

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.246/BB/2019
U/s. 7 of the IBC, 2016
R/w Rule 4 of the I&B (AAA) Rules, 2016

In the matter of:

1. M/s. India Asset Growth Fund
(A category II AIF bearing registration number
IN/AIF2/12-13/0037)
601, 6th Floor, Jet Prime,
Plot No.39-B, Suren Road,
Andheri (East),
Mumbai – 400 093

Acting through its Investment Manager,
Essel Finance Advisors and Managers LLP,
A limited liability partnership,
R/o. at A Wing, 18th Floor,
Marathon Futurex,
N.M.Joshi Marg, Lower Parel,
Mumbai – 400 013

2. M/s. Vistra (ITCL) India Limited
Through its authorized signatory
(in its capacity as the Debenture Trustee)
IL & FS Financial Centre, Plot No.C-22,
G-Block, Bandra – Kurla Complex,
Bandra East,
Mumbai – 400 051 - Petitioners/Financial Creditors

Versus

M/s. Vikram Structures Private Limited
R/o. at No.22, 5th A Main Road,
Near Baptist Hospital,
Bengaluru – 560 024 - Respondent/Corporate Debtor



Date of Order: 29th November, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioners : Shri Abhishek Bagga
For the Respondent : Shri Abhijit Atur with Ms. Akhila M.S,
Shri Vikram Prabhakar, Managing Director

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P. (IB)No.246/BB/2019 is filed by M/s. India Asset Growth Fund & Anr. ('Petitioners/Financial Creditors'), U/s. 7 of the IBC, 2016, R/w Rule 4 of I&B (AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Vikram Structures Private Limited ('Respondent/Corporate Debtor') on the ground that it has committed default for an amount of Rs.31,81,30,887/- (Rupees Thirty One Crores Eighty One Lakhs Thirty Thousand Eight Hundred and Eighty Seven only) as on 31.12.2016 along with interest.
2. The case was listed for admission viz., 17.07.2019, 31.07.2019, 09.08.2019, 16.08.2019, 30.08.2019, 17.09.2019, 10.10.2019, 25.10.2019, 11.11.2019, 18.11.2019, 21.11.2019, 27.11.2019 and and on 29.11.2019. The case was adjourned on these dates at the requests of the parties, on one ground or the other including to settle the issue in question.
3. Heard Shri Abhishek Bagga, learned Counsel for the Petitioner and Shri Abhijit Atur, learned Counsel for the Respondent along with



Shri Vikram Prabhakar, Managing Director of the Corporate Debtor. We have carefully perused the pleadings of both the parties and extant provisions of the Code and Rules made there under.

4. Shri Abhishek Bagga, learned Counsel for the Petitioner submits that the parties have settled the outstanding amount claimed in the Company Petition for sum of Rs.20,00,00,000 along with applicable interest as a full and final settlement to the Petitioner/Financial Creditor, which shall be paid by the Corporate Debtor as per the following repayment schedule:

Sl. No.	Date	Settlement Amount (Rs.)	Interest Amount (Rs.)
1	Paid as on November 27 th 2019	88,00,000	-
2	On or before 30 th November 2019	50,00,000	-
3	On or before 31 st December 2019	3,62,00,000	30,04,706.85
4	On or before 31 st January 2020	5,00,00,000	24,20,547.95
5	On or before 28 th February 2020	5,00,00,000	14,57,534.25
6	On or before 24 th March 2020	5,00,00,000	6,50,684.93
	Total Amount	20,00,00,000	75,33,473.97

5. Both the Counsel have also placed the Joint Memo dated 27.11.2019, which inter-alia contents as follows:

(1) The parties have agreed that the Corporate Debtor will pay a lump-sum amount up to Rs.15,00,000/- (Rupees Fifteen Lakhs only) towards the legal expenses, Trustee Fees and other Miscellaneous expenses and the same shall be paid on or before March 24, 2020 to the Financial Creditor. This amount is not part of the Settlement Amount but has been agreed by the Parties over and above the mutually agreed revised repayment terms. And they have agreed that the



Corporate Debtor shall pay interest @ 19% p.a. payable monthly from December 1st 2019 at the end of each month on the balance outstanding amount payable by the Corporate Debtor as per this settlement terms.

- (2) The parties have also agreed that in the event the Corporate Debtor fails to make the installment amount that falls due on December 31, 2019 or January 31, 2020 the Financial Creditor shall issue a notice calling up the Corporate Debtor to pay the due amount within 15 days from the due date (First Notice). Further, if the Corporate Debtor fails to make payment as per the First Notice, the Financial Creditor will issue the second demand notice (Second Notice) immediately after the expiry of 15th day to the Corporate Debtor again calling upon the Corporate Debtor to pay the due amount within 15 days from the date of receipt of the Second Notice. In the event the Corporate Debtor fails to pay the amount due in spite of the Second Notice, the present settlement shall stand terminated, the parties shall be relegated to the same position and the whole outstanding amount as per the Debenture Trust Deed dated October 21st 2015 and other Transaction Documents shall become due and payable immediately along with all applicable interests and charges as they were prior to this settlement.
- (3) The parties agree that in the event the Corporate Debtor fails to make the installment amount that falls due on 28th February 2020 or on 24th March 2020, the Financial Creditor shall provide 7 days of grace period by issuing a demand notice for compliance and payment of the respective Settlement Amount as on 28th February 2020 or 24th March



2020 along with applicable interests and charges. The said payment shall be made on or before March 31, 2020. In the event the Corporate Debtor fails to pay the amount due in spite of the notice provided under this clause, the present settlement shall stand terminated, the parties shall be relegated to the same position and the whole outstanding amount as per the Debenture Trust Deed dated October 21st 2015 and other Transaction Documents shall become due and payable immediately along with all applicable interests and charges as they were prior to this settlement.

6. Therefore, the learned Counsel for the Petitioner urged the Adjudicating Authority to withdraw the instant Company Petition subject to comply with the terms and conditions as mentioned in the said Joint Memo Settlement Terms.
7. Shri Abhishek Bagga, learned Counsel for the Respondent submits that under the instruction from Shri Vikram Prabhakar, Managing Director of the Corporate Debtor and affirmed that the Joint Memo dated 27.11.2019 has been executed in accordance with law, and they are bound with the terms and conditions as mentioned in the said Joint Memo Settlement Terms and they will settle the issue as per the terms.
8. Since the Company Petition is not yet admitted by the Adjudicating Authority, and the parties themselves have settled the issue, we are inclined to permit the Petitioner to withdraw the instant Company Petition with a liberty to file fresh Company Petition in case the Corporate Debtor failed to comply with the terms and conditions of



the payment as mentioned in the said Joint Memo Settlement Terms dated 27.11.2019.

9. In view of the above facts and circumstances of the case, C.P.(IB)No.246/BB/2019 is hereby disposed of as withdrawn by directing the Corporate Debtor to strictly adhere to the terms and conditions as mentioned in the said Joint Settlement Terms dated 27.11.2019 without fail failing which the Petitioner is at liberty to file fresh Company Petition in accordance with law. No order as to costs.

**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

Shruthi