

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 70/Chd/HP/2019

**Under Section 7 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Mr. Vinay Yadav

Through authorized representative
Mr. Anshu Arora,
Aged 30 years, S/o Rohtash Yadav
Residing at:
R/o 38A, Mianwali Colony,
Gurgaon, Haryana-122001.

....Applicant-Financial Creditor

Versus

M/s Jindal Buildtech Private Ltd.

having its registered office at
Village, Kishanpura, Baddinalagarh Road,
Baddi Distt. Solan, Himachal Pradesh

...Respondent-Corporate Debtor

Judgement delivered on: 26.03.2021

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

For the Financial Creditor: Mr. Himanshu Yadav, Advocate

For the respondent : Mr. Prateek Rathee, Advocate.

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The present petition is filed, under the Section 17 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC' / 'Code') read

with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by Mr. Vinay Yadav through Authorized Representative Mr. Anshu Arora who is duly authorized vide Letter of Authority (Annexure-A) with a prayer to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s Jindal Buildtech Private Ltd. (**hereinafter referred to as 'Corporate Debtor'**). The Corporate Debtor namely, M/s Jindal Buildtech Private Limited is a Company incorporated on 10.06.2005 under the provisions of Companies Act, 1956 with CIN No. U45201HP2005PTC028534 having its registered office at Village, Kishanpura, Baddinalagarh Road, Baddi Distt. Solan, Himachal Pradesh which falls within the State of Himachal Pradesh. Hence, the jurisdiction lies with this Adjudicating Authority.

2. The Authorized Share Capital of the Respondent Company is ₹2,00,00,000 and Paid-Up Share Capital of the Company is ₹1,48,00,100 as per Form 1.

3. It is stated in Part-IV of Form No.1 that the corporate debtor has been granted a total debt of ₹97,00,000/- which was disbursed on 08.12.2015 and 14.12.2015. The total amount claimed to be in default is ₹87,50,000/- as on 05.12.2016 and 21.11.2016. Computation of amount of default in tabular form is attached as Annexure-B (Page No.22).

4. It is stated in Part-V of Form No.1 that two cheques, bearing No.000221 dated 01.09.2016 amounting to ₹57,00,000/- and bearing No.000222 dated 01.09.2016 amounting to ₹30,50,000/- for loan repayment had bounced. Copies of cheque are attached as Annexure-C (Colly) (Page Nos. 23, 23A, 24 and 24A) of the petition. It is submitted that the financial

creditor has transferred a sum of ₹97,00,000/- through his personal account as well as from the account of Sole Proprietorship firm i.e. M/s Ultracon International. An amount of ₹9.50,000/- has been returned by the corporate debtor and therefore, the corporate debtor issued the aforesaid cheques for repayment of loan amount. It is also mentioned that the Financial Creditor has deposited the aforesaid cheques with his banker and the same were returned unpaid due to "Insufficient Funds" as mentioned in the Return Cheque Memo. The Return Cheque Memos dated 05.12.2016, 21.11.2016 and 30.11.2016 are attached as Annexures-D, E & F, respectively of the petition.

5. It is further submitted that the financial creditor has issued Legal Notice dated 19.10.2018 (Annexure-G) demanding full and final payment of debt within 7 days. The aforesaid notice was duly served on the corporate debtor and copy of postal receipts and tracking report are appended as Annexure-H (Colly) of the petition. Bank Statement of the financial creditor is attached as Annexure-I (Colly) of the petition.

6. In Part-III of Form No.1, Vikas Garg, Registration No.IBBI/IPA-002/IP-N00189/2017-18/10506 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 20.11.2018 submitted by the proposed IRP is found at Page Nos.17-21 of the petition.

7. The corporate debtor has filed reply vide Diary No.4354 dated 27.08.2019 in which the corporate debtor has submitted that due to financial distress faced by the company, corporate debtor could not repay the pending amount. It is also submitted that proceedings under Section 138 of the Negotiable Instruments Act are pending for adjudication before the trial court.

8. Rejoinder was filed vide Diary No.606 dated 22.01.2020 wherein the contents of the application have been reiterated and it is submitted that it is a fit case that the present application be allowed in the interest of justice.

9. We have heard the learned counsels for the petitioner & the corporate debtor and have also perused the record carefully.

10. Section 7(5)(a) of the Code is as follows:-

“5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

11. In the present case, the concurrence of default is evidenced by the details furnished by the petitioner including cheque bearing No.000221 dated 01.09.2016 amounting to ₹57,00,000 and cheque bearing No.000222 dated 01.09.2016 amounting to ₹30,50,000 [Annexure-C (Colly)]. It can be seen that aforesaid cheques were dishonoured due to “Insufficient Balance” as evident from cheque Return Memo dated 05.12.2016, 21.11.2016 and 30.11.2016 attached as Annexures D, E & F respectively. The financial creditor has also issued a Legal notice dated 19.10.2018 (Annexure-G) through its counsel demanding full payment of pending amount. Original postal receipts and tracking report showing the delivery of Legal notice dated 19.10.2018 are found at Annexure-H (Page Nos.31-36). The petitioner has attached bank statements showing an amount of ₹57,00,000/- transferred to the corporate debtor from the account of his Sole Proprietorship Firm i.e. M/s Ultracon International and ₹40,00,000/- from his own account as Annexure-I (colly). It is evident from the contents of the petition that the corporate debtor has defaulted in the repayment of amount to the financial creditor.

12. The application filed in the prescribed Form No.1 is found to be complete.

13. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 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;
- (d) 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) It is further directed that 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.
- (f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) The order of moratorium shall have effect from the date of this order till 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.”

14. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vikas Garg and there is nothing adverse against him. In view of the above, we appoint Mr. Vikas Garg, Registration No.IBBI/IPA-002/IP-N00189/2017-18/10506, House No.2045, First Floor, Sector 15-C, Chandigarh-160015, Email: vgargcs@rediffmail.com, M: 94173-50437 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the

financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-

(Raghu Nayyar)
Member (Technical)

(Ajay Kumar Vatsavayi)
Member (Judicial)

March 26, 2021
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