

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

Company Petition (IB)No.353/ALD/2018

(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016)

IN THE MATTER OF:

INDIABULLS HOUSING FINANCE LTD.

.....Applicant/Financial Creditor

VERSUS

V.A.M RESORTS AND HOTELS PRIVATE LIMITED

.....Respondent/Corporate Debtor

ORDER RESERVED ON:26.09.2019

ORDER DELIVERED ON : 24.10.2019

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

For the Applicant/ Operational Creditor: Sh. Nishant Mehrotra, Advocate

For the Respondent/ Corporate Debtor: Sh. Prashant Kumar with
Sh. Sarvesh Tiwari, Advocate

AS PER: Mr. Abni Ranjan Kumar Sinha, Member , Judicial.

Order

1. The present petition is filed under Section 7 of Insolvency and Bankruptcy Code,2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the petitioner/financial creditor *i.e. Indiabulls Housing Finance Ltd.* for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate debtor company *M/s V.A.M Resorts And Hotels Private Limited.*

2. The Applicant "*Indiabulls Housing Finance Limited*" is a company incorporated under the Companies Act,1956; Incorporated on 10.05.2005;(Having its Registered Office at, M-62 & 63; CIN

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L65922DL2005PLC136029). **Mr. Dinesh Chandra Pandey**, Chief Manager, has been authorised to file this application on behalf of Financial Creditor. *(The Board Resolution dated 10.01.2018 is annexed A-1 of the application).*

3. The Respondent **M/s V.A.M Resorts and Hotels Private Limited.**, incorporated on 16/08/1999 *(Having its Registered Office at, OPPOSITE Appex College, VedVyasPuri, Meerut-Dehradun By Pass Road, Meerut; CIN U55101UP1998PTC024082)*. The authorised share capital of respondent is Rs. 3,00,00,000/- (Rupee Three Crores Only) and Paid-Up share Capital is Rs. 35,16,800 (Rupees Thirty-Five Lakhs Sixteen Thousand Eight Hundred Only).

4. Brief facts related to petition are as follows:

- i.* The learned counsel for the applicant submitted that the Indiabulls Housing Finance Limited granted a loan in favour of V.A.M Resorts and Hotels Private Limited on the terms and conditions stated in the loan Agreement and the total amount of loan granted was Rs. 5,96,99,885/- (Rupees Five Crores Ninety Nine Thousand eight Hundred Eighty Five).
- ii.* Further stated that the security documents executed to secure the loan facility were (a). Declaration and acknowledgment; (b) Memorandum of Entry ;(c) Charge Form registered in ROC. Further stated that the corporate debtor was irregular and committed a breach in making payment towards the EMI with respect to the loan facility, so, the said loan was declared as NPA by the financial creditor.

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- iii. Further stated that the recall Notice was issued by the Financial Creditor to the Corporate Debtor dated 05.12.2016 under Section 13(2) of SARFAESI and submitted that the total sum, which was in default is Rs. 7,44,91,494 (Rupees Seven Crores Forty-Four Lakhs Ninety-One Thousand Four Hundred Ninety-Four Hundred Only) and the date of default is on 11.11.2016.
- iv. In the reply filed by the Corporate Debtor , it is stated that the petition is not maintainable against the respondent as the alleged loan has been taken by the M/s Sarvhit Trust being the borrower and the amount has been disbursed by the financial creditor in the account of the M/s Sravhit Trust and the corporate debtor being the owner of the property has only executed the loan documents with the financial creditor and not a single penny has been utilized by the Corporate Debtor against the amount disbursed by the financial creditor.
- v. Further stated that as per Sec 13 (2) notice ,the account was declared NPA on 11.11.2016 but as per the records of the financial creditor, the account of the Corporate Debtor defaulted on the loan account on 13.12.2016.
- vi. Further stated that the financial creditor has also filed case before Learned J.M (Ist class) at district court Gurugram under Section 138 of NI Act, against one of the co-director of the Corporate Debtor, which has concealed the same before this Hon'ble Tribunal and also submitted that the applicant company is always interested in settling the dues of the financial institution and it was agreed between the parties that the financial Institution shall sell the properties mortgaged in the loan account as per the provision of

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properties mortgaged in the loan account as per the provision of SARFAESI Act, 2002 and shall settle the dues and after settlement of the dues the remaining amount shall be return to the applicant.

