

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-VI, NEW DELHI BENCH
COMPANY PETITION IB (IBC) NO. 621/ND/2023**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/S SADHANA CITY HOMES PRIVATE LIMITED
Through its Director and Authorised Representative
2/268, Vishawas Khand,
Gomti Nagar, Lucknow-226010

...Applicant/Financial Creditor

Versus

M/S UPAL BUILDTECH PRIVATE LIMITED
Office No. 303, 3rd Floor, Balaji Chamber,
D-246/10, Street No. 10,
Laxmi Nagar, New Delhi- 110092

...Respondent/Corporate Debtor

Order Delivered on: 08.07.2025

CORAM:

JUSTICE JYOTSNA SHARMA
HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH
HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Mr. Yashraj Singh, Adv.

For the Respondent: Mr. Pankaj Agarwal, Mr. Shashwat Srivastava, Advs.

ORDER

1. This is a Company Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **M/s Sadhana City Homes Private Limited** through its Authorized Representative, Mr. Ajayraj Agarwal (hereinafter referred to as ‘Financial Creditor’), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **M/s UPAL Buildtech Private Limited** (“Corporate Debtor”).
2. The Corporate Debtor was incorporated on 13.03.2008, having CIN: U45400DL2008PTC175323 under the Companies Act, 1956. Its registered office is at Office No. 303, 3rd Floor, Balaji Chamber, D-246/10 Street No. 10, Laxmi Nagar New Delhi-110092. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present application was filed on 17.09.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 1,93,65,176.47/- (Rupees One Crore Ninety-Three Lakhs Sixty-Five Thousand One Hundred Seventy-Six and Forty-Seven Paise). The alleged date of default is stated as 02.08.2023. The Financial Creditor has also filed the NeSL certificate which reflects that the Principal Borrower has defaulted in the payment of Rs. 1,89,20,000/- owed to the Financial Creditor in respect of which the Corporate Debtor herein has also stood as a guarantor.
4. In the present case, the Respondent is a Corporate Guarantor to the Principal Borrower i.e. M/s Vayuputra City Homes Private Limited, and the instant case has been filed against the Corporate Guarantor for standing as guarantor in respect of the loan facilities availed by the Principal Borrower. A petition bearing C.P. (IB) 66/(ALD)/2023 was filed by M/s Sadhana City Homes Private Limited against M/s Vayuputra Constructions Private Limited (the Principal Borrower) for initiation of CIRP and vide order dated 04.12.2024 the co-ordinate bench of this Adjudicating Authority had initiated CIRP against the Principal Borrower i.e. M/s Vayuputra Constructions Private Limited.

Submissions of the Financial Creditor: -

5. The details of transactions leading to the filing of this petition as averred by the Financial Creditor are as follows:
- a) The Financial Creditor is engaged in the business of development of Commercial and Residential real estates and the Corporate Debtor is engaged in the business of Building interiors, furnishing, fitting & fixtures, completion which includes activities that contribute to the completion or finishing of constructions.
 - b) The Corporate Debtor herein is a Corporate Guarantor to the facilities availed by M/s Vayuputra Constructions Private Limited, the Principal Borrower from the Applicant.
 - c) The Principal Borrower approached the Financial Creditor in the year 2016 for financial assistance in the form of loan for its working capital needs and requirements and pertaining to the relations with the promoters and members of the Principal Borrower. The Financial Creditor agreed to advance loan facility to the Principal Borrower.
 - d) The shareholders of the Financial Creditor passed a special resolution in the meeting convened on 16.09.2016 to provide an inter-corporate loan to the Principal Borrower. The Loan Agreement dated 01.05.2017 was entered into between the Financial Creditor and the Principal Borrower and the said loan facility was advanced for a period of 36 months from the date of signing of the Loan Agreement. Accordingly, the Financial Creditor issued payments of Rs. 1,10,00,000/- through RTGS via Axis Bank, Sector 44, Noida, Uttar Pradesh Branch in the favour of Principal Borrower.
 - e) As per the terms of the Loan Agreement, the loan shall carry an interest at the rate of 2% p.m. to be compounded on yearly basis in the end of every financial year and in the event of default by the Corporate Debtor, the Principal Borrower was also liable to additionally pay a penal interest over and above the agreed interest, at the rate of 1% p.m. to the Financial Creditor.
 - f) Due to outbreak of COVID- 19 pandemic, the Principal Borrower failed to repay the loan amount within the stipulated period. Therefore, on 20.05.2020, the Financial Creditor and Principal Borrower executed Memorandum of

