



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-110(ND)/2023

IN THE MATTER OF:

Covet Financial Services Private Limited

Plot Unit No. 15, Pkt-B,
Space No. S-2, S/F Sachdeva Arcade,
Mayur Vihar Phase-2
East Delhi-110091, Delhi

... Applicant

VERSUS

Frugal Developers Private Limited

Chander Mal Complex, Plot No-9
Office No-9, First Floor,
Dharamvir Market, Badarpur
New Delhi-110044

... Respondent

Section: 7 of IBC, 2016

Order Delivered on: 03.07.2023

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Palash S. Singhai

For the Respondent : Adv. Lavish Jain



ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

M/s. Covet Financial Services Private Limited (for brevity, the '**Applicant**') has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Frugal Developers Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely M/s Frugal Developers Private Limited is a Company incorporated on 17.08.2010 with CIN U65100DL2010 PTC207151 under the provisions of the Companies Act, 1956 having its registered office at Chander Mal Complex, Plot No-9, Office No-9, First Floor, Dharamvir Market, Badarpur, New Delhi-110044, which is situated within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.1,25,00,000/- and the Paid-up Share Capital of the company is Rs.1,19,87,500/- as per Master Data.

3. It is stated by the Applicant that it entered into a Loan Facility Agreement dated 01.03.2022 with the Respondent and accordingly, disbursed an amount of Rs.1,00,00,000/- to the Respondent, that was to be repaid with interest @8.50% per annum in terms of clause 4.2 of the said Loan Facility Agreement.



3.1 The Respondent, however, failed to adhere to the EMI due dates, and the Applicant was constrained to issue a default letter dated 17.06.2022 to the Respondent duly demanding repayment of the principal loan amount of Rs.1,00,00,000/- along with accrued interest @ 8.25% per annum. The Respondent vide letter dated 06.07.2022 requested two months' time to make complete payment along with the interest due. Though as per the request, the Applicant granted 2 months' time to the Respondent to make payment, the Respondent failed to make the payment as promised.

3.2. Being aggrieved by the continuous default by the Respondent, the Applicant again sent a demand notice dated 30.09.2022 to the Respondent. However, the respondent chose not to reply to the same and paid no heed to the applicant's notices. Resultantly, the Applicant sent a Loan Recall Notice dated 16.01.2023, which was duly received by the Applicant vide speed post on 23.01.2023. In terms of the Loan Recall Notice, the Applicant called upon the Respondent to repay the outstanding loan of Rs.1,00,00,000/- along with the interest at the rate of 8.50% within 10 days from the receipt of the notice. However, the Respondent failed to repay the debt which became due and payable on the receipt of the demand notice as per the time period envisaged therein i.e., 01.02.2023, and committed a default in terms of the provisions of IBC. Hence the instant Application.



3.3. The particulars of the total amount of unpaid financial debt and the date of default are mentioned in Part IV of the application, which is reproduced below:

PART-IV

PARTICULARS OF FINANCIAL DEBT						
1.	Total amount of debt granted	Rs. 1,00,00,000/- (Rupees One Crores only)				
	Date(s) of disbursement	<p>A total amount of Rs. 1,00,00,000/- (Rupees One Crores Only) disbursed by the Applicant/ Financial Creditor to the Respondent/ Corporate Debtor as a Short term loan facility, with an agreed repayment within 24 months from the date of the last disbursed tranche, along with monthly interest payable @ 8.25 % per annum. The disbursement of the said loan is as under:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; text-align: center;">02.03.2022</td> <td style="text-align: right;">Rs. 50,00,000/- (Rupees Fifty Lakhs only) RTGS No: UTIBR52022030300480056/H</td> </tr> <tr> <td style="text-align: center;">04.03.2022</td> <td style="text-align: right;">Rs. 50,00,000/- (Rupees Fifty Lakhs only)</td> </tr> </table>	02.03.2022	Rs. 50,00,000/- (Rupees Fifty Lakhs only) RTGS No: UTIBR52022030300480056/H	04.03.2022	Rs. 50,00,000/- (Rupees Fifty Lakhs only)
02.03.2022	Rs. 50,00,000/- (Rupees Fifty Lakhs only) RTGS No: UTIBR52022030300480056/H					
04.03.2022	Rs. 50,00,000/- (Rupees Fifty Lakhs only)					
		<p>In or around Feb 2022, the Corporate Debtor approached the Applicant/ Financial Creditor and sought to avail a temporary unsecured loan of Rs. 1,70,00,000/- (Rupees One Crore Seventy Lakhs only) on account of business expansion and carry on its business in the market. The Corporate Debtor cited its future strategy and requested the Applicant to disburse the said loan at an agreed interest rate of 8.25% per annum, and further assured the Applicant/ Financial Creditor that the said loan amount will be repaid within</p>				