- vii.* In reply to the objections raised by the corporate debtor, the learned Counsel for the applicant submitted that as per the request of the corporate Debtor i.e V.A.M Resorts & Hotels Pvt. Ltd along with co-borrower's M/s Sarvhit Trust and Emm Vee Infrastructures (India) Pvt. Ltd., an amount of Rs. 5,96,99,885/- was sanctioned on 30 November,2015 to corporate Debtor by financial creditor and the loan agreement was signed by the corporate Debtor along with Sarvhit Trust and Emm Vee Infrastructures (India) Pvt. Ltd. and the corporate Debtor has also executed documents which shows that Sarvhit Trust and Emm Vee Infrastructures (India) Pvt. Ltd. are co borrowers. So, the liability of existence of financial debt and its repayment cannot be denied by the corporate debtor and the corporate debtor has a proven undisputed debt to be repaid to financial creditor amounting to Rs. 7,44.91,494/- as on 17-09-2018.
- viii.* Further stated that the corporate Debtor has kept clear and transparent accounts and consequently his account was declared NPA on 11.11. 2016. Accordingly, mentioned in recall notice dated 05-12-2016 as to pay the outstanding loan amount of Rs. 5,97,10,307 as on 11.11.2016 along with future interest @ 15% from 12-11-2016 till date of payment so there is no relevancy about the computation. It is also submitted that the corporate Debtor sent a representation dated 05-02-2017 accepting the debt and stating that in absence of documents they were unable to

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calculate the correct liability. Further stated Section 138 of NI Act relates to dishonouring of cheques of Corporate Debtor, and corporate Debtor is free to contest proceedings before competent court and corporate debtor has failed to show any scheme of repayment to Financial creditor or to this tribunal.

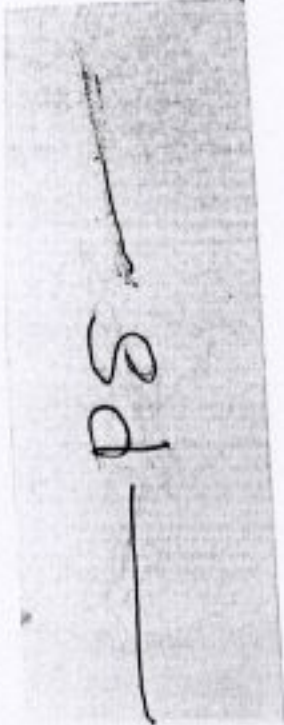
5. The Learned Counsel for the Financial Creditor submitted that in order to prove the Existence of the Financial Debt; they have annexed following documents:

- i.* The Copy of loan Sanction Letter dated 30.11.2015 is annexed as *Annexure A-5 of the Application.*
- ii.* The computation relating to all the default amounts and days of default is annexed as *Annexure A-6 of the Application.*
- iii.* The copy of the declaration and acknowledgement vide board resolution dated 30.11.2015 is annexed *as Annexure A-7 of the Application* and the memorandum of entry recording deposit of title deeds executed on 03.12.2015 is annexed *as Annexure A-8 of the Application.*
- iv.* The copy of the record of default available with the credit information company CIBIL is annexed *as Annexure A-10 of the Application.*
- v.* The copies of entries in the statements of Accounts and foreclosure of the loan facilities of the Corporate Debtor is annexed as *Annexure A-11 of the Application.*
- vi.* The Copy of the Legal Notices dated 05.12.2016 sent to the Corporate Debtor for recalling loan facilities sanctioned to

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the Corporate Debtor is annexed as *Annexure A-11 of the Application.*

6. I have gone through the contents of the petition , the counter affidavits filed by the respondent and reply to the counter affidavit filed by the petitioner and documents annexed there of.
7. The learned counsel for the respondent at Para 3 of the written submission stated that the alleged borrower of the financial creditor is 'being the trust is governed by the provisions prescribed under Indian Trust Act, 1882 and Charitable Endowments Act,1890 and he does not fall under the ambit of Insolvency Code,2016 and in reply to that the learned counsel for the petitioner stated that as per the request of the corporate Debtor i.e V.A.M Resorts & Hotels Pvt. Ltd along with co-borrower's M/s Sarvhit Trust and others an amount of Rs. 5,96,99,885/- was sanctioned on 30 November,2015 to them by financial creditor India Bulls Housing Finance Ltd for business needs and the loan agreement dated 30 november,2015 was signed by the corporate Debtor VAM Resorts & Hotel Pvt Ltd. along with others and accordingly liability of existence of Financial Debt and its repayment cannot be denied by Corporate Debtor.
8. In light of the submissions made on behalf of the parties, when I have gone through the documents enclosed with the application then this Adjudicating Authority finds that the loan agreement was executed jointly by Sarvhit Trust and VAM Resorts & Hotels Pvt. Ltd.and Emm Vee Infrastructures (India) Pvt. Ltd. who is the corporate Debtor



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before this Adjudicating Authority and nowhere in the agreement, it is mentioned that the loan was not granted to the Corporate Debtor and was given to the trust and Emm Vee Infrastructures (India) Pvt. Ltd. . So, on the basis of the above documents, it can be safely said that there is no force, in the contention raised on behalf of the Corporate Debtor that the loan was not granted to him rather granted to Sarvhit Trust and Emm Vee Infrastructures (India) Pvt. Ltd.

9. Now, coming to the maintainability of the application filed by the applicant, I find that the Corporate Debtor has raised the question of maintainability on the ground referred in the counter affidavit. I have carefully examined the ground mentioned in the counter affidavit along with the provisions contained Under Section 7 of IB Code. The relevant provision of Section 7 (1), (2), (3) is as quoted below:

Section 7: Initiation of corporate insolvency resolution process by financial creditor:

(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation. —For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

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10. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

- a. Whether there is duly established financial debt.
- b. Whether there is default in payment by the corporate debtor.
- c. Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.

