

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**CP (IB) No. 315/Chd/Hry/2019
Under Section 7 of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:

Bank of India
with its registered office at
Large Corporate Branch,
PTI Building, 4 Sansad Marg,
New Delhi-110001

...Petitioner/Financial Creditor

Versus

Vikas WSP Limited.
with its registered office at
Railway Road, Siwani
Haryana-127046

...Respondent/Corporate Debtor

Judgement delivered on: 02.02.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH (TECHNICAL)**

For the Petitioner : Mr. Vaibhav Gupta, Advocate
For the Respondent : Mr. Vaibhav Sahni, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGEMENT

The present petition is filed, under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (**hereinafter referred to as 'IBC'/'Code'**) by Bank of India through its Authorized Representative Mr. Pawan Kumar (hereinafter referred to as Petitioner) to initiate the Corporate Insolvency Resolution Process (**'CIRP'**) against M/s Vikas WSP Limited (**hereinafter referred to as 'Corporate Debtor'**). Authorization letter dated 10.05.2019 and power of Attorney dated 20.04.2017 are attached with the petition. The

Corporate Debtor namely, M/s Vikas WSP Limited is a Company incorporated on 22.06.1988 under the provisions of the Companies Act, 1956 with CIN No. L24139HR1988PLC030300 having its registered office at Railway Road, Siwani, Haryana HR 127046 IN which falls within the territorial jurisdiction of this Adjudicating Authority.

2. The Authorized Share Capital of the Respondent Company is ₹ 2,87,500,000/- and Paid-Up Share Capital of the Company is ₹ 2,04,439,600/- as per the Company Master Data attached as Annexure 1 of the Petition.

3. The facts of the case, as briefly stated in the petition, is that the corporate debtor has requested the petitioner to avail/enhance the credit facilities. In pursuance of the same, the following documents are executed between the Corporate Debtor and Petitioner: -

- a) Form 8 for creation of charge vide charge ID 10318886 dated 09.11.2011- Annexure 4.
- b) Form 8 for creation of charge vide charge ID 10379510 dated 12.09.2012- Annexure 5.
- c) Form 8 for modifications dated 25.09.2012 of charge created under charge ID 10379510 dated 12.09.2012- Annexure 6.
- d) Form 8 for further modifications dated 05.08.2013 of charge created under charge ID 10379510 dated 12.09.2012 to record the increase in the limit of existing facilities from Rs. 105 Crores to Rs. 220 Crores- Annexure 7.
- e) Form 8 for further modifications dated 30.09.2013 of charge created under charge ID 10379510 dated 12.09.2012 to record the change owing to handing over to the corporate debtor's property situated at Plot No.

SP/247 Udyog Vihar. RIICO Industrial area, Sri Ganganagar over which the financial creditor was having individual Charge-Annexure 8.

- f) Form 17 for satisfaction of charge created under charge ID 10318886 dated 09.11.2011 pursuant to the no objection certificate dated 08.10.2013 issued by the financial creditor on account of the exposure/ facility being already covered in consortium exposure of Rs. 220 crores registered under charged ID 10379510/ Annexure 9.
- g) Form CHG-1 for further modification dated 22.11.2014 of charge created under charge ID 10379510 dated 12.09.2012 to record the addition of property as a collateral security in favour of UBI-Annexure 10.
- h) Form CHG-1 for further modifications dated 09.12.2014 of charge created under charge ID 10379510 dated 12.09.2012 to record the addition of property situated at SP-82, IGC Khara, Bikaner measuring 33340 sq. mtr. as collateral in favour of PNB lead bank- Annexure 11.
- i) Copy of sanction letter with Ref. No. NDLCB/AK/2011-12/1721 dated 24.10.2011 issued by the Financial Creditor to the Corporate Debtor along with the copy of letter dated 01.11.2011 of the Corporate Debtor confirming the sanction letter dated 24.10.2011- Annexure 12.
- j) Copy of letter with Ref. No. NDLCB/AK/2011-12/1767 dated 08.11.2011 issued by the Financial Creditor to the Corporate Debtor modifying the sanction letter dated 24.10.2011 along with the copy of below mentioned documents all dated 09.11.2011-Annexure 13.

