



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI

CP/IB/81/CHE/2023

(filed 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 *Tuscan Consultants and Developers Private Limited*

**IDBI TRUSTEESHIP SERVICES LIMITED**

Asian Bldg., Ground Floor,

17, R. Kamani Marg,

Ballard Estate, Mumbai – 400 001

Through authorized signatory Mr. Suresh Kanōja

...Applicant/Financial Creditor

-Vs-

**TUSCAN CONSULTANTS AND DEVELOPERS PRIVATE LIMITED**

2<sup>nd</sup> Floor, No.35/1,

Yellapa Chetty Layout,

Civil Station, Ulsoor Road,

Bangalore – 5600 042

...Respondent/Corporate Debtor

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**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

For Applicant : V.V. Sivakumar, Advocate  
Angail Varma, Advocate

For Respondent : Debopriyo Moulik, Advocate

Order Pronounced on 9<sup>th</sup> October 2023



## ORDER

*(Heard through video conferencing mode)*

*Per:* VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

This is an Application filed by **IDBI TRUSTEESHIP SERVICES LIMITED** (hereinafter the "Financial Creditor") against **TUSCAN CONSULTANTS AND DEVELOPERS PRIVATE LIMITED** (hereinafter the "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor herein.

2. In Part-I of the Application, it is stated that the Financial Creditor is a public company incorporated under the provisions of Companies Act, 1956 on 08.03.2001 with CIN: U65991MH2001GOI131154. In Part – II of the Application, it is stated that the Corporate Debtor was incorporated under the provisions of the Companies Act, 1956 on 09.03.1993 with CIN: U85110KA1993PTC014087 and the Registered office of the Corporate Debtor is situated at 2<sup>nd</sup> Floor, No.35/1, Yellappa Chetty Layout, Civil Station, Ulsoor Road, Bangalore, Karnataka – 560 042.

3. In Part III of the application, the Financial Creditor has proposed one Mr. Ashok Mittal with Registration No: IBBI/IPA-001/IP-P02549/2021-



2022/13889 as the "Interim Resolution Professional" of the Corporate Debtor. The Written Consent of the IRP is appended at Page 379 of the Application.

4. In Part-IV of the Application, a total sum of Rs.212,31,79,848/- (Rupees Two Hundred and Twelve Crore Thirty-One Lakh Seventy Nine Thousand Eight Hundred and Forty-Eight only) has been claimed by the Financial Creditor as the Financial debt, due and payable by the Corporate Debtor. It is stated that the default committed by the Corporate Debtor is of a continuing nature which commenced from September 30, 2021 on account of non-payment of Principal and Interest under the Loan Agreement.

5. Learned Counsel for the Financial Creditor submitted that IDBI Trusteeship Services Ltd, is a company incorporated under the provisions of the Companies Act 1956 and is engaged in providing corporate trusteeship services. He stated that IDBI Trusteeship Services Ltd. was appointed as a Debenture Trustee by the Corporate Debtor under the Trustee Agreement dated 17.06.2016. The present Application has been filed by IDBI Trusteeship Services Ltd under Section 7 of IBC, 2016 in its



capacity as the Debenture Trustee, on behalf of the Financial Creditor i.e. India Bulls Real Estate Fund and Patni Healthcare Limited (hereby collectively referred to as the "Debenture Holders"). The Corporate Debtor herein is the Corporate Guarantor in respect of the the Principal Borrower viz. Ozone Projects Private Limited.

6. Learned Counsel submitted that the Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of, *inter alia*, development and construction of real estate projects. A Debenture Trust Deed ("Trust Deed") dated 29.06.2016 was executed by and between the Applicant / Financial Creditor and Ozone Projects Private Limited ("Ozone / Principal Borrower") vide which 1,263 (One Thousand Two Hundred and Sixty-Three) fully secured, redeemable, interest-bearing and non-convertible debentures ("Debentures") each with face value of INR 10,00,000 (Rupees Ten Lakhs Only) totaling to Rs.126,30,00,000 (Rupees One Hundred Twenty Six Crore and Thirty Lakh Only) were issued by the Principal Borrower, and subscribed by the Debenture Holders on a private placement basis on the terms and conditions recorded in *inter alia*, the Trust Deed.



