Corporate Debtor. It is a settled proposition of law that any fact which is not specifically denied is deemed to have been accepted as correct by the opposite party. Therefore, the fact that the loan in question was advanced for a period of three years which was repayable with the interest at the rate of 18 percent per annum has

gone un rebutted. In these circumstances, the plea raised by the Corporate Debtor that the nature of the transaction being a financial debt is not proved cannot be accepted.

30. It has further been argued on behalf of the Corporate Debtor that the Petition is barred by time. Even this contention does not appear to be correct. The loan in question was advanced and disbursed in the year 2018. It was advanced for a period of three years. Therefore, the cause of action arose to the Financial Creditors in the year 2021 and finally when despite issuing the demand notices dated 01.07.2022 and 23.07.2022 the outstanding dues were not paid by the Corporate Debtor and, therefore, this Petition having been filed in the year 2023 is well within the period of three years from the date of occurrence of the cause of action.
31. It has also been argued on behalf of the Corporate Debtor that the date of default has been wrongly mentioned and claimed by the Financial Creditors as 01.07.2022 or 23.07.2022 on the basis of the legal notice issued by them on the said dates. Even this contention of the Ld. Counsel for the Corporate Debtor seems to be devoid of any force or substance. As stated above, the loan was advanced and disbursed in the year of 2018 for a period of three years. It became due for repayment in the year 2021. Since the loan was not repaid on completion of three years, the Financial Creditors got issued legal notices dated 01.07.2022 and 23.07.2022 calling upon the Corporate Debtor to pay the sum. As the loan was not repaid despite notices, the date of default could be treated to be the date of notice or the period given in the notice and, therefore, under these circumstances, it cannot be said that the Financial Creditors have wrongly claimed 01.07.2022 and 23.07.2022 as dates of default.

32. Similarly, the argument that the notice was served u/s 8 of the IB Code, 2016 which is supposed to be given prior to filing the Petition u/s 9 of the Code is concerned, is also of not any consequence. So far as Section 7 is concerned, no notice is required to be given prior to filing of the Petition u/s 7 of the Code, 2016. Therefore, even if the notice was given u/s 8 of the IB Code, 2016, it cannot be said to be an illegality. The notices were duly replied to by the Corporate Debtor. Even if the notices were served u/s 8 of the Code, it served the purpose to the effect that the loan was recalled, and the Corporate Debtor was asked to repay the same. Therefore, on this hyper technical ground, the Petitioners cannot be non-suited.
33. Ld. Counsel for the Corporate Debtor further pointed out that the Petition has been jointly filed by two Financial Creditors and is liable to be dismissed. However, this is also not an illegality as Section 7 permits that two or more Financial Creditors can jointly file a Petition u/s 7 of the IB Code, 2016.
34. Ld. Counsel for the Corporate Debtor has further raised an objection that in this case apart from the Corporate Debtor, the Directors of the Corporate Debtor has also wrongly been impleaded as parties as Respondent nos. 2 and 3. In our considered view, at the most this is an irregularity which could be rectified and Respondent nos. 2 and 3, who had been wrongly arrayed as party, can be ordered to be deleted from array of parties.
35. No other pointed have been raised on behalf of the Corporate Debtor. Even otherwise the Petitioner have been able to establish the existence of debt and its default committed by the Corporate Debtor and further that the Petition has been filed within the period of

limitation. Therefore, in our considered view, it is a fit case for admission. Resultantly, the present Company Petition filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 is **admitted** in the following terms.

ORDER

- a. **The above Company Petition No. (IB) -164 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Vaikunth Townships Pvt. Ltd.**
- b. This Bench hereby appoints Ms. Suman Kumar Verma, Registration No: IBBI/IPA003/IPA-N00342/2021-2022/13657 as the Interim Resolution Professional email :- ipskverma@gmail.com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for

liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
- k. The name of the Respondent nos. 2 and 3 shall stand deleted from the array of parties.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)
ANKIT

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)