		<p>24 months. Believing the assurances and representations made by the Corporate Debtor to be true, the Applicant/ Financial Creditor <i>bona-fidely</i> entered into the Loan Facility Agreement dated 01.03.2022 with the Corporate Debtor for the disbursal of Loan and the said Agreement contains all the conditions attached with the disbursal of Loan to the Corporate Debtor. The Applicant thereafter disbursed the loan amount pursuant to the execution of Agreement to the Corporate Debtor on various dates as mentioned above. (A copy of the Loan Facility Agreement is annexed herewith and marked as <u>ANNEXURE A-8.</u></p> <p>As per 3.4, of the Loan Facility Agreement, the Corporate Debtor agreed that the entire loan disbursed shall be payable on or before expiry of 24 months from the date of disbursal of loan amount which is 04.02.2024.</p> <p>The Applicant disbursed the amount , of Rs.1,00,00,000/- to the Corporate Debtor upon the execution of the MoU and the Corporate Debtor became liable for the payment of interest @8.25% per annum in terms of the clause 4.2 of the Loan Facility Agreement.</p>
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	<p>Aggrieved by the violation of the agreed and settled terms of repayment, the Applicant herein was constrained to issue a default letter dated 17.06.2022 to the Corporate Debtor duly demanding repayment of the principal loan amount of Rs. 1,00,00,000/- (Rupees One Crores Only) along with accrued interest @ 8.25% per annum amounting to Rs. 5,02,416.82 (Rupees Five Lakh Two Four Hundred Sixteen and Eighty Two Paise Only) as on 17.06.2022. A Copy of the Demand Letter dated 17.06.2022 is annexed herewith and marked as <u>ANNEXURE A-9</u>.</p> <p>The respondent/ corporate debtor vide his letter dated 06.07.2022 sought two months time to make complete payment along with the interest on account of financial crisis going on in their company. A Copy of letter dated 06.07.2022 issued by respondent is annexed herewith and marked as Annexure-A-10</p> <p>That looking into request made by the respondent, applicant allowed two months time to respondent to make complete payment as per the demand raised, however, to the utter disappointment of applicant, respondent failed to make the payment or single even instalment as promised by them. The applicant again sent a demand notice dated 30.09.2022 to the respondent on account of consequent default from the</p>
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		<p>date of first instalment till date. However, respondent chose not to reply the same and paid no heed to the applicant's notices issued to them. A Copy of letter dated 30.09.2022 is annexed herewith and marked as Annexure-A-11</p> <p>It is imperative to say that applicant waited long enough to get their dues back, however it went into vain. Resultantly the Applicant sent a Loan Recall Notice dated 16.01.2023 which was duly received by the Applicant vide speed post on 23.01.2023. In terms of the Loan Recall Notice, the Applicant called upon the Corporate Debtor to repay the outstanding loan of Rs. 1,00,00,000/- alongwith the interest at the rate of 8.25% within 10 days from the receipt of the notice. However, the Corporate Debtor failed to repay the debt which became due and payable by the receipt of the demand notice as per the time period envisaged therein i.e., 01.02.2023 and committed a default in terms of the provisions of IBC. A copy of loan recall notice dated 16.01.2023 alongwith proof of service to Corporate Debtor are annexed herewith and marked as ANNEXURE A-12</p> <p>Thus, the aforesaid default in repayment of the due and payable financial debt continues till date.</p>
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2.	Amount claimed to be in default Date on which the default occurred	Total: INR 1,07,00,738.90 (Rupees One Crore Seven Lakh Seven Hundred Thirty Eight and Ninety Paise Only) including principal amount of Rs. 1,00,00,000/- (Rupees One Crores only) along with unpaid accumulated interest @8.25% Per Annum along with penal interest @2% per annum as on 16.01.2023 and Miscellaneous Expenses. Date of default: 02.05.2022 A tabular computation of amount in default is annexed herewith and marked as <u>ANNEXURE A-13.</u>
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3.4. Thus, as per Part IV of the Application, the Applicant has claimed an amount of Rs.1,07,00,738.90/- (including principal amount of Rs.1,00,00,000/- along with unpaid accumulated interest @ 8.25% Per Annum along with penal interest @ 2% per annum as on 16.01.2023). Further, the Applicant has relied on 02.05.2022 as the date of default.