- k) Copy of the resolution passed in board meeting dated 25.03.2012 of the Corporate Debtor accepting the said sanction letter-Annexure 14.
- l) Copy of letter with Ref. No. NDLCB:AK:2012- 13:5 dated 03.04.2012 of the Financial Creditor ceding Pari-passu charge in favour of UBI and PNB-Annexure 15.
- m) Copy of Interse Agreement dated 12.09.2012-Annexure 16.
- n) Copy of the Letter of Authority dated 12.09.2012 given by the Financial Creditor and the UBI in favour of the PNB lead Bank-Annexure 17.
- o) Copy of Joint Deed of Hypothecation dated 12.09.2012-Annexure 18.
- p) Copy of Working Capital Consortium Agreement dated 12.09.2012-Annexure 19.
- q) Copy of Letter of undertaking for creating a Pari-passu charge on Fixed Assets to the PNB dated 12.09.2012-Annexure 20.
- r) Copy of Deed of Guarantee dated 12.09.2012 executed by Mr. B.D. Agarwal, Mrs. Bimla Devi and Mr. Megh Raj Jindal in favour of the Consortium-Annexure 21.
- s) Copy of Continuing Oral Assent in respect of Extension of Equitable Mortgage of Immovable Property was given by the Financial Creditor-Annexure 22.

- t) Copy of sanctioned letter dated 12.02.2013 issued by the Financial Creditor to the Corporate Debtor for the exposure of Rs. 100 Crores-Annexure 23.
- u) Copy of resolution passed in board meeting dated 04.08.2013 of the Corporate Debtor accepting the sanction letter dated 27.07.2013 issued by the PNB lead Bank-Annexure 24.
- v) Copy of Joint Deed of Hypothecation dated 05.08.2013 executed by the Corporate Debtor in favour of the consortium Annexure 25.
- w) Copy of Working Capital Consortium Agreement dated 05.08.2013-Annexure 26.
- x) Copy of letter of undertaking & declaration dated 05.08.2013-Annexure 27.
- y) Copy of Letter of undertaking for creating a Pari-passu charge on fixed assets in favour of Consortium dated 05.08.2013-Annexure 28.
- z) Copy of Deed of Guarantee dated 05.08.2013 given by Mr. Bajrang Dass Agarwal, Mrs. Bimla Devi and Mrs. Kamini Jindal in favour of the consortium-Annexure 29.
- aa) Copy of Interse Agreement dated 05.08.2013 between PNB, UBI and the Financial Creditor-Annexure 30.
- bb) Copy of Letter of Authority dated 05.08.2013 given by the Financial Creditor and the UBI in favour of the PNB lead Bank-Annexure 31.

- cc) Copy of sanction letter dated 16.06.2015 issued to the Corporate Debtor by the Financial Creditor whereby reviewed and reduced the existing sanction limits from Rs. 60 Crores to Rs. 51 Crores- Annexure 32.
- dd) Copy of Notice u/s 13(2) of SARFAESI Act, 2002 dated 27.06.2016 issued by the Financial Creditor to the Corporate Debtor for the recovery of Rs. 58,64,42,549/- with interest @ 15.20% p.a. with monthly rest for the Packing Credit facility and @ 18.95% for overdraft in the Current Account, within a period of 60 days from the date of the Notice-Annexure 33.
- ee) Copy of the minutes of the consortium meeting dated 07.09.2017- Annexure 34.
- ff) Copy of Recall Letter dated 15.12.2017 issued by the Financial Creditor recalling of sanctioned loan from the Corporate Debtor- Annexure 35.
- gg) Copy of the minutes of the consortium meeting dated 29.01.2018- Annexure 36.
- hh) Copy of letter dated 13.02.2019 offered to the Financial Creditor for 'One-time settlement' towards the entire outstanding as on date and propose to pay Rs. 45 Crores as full and final settlement- Annexure 37.
- ii) Copy of an e-mail dated 13.02.2019 sent by the Financial Creditor advising the Corporate Debtor to improve its offer at least at the

outstanding level along with 10% amount of the outstanding balance as on date (to keep in no lien accounts) to enable to initiate the process of Compromise-Annexure 38.

jj) Copy of letter dated 20.02.2019 offered to the Financial Creditor for 'One-time settlement' towards the entire outstanding as on date and propose to pay Rs. 46 Crores as full and final settlement Annexure 39.

kk) Copy of an e-mail dated 02.03.2019 sent by the Financial Creditor advising the Corporate Debtor to improve its offer at least at the outstanding level along with 10% amount of the outstanding balance as on date (to keep in no lien accounts) to enable to initiate the process of Compromise-Annexure 40.

ll) Copy of Letter dated 04.04.2019 issued by the Financial Creditor to the Corporate Debtor asking it to clear the dues of Rs. 49,71,20,262-Annexure 41.