7. Learned Counsel submitted that in terms of the Trust Deed, the Debenture Holders had extended financial assistance of Rs.126,30,00,000 (Rupees One Hundred Twenty Six Crore and Thirty Lakh Only) to the Principal Borrower as per the terms and conditions set forth in the Trust Deed. The principal amount along with the redemption premium was due to be paid on 29.10.2019 i.e. the Redemption Date. However, owing to repeated requests of the Principal Borrower and after obtaining the consent of the Debenture Holders, the redemption date came to be extended on seven occasions, consequent to which seven amendments to the Trust Deed were executed. The last extension of the Redemption Date was granted up to 30.09.2021, and the same stand expired.

8. Learned Counsel submitted that the Principal Borrower's obligation to repay the loan along with all amounts due under the Trust Deed, was *inter alia*, fully secured by a Corporate Guarantee Agreement dated June 29, 2016 ("Corporate Guarantee") executed by the Corporate Debtor herein in favour of the Applicant / Financial Creditor. The Corporate Guarantor had executed an unconditional and irrevocable guarantee. In terms of the Corporate Guarantee, the Corporate Debtor agreed that in the event of default under the Trust Deed, the same shall be construed as a default



under the Corporate Guarantee and the Corporate Debtor shall forthwith, unconditionally and irrevocably pay to the Trustee without demur the outstanding amounts.

9. Learned Counsel submitted that the Principal Borrower has defaulted and failed in fulfilling its payment obligations under the Debenture Trust Deed and has committed a default in terms of Clause 21 thereof. Learned Counsel submitted that the Applicant / Financial Creditor, on behalf of the Debenture Holders, issued a Demand Notice dated 13.12.2021 under the Debenture Trust Deed to the Principal Borrower and the Guarantors including the Corporate Debtor herein for payment of the amounts due under the Debenture Trust Deed as on 20.09.2021, within 10 days of receipt of the said notice, and for invocation of the guarantees executed by the Guarantors including the Corporate Debtor.

10. Learned Counsel submitted that despite receipt of the aforesaid notice, the Principal Borrower and the Corporate Debtor failed to make any payment. The Financial Creditor then issued a final Demand Notice dated 06.01.2022, on behalf of the Debenture Holders, calling upon the Principal Borrower and the Corporate Debtor herein to pay the outstanding amount



due as on 31.12.2021, within 10 days of receipt of the said notice. However, the Principal Borrower and the Corporate Debtor failed to repay the outstanding amount.

11. Learned Counsel submitted that subsequently, the Financial Creditor issued a Legal Notice dated 24.03.2022, on behalf of the Debenture Holders, calling upon the Principal Borrower and the Corporate Debtor to pay the outstanding amount within 10 days of receipt of the said notice. However, the Principal Borrower and the Corporate Debtor continued to remain in default. Further, the Financial Creditor, on behalf of the Debenture Holders, issued a final Legal Notice dated 20.07.2022, calling upon the Principal Borrower and the Corporate Debtor to immediately pay the total outstanding amount aggregating to outstanding sum of Rs.194,29,41,539/- (Rupees One Hundred Ninety Four Crores Twenty Nine Lakhs Forty One Thousand Five Hundred and Thirty Nine Only), within 7 days from the receipt of the said notice, failing which the Financial Creditor would be constrained to initiate civil, criminal and the regulatory action(s) against the Principal Borrower and the Corporate Debtor and other officers as it may deem fit. Learned Counsel submitted that despite repeated requests, reminders, extensions and notices, the Principal Borrower and the



Corporate Debtor willfully failed and deliberately neglected to pay the outstanding sums.

12. Learned Counsel submitted that since the Corporate Debtor continued to remain in default, the Financial Creditor issued a Demand Certificate dated 12.08.2022 under Clause 2 of the Corporate Guarantee calling upon the Corporate Debtor to make payment of the outstanding amount of Rs.212,31,79,848 (Rupees Two Hundred Twenty One Crores Thirty one Lakh Seventy Nine Thousand Eight Hundred Forty Eight) as of July 31, 2022 within two days of receipt of the said notice, failing which the Financial Creditor on behalf of the Debenture Holders would be constrained to initiate and pursue proceedings *inter alia* under the Insolvency and Bankruptcy Code, 2016.