11. At this juncture, I would like to refer certain decisions:

The Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank*, (2017)205 Comp Cas 57(SC) held :

“The scheme of Sec 7 stands in contrast with the scheme under Sec 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in sec 8(1) of the Code. Under Sec 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in Sub Section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing –i.e., before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor goes out of the clutches of the Court.

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 further debt.

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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 further debt. It is only when this is prove to the satisfaction of the adjudicating authority may reject an application and not otherwise”.

12. In the case of Ajay Agarwal vs. Central Bank of India (2018) 208 Comp Cas 402 (NCLAT) Hon'ble NCLAT held:

“When in case a “Corporate Debtor” commits a default of 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. Other considerations, such as the existence a dispute or discrepancy are irrelevant, so long it has not been disputed the same debt is due and is payable to the financial creditor and the corporate debtor has defaulted.”

11. Recently in the matter of Karan Goel v. M/s Pashupati Jewellers & Anr. Company Appeal (AT) (Insolvency) No. 1021 of 2019 dated 01.10.2019 stated :

“..... it is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application.”

12. In the light of the aforesaid decisions and provisions of law, when this Adjudicating Authority shall consider the case in hand, then found that by producing the document which is attached with application filed by the applicant , the applicant has succeeded to establish that the loan was granted to corporate debtor jointly along with Sarvhit Trust and Emm Vee Infrastructures (India) Pvt. Ltd and as per annexure A-6 which is related to “*the computation relating to all the defaults amounts and days of*

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13. At this juncture, I would also like to mention the fact that the corporate debtor has taken the plea that the date of NPA is 11.11.2016 but in the petition under the heading "*particulars of financial debt*" the financial creditor has mentioned the date of default as on 13.12.2016, therefore, the corporate debtor submitted that the account is not being properly maintained.

14. At this juncture, I have again gone through part IV of the petition and it is admitted fact that the date of default of loan mentioned in it is 13.12.2016 but it is also mentioned that "*the computation relating to all the default amount and days of default in respect of the facilities*" is annexed as A-6 of the petition, in which, it is specifically mentioned 11.11.2016 as the date of default. Therefore, it appears that it may be a typographical error and can be ignored, so, in my opinion, it cannot be said that the application submitted by the applicant is not complete. Thus, this Adjudicating Authority finds, no force in the submissions raised by the learned counsel for the corporate debtor.

15. Further, it is matter of record, as per record of the financial creditor account of the corporate debtor was declared NPA on **11.11.2016** and Applicant/ Financial Creditor has filed this application on **27.09.2018**, which is within the limitation period.

13. Hence, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete and it is within limitation. It further appears that there is default in non-payment of the debt owed by the corporate debtor, which is more than Rs One Lakh to trigger the CIRP

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against the Corporate Debtor and the applicant has annexed sufficient documentary evidence to show that there is default on behalf of the corporate debtor. Therefore, application filed U/S 7 of IBC deserves to be admitted.

14. The Financial Creditor has proposed the name of **Mr. Ashish Singh IBBI/IPA-002/IP-N00416/2017-18/11230** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. *(Copy of Form -2 is annexed as Annexure-4 of the Application)* and there is default in the payment of the financial debt, which is more than Rs One Lakh. Therefore, as per section 7(5)(a) of the code, the present application filed U/s 7 of the IB Code is admitted.

15. **Mr. Ashish Singh IBBI/IPA-002/IP-N00416/2017-18/11230** is appointed as Interim Resolution Professional (IRP). Further, a moratorium under the provision of section 13 & 14 of the Code is declared prohibiting the following:

- i. *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property*

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including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.*

It is further directed that:

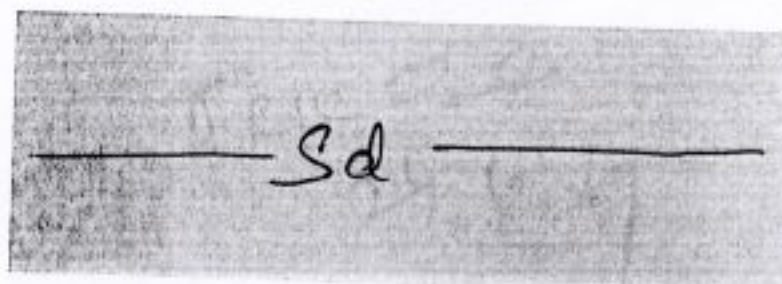
- (i) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period*
- (ii) The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

16. The IRP shall comply with the Provision of Section 13(2), 15, 17 & 18 of the Code. Further, the Directors, Promoters or any person associated with the Management of the Corporate Debtor are directed to co-operate to the IRP as prescribed under Section 19 and for discharging his function under a provision of section 20 of the Code.

17. The Registry is further directed to communicate the copy of this order to Financial Creditor and Corporate Debtor and IRP through email and speed post.

18. List on **15.11.2019** for the filing of the progress report.

Date : 24.10.2019



Abni Ranjan Kumar Sinha
(Member Judicial)