4. In Part-III of Form No.1, Mr. Darshan Singh Anand, Registration No. IBBI/IPA-002/IP-N00326/2017-18/10931 has been proposed as Interim Resolution Professional (IRP). Form No. 2 stating that there are no disciplinary proceedings against the proposed Resolution Professional is at page no. 825-827A of the Petition. It is also stated that the interim Resolution Professional is currently serving in two other proceedings.

5. It is stated in Part-IV of Form No. 1 that the total amount of default is Rs. 90,09,15,442.30/- as on 16.05.2019. The Petitioner has stated that vide its letter

dated 04.04.2019 given the final notice to, and ask the corporate debtor to clear the dues of Rs. 49,71,20,262/- plus uncharged interest/penal interest and other expenses including legal expenses by 12.04.2019. In addition to the above, the petitioner has submitted that the corporate debtor in its annual return, inter alia, for F.Y 2017-18 had admitted its liability towards the Financial Creditor. The accounts of the corporate debtor were classified as NPA on 31.12.2015 and Corporate Debtor vide its letter dated 20.02.2019 approached petitioner and offered One Time Settlement towards the entire outstanding as on date, which is acknowledgement of debt and considered as date of default.

6. In Part-V of Form No. 1, the details of the security held by the Petitioner is mentioned as in (Annexure-4 to Annexure-11) attached with the main petition.

7. Notice was issued to the corporate debtor as to why this petition should not be admitted on 11.07.2019. The petitioner has filed an affidavit of service vide Diary No. 4361 dated 27.08.2019 wherein, notices were issued through post as well as by e-mail as mentioned in master data of the corporate debtor. The original receipts of the speed post and that of copy of the online delivery reports of the speed post are collectively attached as Annexure-X with an affidavit and the copy of the email sent to the corporate debtor is attached as Annexure-Y with the affidavit. As per the said speed post tracking report, the corporate debtor has been duly served and also it is further submitted and affirmed that the email sent on the email address of the corporate debtor as per the master data, the said email has not bounced back.

8. In reply on behalf of the corporate debtor vide Diary No. 00638/01 dated 06.01.2022 submitted that the affairs of the corporate debtor were managed by Late Sh. Bajrang Das Aggarwal and during the pendency of the petition Sh.

Bajrang Das Aggarwal expired on 21.09.2020 and he was solely looking after the affairs of the company being the Managing Director and the chairman of the corporate debtor. It is further submitted that the corporate debtor is not in a position to carry out the functioning and to meet its day to day expenses and was solely relying upon the investments to be made by the strategic investor for settling the dues of the financial creditor.

9. It is further submitted by the corporate debtor in its reply that the corporate debtor has been experiencing a severe financial crisis owing to the said demise of Late Sh. Bajrang Das Aggarwal, losses incurred during previous period, several ongoing litigation and non-operation of the plan of the corporate debtor and therefore, could not make the payment to its creditors including the petitioner.

10. We have heard the learned counsel for the petitioner and have also perused the record carefully.

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 occurrence of default of debt is evidenced by the copy of the agreement of term loan, General Power of Attorney, letter of undertaking cum declaration, common deed of hypothecation and sanction letter dated 24.10.2011. The corporate debtor has defaulted in making the regular payments of the credit facilities sanctioned by the petitioner and a demand notice under Section 13(2) of the Sarfeasi Act, 2002 recalling debt.

12. The other issue for consideration is whether the present application is filed within limitation. The corporate debtor has acknowledged the debt by offering one-time settlement vide its letter dated 20.02.2019 and the present petition has been filed on 13.05.2019. Therefore, the petition has been filed within the period of limitation. Moreover, the Corporate Debtor has also admitted the liability but stated that it has been experiencing financial crises and unable to make payment to the petitioner.

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

14. 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 the threshold limit, 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.”

15. The Law Research Associate of this Tribunal has checked the credentials of Mr. Darshan Singh Anand and there is nothing adverse against him. In view of the above, we appoint Mr. Darshan Singh Anand bearing Registration No. IBBI/IPA-002/IP-N00326/2017-18/10931, e-mail: dsanand57@gmail.com as the Interim Resolution Professional and Mobile No. 7499680526. 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.

16. 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 the 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.

17. The Petitioner is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the Operational Creditor to be recovered as the CIRP cost.

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

Sd/-
(Subrata Kumar Dash)
Member (Technical)
February 2, 2022
PB/ASH

Sd/-
(Harnam Singh Thakur)
Member (Judicial)