Understanding (MOU) cum Loan Amendment agreement, whereby, the Financial Creditor extended the loan facility for a period of 2 years.

- g) As per the terms of MOU, the entire Loan Amount along-with already accrued interest thereon i.e. a sum of Rs. 1,89,20,000/- (Rupees One Crore Eighty-Nine Lakhs Twenty Thousand) was mutually agreed to be considered as Principle Amount.
- h) The Principal Borrower executed an unconditional and irrevocable Corporate Guarantee from one of its group namely- M/s UPAL Buildtech Private Limited, the Corporate Debtor herein, in favour of the Financial Creditor. Accordingly, an independent and distinct Corporate Guarantee Agreement was signed in between the Corporate Debtor and Financial Creditor on 25.05.2020.
- i) The Financial Creditor had sent Invocation Letter dated 02.08.2023 to the Corporate Debtor and Principal Borrower, thereby, calling upon the Corporate Debtor to pay the payment of the outstanding amount along with interest thereon.
- j) The Applicant submits that both the Corporate Debtor and the Principal Borrower have failed to repay the debts of the Financial Creditor as per the terms of the MOU cum Loan Amendment Agreement. Hence, the instant application has been filed.

6. Submissions of the Corporate Debtor:

- a) That in the Financial Year 2017-18, the Principal Borrower admittedly took financial assistance cum loan for Rs. 1,10,00,000/- in the form of Inter-Corporate deposit from the Financial Creditor in respect of which the Corporate Debtor provided an unconditional Corporate Guarantee to the Financial Creditor on 20.05.2020.
- b) That the Principal Borrower has faced multiple losses and since the Corporate Debtor and Principal Borrower are associate companies, therefore, the business of the Corporate Debtor had also been impacted from such losses. Further, both the Principal Borrower and Corporate Debtor are making efforts to revive their business operations in order to pay off all of its debts.

- c) That both the Principal Borrower and Corporate Debtor are having bonafide intent to repay the dues of the Financial Creditor within the earliest possible time span and the initiation of CIR Process against the Corporate Debtor would result in corporate death of the company.
- d) Admittedly, there is a default on part of the Principal Borrower and the Corporate Debtor herein is merely a corporate guarantor, however, to prove its bonafide intent, the Corporate Debtor ensures to pay the debt amount of the Financial Creditor within a period of 24 months from the date of dismissal of this Petition.

Analysis and Findings

We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and written submissions.

- 7. The Respondent is a Corporate Guarantor to the Principal Borrower i.e. M/s Vayuputra Constructions Private Limited. We note the submissions of the Financial Creditor that a petition under Section 7 of the Code was filed by M/s Sadhana City Homes Private Limited for initiation of CIRP against M/s Vayuputra Constructions Private Limited and vide order dated 04.12.2024, the Co-ordinate bench of this Adjudicating Authority had initiated CIRP against the Principal Borrower i.e. M/s Vayuputra Constructions Private Limited.
- 8. In the present case, on the perusal of records, it emerges that the Principal Borrower (M/s Vayuputra Constructions Private Limited) took a loan in the form of Inter-Corporate Deposit for an amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lacs) from the Financial Creditor and a Loan Agreement dated 01.05.2017 was entered into between the Financial Creditor and the Principal Borrower. Further, the Financial Creditor and the Principal Borrower executed a Memorandum of Understanding (MOU) cum Loan Amendment Agreement dated 20.05.2020 in terms of which the entire Loan Amount along-with already accrued interest thereon i.e. a sum of Rs. 1,89,20,000/- (Rupees One Crore Eighty-Nine Lacs Twenty Thousand) was mutually agreed to be considered as Principle Amount.

