



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 23
(IB)-296(PB)/2023

IN THE MATTER OF:

Nimble Credit Cooperative Society Ltd. Petitioner/Applicant
v.
Bulland Realtors Private Limited Respondent

Order U/s. 7 of Insolvency & Bankruptcy Code (IBC), 2016

Order delivered on 31.07.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE & VC)

PRESENT:

For the Petitioner : Adv. Ashutosh Gupta, Adv. Gaurav Rana,
Adv. Ajitesh Kumar
For the Respondent : None

ORDER

PER ORAL:- AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an application, filed by **Nimble Credit Cooperative Society Ltd** (Financial Creditor/Applicant) under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor (CD) viz., Bulland Realtors Private Limited, for a total financial default of **Rs. 6,02,00,000 (Rupees Six Crore Two Lakhs Only) (Rs. 2,98,95,000/- Principal amount alongwith Rs. 3,03,05,000/- as interest calculated @ 2% per month from 01.06.2018 till 31.03.2023).**



2. The Corporate Debtor was incorporated on **06/11/2013**, having CIN:U45400DL2013PTC259974, under the Companies Act, 1956, with the purpose of doing business of Building Completion (Includes activities that contribute to the completion or finishing of a construction). The registered office is at D-138, Flat No. 04, First Floor, Krishna Park, Khanpur, New Delhi 110080. Therefore, this Bench has jurisdiction to deal with this application. A copy of the master data of the Corporate Debtor as accessed from the MCA website is annexed at **Annexure-5**.
3. The present application was filed on 25.04.2023 before this Adjudicating Authority on the ground that the Corporate Debtor is currently in default to financial creditor for an aggregate amount of **Rs. 6,02,00,000 (Rupees Six Crore Two Lakhs Only) (Rs. 2,98,95,000/- Principal amount alongwith Rs. 3,03,05,000/- as interest calculated @ 2% per month from 01.06.2018 till 31.03.2023)**.
4. In support of this application, NESL Certificate/Record of Default dated 10.05.2023 has been submitted in which the amount of debt and interest as narrated above, is deemed to be authenticated.
5. From the perusal of the order sheet, we find that Mr. Shubham Raghuwanshi, Ld. Counsel appeared on behalf of Respondent on 24.05.2023 and sought adjournment to upload reply on the E-portal and the matter was adjourned to 31.05.2023.
6. On 31.05.2023, none appeared on behalf of the Respondent and a cost of Rs. 10,000/- was imposed on the Respondent.
7. On 03.07.2023, Mr. Shubham Raghuwanshi appeared on behalf of the CD and requested for a date to report compliance regarding payment of cost.
8. Today, when the matter was called, neither the Respondent nor its counsel appeared. However, the Corporate Debtor has filed reply in which he has admitted the default and sought time to settle the matter. There are two judgments which have been quoted in the reply namely Vidarbha Industries Power Limited Vs. Axis Bank Limited (Civil Appeal No. 4633 of 2021) in which the Hon'ble Supreme Court held as follows:-



"61. In our view, the Appellate Authority (NCLAT) erred in holding that the Adjudicating Authority (NCLT) was only required to see whether there had been a debt and the Corporate Debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The Adjudicating Authority (NCLT) was require to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC 's appeal, pending in this Court, order of APTEL referred to above and the overall financial health and viability of the Corporate Debtor under its existing management.

....

78. The Legislature has consciously differentiated between Financial Creditors and Operational Creditors, as there is an innate difference between Financial Creditors, in the business of investment and financing, and Operational Creditors in the business of supply of goods and services. Financial credit is usually secured and of much longer duration. Such credits, which are often long term credits, on which the operation of the Corporate Debtor depends, cannot be equated to operational debts which are usually unsecured, of a shorter duration and of lesser amount. The financial strength and nature of business of a Financial Creditor cannot be compared with that of an Operational Creditor, engaged in supply of goods and services. The impact of the non-payment of admitted dues could be far more serious on an Operational Creditor than on a financial creditor.

....

81. The title "Insolvency and Bankruptcy Code" makes it amply clear that the statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the Adjudicating Authority (NCLT) to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP."

9. We find that this case is not covered by the above judgment because here the Corporate Debtor had earlier made an offer of settlement and accordingly entered into an MoU with the Financial Creditor in 2018, thereafter, he has defaulted in the payment.
10. Likewise, the other judgment namely Reliance Commercial Finance Limited Vs Darode Jog Builder Private Limited (Company Appeal (AT)



(Insolvency) No. 1005 of 2022), passed by the Hon'ble NCLAT also does not come to rescue the Corporate Debtor. Since, there was an earlier offer of settlement which was accepted by the Financial Creditor but the Corporate Debtor has defaulted on the same and the principal amount as well as the interest has not been paid so far.

11. We have heard the Ld. Counsel for the Petitioner and perused the documents submitted. We find that the petition is complete in all respects. Therefore, we are inclined to admit the Section 7 application filed by the Financial Creditor.

ORDER

In light of the above facts and circumstances, it is, **hereby ordered** as follows: -

- i. The Application bearing **C.P. (IB)-296(PB)/2023** filed by Nimble Credit Cooperative Society Ltd, the Applicant/FC, under section 7 of the Code for initiating CIRP against **Bulland Realtors Private Limited**, the Respondent/CD, is hereby admitted.
- ii. As a consequence of the Application CP (IB) 350(PB)/2021 being admitted, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/CD as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. The Applicant/FC has proposed the name of **Mr. Ashish Singh** as the IRP, email id ashishsinghcs@gmail.com, registration number **IBBI/IPA-002/IP-N00416/2017-18/11230**. He has filed his written communication, **(Page 28 of the Application)** as per the requirement of Rule 9(l) Adjudicating Authority Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in the ICSI Institute of Insolvency Professional. In addition, further necessary disclosures have been made by Mr. Ashish Singh as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section



7(3)(b) of the code. Hence we appoint **Mr. Ashish Singh** as the IRP of the Corporate Debtor.

- iv. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. During the CIRP period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii. The FC shall deposit a sum of **Rs 5,00,000/- (Rupees Five Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice, inviting claims and other preliminary expenses. These expenses are subject to the approval of the Committee of Creditors (CoC).
- ix. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the



CD and specific mention regarding admission of this petition must be notified.

- x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
12. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

IA-3552/2023

The prayer made in this application reads as follows:-

1. Allow the Present Application and waived off the cost imposed on the Applicant.
2. Any other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case;

On 31.05.2023, we imposed a cost of Rs. 10,000/- on the Corporate Debtor. On 03.07.2023, Mr. Shubham Raghuvanshi appeared on behalf of the Corporate Debtor and requested for a date to report compliance regarding payment of cost. However, the same has not been done so far.

Today, neither the counsel nor the Corporate Debtor is present. We see no reason to waive this cost of Rs. 10,000/-. The Corporate Debtor is directed to pay the said cost of Rs. 10,000/-.

In view of the above, **IA-3552/2023 stands dismissed.**

-Sd/-

**RAMALINGAM SUDHAKAR
(PRESIDENT)**

-Sd/-

**AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)**