3.5. The Applicant has relied upon the following documents to prove the existence of financial debt:

- i) A copy of the Loan Facility Agreement dated 01.03.2022.
- ii) A Copy of the Demand Letter dated 17.06.2022.
- iii) A Copy of the letter dated 06.07.2022 issued by the respondent.
- iv) A Copy of the letter dated 30.09.2022 issued by the Applicant.
- v) A copy of the loan recall notice dated 16.01.2023 along with proof of service to Respondent.



- vi) copy of Statement of Bank Account of the Applicant bearing No. 10073898888 maintained with IDFC Bank for the period from 01.03.2022 TO 31.01.2023.
- vii) Copy of ledger account maintained by the Applicant of the Respondent.

3.6. Based on the aforesaid facts and documents, the Applicant has prayed for the initiation of the CIR process against the Respondent.

4. On issuance of the notice, the Respondent has filed its reply and admitted the default. The relevant averments made in the reply are reproduced below:

“8. *That in the instant case, on account expiry of due date of instalment, the answering respondent had requested the applicant to disburse remaining Rs.50,00,000/- to meet the financial requirements as per the agreement. But the applicant being disregarded such request, answering respondent sought an extension of two months for repayment of due instalments **but admittedly had committed a default in repaying the outstanding debt of the Financial Creditor on account of internal financial distress happened to respondent company due to Covid-19 pandemic.***

9. *That the answering respondent has been in a business since a very long time and it is vouched here that none of its business loans were ever in default and have always paid against the outstanding dues on time and as well as willing to repay the present debt owed towards applicant within a duration of one year.*

10. *That is submitted by looking into the present circumstances of business, the Corporate Debtor herein is*



seeking some further extension of time to repay the remaining outstanding dues as claimed by the applicant.”

5. The arguments of both parties were heard on 24.05.2023. After hearing the submissions of parties and perusing the documents placed on record, this Bench observes that there is sufficient material on record to establish the financial debt. Further, the Respondent has admitted in its reply the default in repaying the outstanding debt of the Financial Creditor on account of internal financial distress due to the Covid-19 pandemic.

6. Further, in compliance with the order dated 24.05.2023, the Applicant/Financial Creditor has filed an Additional Affidavit dated 27.05.2023 stating “.....*that the facility agreement was executed in terms of the policy and guidelines of the Reserve Bank of India at arms-length basis. The Corporate Debtor has no relation to the Financial Creditor and the loan was disbursed during the ordinary course of business. The Financial Creditor has no conflict of interest in the instant matter and the Application has been filed in view of the provisions of the IBC.*”

7. In the given facts and circumstances, the present petition being complete and the Financial Creditor having established the default on the part of the Respondent, in payment of its financial debt, the amount of which being above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, a moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a),



(b), (c) & (d), the following prohibitions are imposed, which must be followed by all -

- “(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.”

8. As proposed by the Financial Creditor, this Bench appoints Mr. Anil Kumar Singhal as IRP having Registration No. IBBI/IPA-001/IPP00468/2017-2018/10811, Email id: anilsinghalca@gmail.com subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority further orders that:

“Mr. Anil Kumar Singhal, E-mail id: anilsinghalca@gmail.com as IRP having Registration No. IBBI/IPA-001/IPP00468/2017-2018/10811 is directed to take charge of the CIRP of the



Respondent with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

9. The Applicant is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will 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.

10. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Applicant/Financial Creditor, the Respondent, and the IRP mentioned above.

11. A copy of the Order shall also be forwarded by the Registry/Court Officer to the IBBI for their record.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)