9. It is further noted that vide Deed of Guarantee dated 25.05.2020, the Corporate Debtor admittedly provided unconditional and irrevocable guarantee in favour of the Financial Creditor to secure the repayment of the outstanding amounts and discharge of the secured obligations and performances of the Principal Borrower. The aforesaid guarantee was invoked by the Financial Creditor in terms of clause 25 of the Deed of Guarantee by issuance of Invocation Notice dated 02.08.2023 to the Corporate Debtor. Additionally, the Corporate Debtor in its submissions has also admitted the facts regarding rendering of loan facility by the Financial Creditor and providing of corporate guarantee by the Corporate Debtor in respect of the same. Therefore, there is no dispute as to the existence of 'Financial Debt' and Guarantee given by the Corporate Debtor in respect of such debt.
10. It is noted that the Principal Borrower has been admitted into CIRP by Order dated 04.12.2024 passed by co-ordinate bench of this Adjudicating Authority. The Corporate Debtor in its submissions has admitted the fact that there is a default in repayment of debt on part of the Principal Borrower. We rely upon the decision of the Hon'ble Supreme Court of India in **BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. (2025) 1 SCC 456**, whereby, the Hon'ble Supreme Court held as below:

"28. Hence, we summarize some of our conclusions as under:

a.

b.

c. The financial creditor can always file separate applications under Section 7 of the IBC against the corporate debtor and the corporate guarantor. The applications can be filed simultaneously as well;"

Therefore, in view of the aforesaid judicial decision, we are of the view that once the default in repayment of the Financial Debt has been established, the Financial Creditor is at liberty to file separate applications against the Principal Borrower and the Corporate Guarantor.

11. It is a settled law that once debt and default has been established, the Financial Creditor can file an application for initiation of CIRP against the Corporate Debtor under Section 7 of the Code. Further, while adjudicating a Section 7 application, the Adjudicating Authority has to satisfy itself regarding the existence of 'Debt' and 'Default'. In the instant case, as discussed in para 9 & 10, the twin conditions of Section 7 i.e. 'Debt' and 'Default' are established.

12. The Hon'ble Supreme Court in the judgement of "**Innoventive Industries Limited v. ICICI Bank and Another**" (2018) 1 SCC 407 has held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the Application under Section 7 of I & B Code, 2016. The relevant extract of the said judgment is reproduced hereunder as:

*"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, **the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.** It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

13. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time.

14. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/621 (ND) 2023** filed by M/s Sadhana City Homes Private Limited, the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s UPAL Buildtech Private Limited, the Corporate Debtor, stands **admitted** and CIRP of M/s UPAL Buildtech Private Limited is initiated.

15. The Financial Creditor has proposed the name of Mr. Shivanand Chaudhary having IBBI Registration Number IBBI/IPA-001/IP-P-02661/2021-22/14049 to act as the Interim Resolution Professional. Therefore, Mr. Shivanand Chaudhary having IBBI Registration Number IBBI/IPA-001/IP-P-02661/2021-22/14049 and E-mail Id cashivanand12@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that the IRP has a valid AFA.

16. In terms of Section 14 of the Code, the moratorium is declared. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (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) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right*

during the moratorium period.

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
18. In pursuance of Section 13 (2) of the Code, the public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
19. The applicant Financial Creditor shall deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Shivanand Chaudhary to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
20. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
21. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every

assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

22. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
23. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
24. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **C.P. I.B. /621 (ND)/2023 stands admitted.**
25. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-
(JYOTSNA SHARMA)
MEMBER (JUDICIAL)