IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH V AT NEW DELHI

C.P. (IB)- 250 (ND)/2020

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules')

IN THE MATTER OF:

M/s. NARESH KUMAR

...Financial Creditor/Applicant

VERSUS

M/s. INTERNATIONAL LAND DEVELOPERS PRIVATE LIMITED

...Corporate Debtor/Respondent

Order pronounced on: 03.06.2022

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Ms. Tanu Priya Gupta

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. The present application is filed under Section 7, of The Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Naresh Kumar, claiming to be 'Financial Creditor' (FC) (for brevity 'Applicant') has filed this application, with a prayer for initiation of Corporate Insolvency Resolution Process ("CIRP"), in respect of respondent company, M/s. International Land Developers Pvt. Ltd. (for brevity 'Respondent').

2. The Respondent, Corporate Debtor ("CD"), namely M/s. International Land Developers Private Limited (CIN-U70109DL2006PTC151365), was incorporated on 28.07.2006, under the provisions of the Companies Act. The registered office of the respondent company is situated at B-418, New Friends Colony, New Delhi-110025. Its authorized share capital is Rs. 36,00,00,000/- and paid up capital is Rs.35,77,54,000/- which is based on the details given in the Master Data as reflected on the official website of Registrar of Companies under MCA.

3. The registered office of the CD is in Delhi, therefore, this Tribunal, being the Adjudicating Authority ("AA"), has territorial jurisdiction in respect of CD as per the provisions of sub-section (1) of Section 60 of the Code.

4. The order in the matter was reserved in the pre-admission stage, for issuance of Notice, in the Application under Section 7, of the Code. The Question raised by the bench to the Applicant was ***"Whether the Applicant is a Financial Creditor and whether the alleged debt due and default being claimed by the Applicant be covered under IBC ?"***

5. The Applicant in its response stated as below:

   a. *Mr. Naresh Kumar is a "Financial Creditor" within the meaning of Section 5 (7) of the Code as a financial debt is owed by the Corporate Debtor and the same is reflected in the duly executed loan agreements.*

   b. *The relationship between the Petitioner and the Corporate Debtor is based on a pure financial contract i.e., loan agreement.*

   c. *In* ***Dr BVS Lakhsmi Vs. Geometrix Laser Solutions Private Limited: Company Appeal (AT) (Insolvency) No. 38 of 2017,*** *the Hon'ble NCLAT Delhi BEnch has held "If the claimant claims to be 'Financial Creditor' he will have to show that debt is due which he has disbursed against the 'consideration for the time value of money' and that the borrower has raised the amount directly or through other modes like credit facility or its dematerialised equivalent, note purchase facility or the* *issue of bonds, notes, debentures, loan stocks or any other similar instrument." In the present case the amount has been disbursed directly to the Corporate Debtor and the same is reflected in the Bank Statement of the Petitioner which is already on record.*

d. *M/s. International Land Developers Pvt. Ltd. is a "Corporate Debtor" within the meaning of Section 3 (8) of the Code.*

e. *The Corporate Debtor had committed default as per Section 3, subsection 12 of the Code for the non-payment of Debt.*

f. *Important clauses of the Loan Agreement are:*

   i. *As per clause 1, interest @ 14% p.a. is payable on quarterly basis*

6. The Applicant has to the satisfaction of this bench demonstrated that it is a Financial Creditor and the alleged debt and default are covered under the Code.

7. The Ld. Counsel for the Financial Creditor is directed to serve Notice on the Corporate Debtor/ Respondent, reply to be filed within 7 days, rejoinder, if any, to be filed before the next date of hearing.

8. The Registry is directed to list the matter for hearing on 04.07.2022.

-Sd- -Sd-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

(ABNI RANJAN KUMAR SINHA)
MEMBER (JUDICIAL)