13. Learned Counsel submitted that the Corporate Debtor has defaulted and failed in fulfilling its payment obligations under the Trust Deed read with the Corporate Guarantee. Hence, the Corporate Debtor as of July 31, 2022 is liable to pay to the Financial Creditor a total outstanding sum of Rs.212,31,79,848 (Rupees Two Hundred Twelve Crores Thirty One Lakh Seventy Nine Thousand Eight Hundred Forty Eight Only) which



comprises of the Principal Amount, Interest, Redemption Premium and Default Interest.

14. Under such circumstances, the present Application has been filed by the Financial Creditor under Section 7 of IBC, 2016 seeking thereof to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

15. In relation to the Corporate Debtor, it is seen that this Tribunal vide its order dated 22.06.2023 and 04.07.2023 granted opportunity to the Corporate Debtor to file reply. In fact, this Tribunal vide its order dated 04.08.2023 granted further two weeks' time to file reply subject to the cost of Rs.25,000/- (Rupees Twenty Five thousand only). However, the Corporate Debtor has not filed any reply and hence this Tribunal vide its order dated 04.09.2023 closed the right of the Corporate Debtor to file its reply. The Financial Creditor has also reported that there were no settlement talks going on between the parties. Thereafter, the arguments of both the parties were heard on 26.09.2023.



16. The Financial Creditor has filed the Record of Default in respect of the Principal Borrower viz. Ozone Projects Private Limited, from the Information Utility issued by NeSL, from which it is seen that the Status of Authentication is shown as “Deemed to be Authenticated”.

17. The Learned Counsel for the Corporate Debtor during the course of arguments submitted that the Financial Creditor is initiating action against the Corporate Guarantor without exhausting its remedy against the Principal borrower. In this connection, it is required to be noted that as against the Principal Borrower viz. Ozone Projects Private Limited, this Tribunal has initiated CIRP, however the Hon’ble NCLAT granted stay on the order of this Tribunal. The issue as to whether CIRP can be initiated against the Corporate Guarantor without proceeding against the principal borrower has been answered by Hon’ble Supreme Court in the matter of **Laxmi Pat Surana v. Union Bank of India and Another (2021) 8 SCC 481** in para 21 and 23 as under;

21. *Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor. The corporate debtor can be the principal borrower. It can also be a corporate person assuming the status of corporate debtor having offered guarantee, if and when the principal borrower/debtor (be it a corporate person or otherwise) commits default in payment of its debt.*



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23. *Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression "default" has also been defined in Section 3(12) IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be.*

18. The Hon'ble Supreme Court in the matter of **K. Paramsivam v. The Karur Vysya Bank Limited & Anr.** 2022 SCC OnLine SC 1163 has held that it was open to the Financial Creditor to proceed against the guarantor without first suing the Principal Borrower.

19. Thus, it is no longer *res integra* that the Financial Creditor has the option to proceed against the Corporate Guarantor without first taking recourse against the Principal borrower. In the instance case, the Financial Creditor has proved the existence of 'financial debt' and the 'default' having been committed on the part of the Corporate Debtor.



20. Further it has been consistently held by the Hon'ble Supreme Court in **Innoventive Industries Ltd. v. ICICI Bank and another** (2018) 1 SCC 407 as well as in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.** (2018) 1 SCC 353 after going through the Scheme of IBC, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, that in relation to a Section 7 Application where there is an existence of a 'financial debt' and the default in excess of Rs.1,00,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Crore.

21. Under the said circumstances, we are of the view that the present Application is required to be admitted in terms of Section 7(5)(a) of IBC, 2016. We therefore admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.



22. The Financial Creditor has proposed the name of **Ashok Mittal** with *Registration Number: IBBI/IPA-001/IP-P02549/2021-2022/13889*, (email-[ashokmittal2020@gmail.com](mailto:ashokmittal2020@gmail.com)) as the Interim Resolution Professional (IRP) who has also filed consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 10.11.2023. We therefore appointed **Ashok Mittal** as the IRP. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

23. As a consequence of the Application being **admitted** in terms of Section 7(5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:



- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

24. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:



- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
  - (b) a surety in a contract of guarantee to a corporate debtor.

25. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1)



of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

26. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

— Sd

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

— Sd —

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Raymond*