



IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) 2946/MB/2019

Under Section 7 of the IBC, 2016

In the matter of

Bank of India
Star House, C-5, G-Block, Bandra
Kurla Complex, Bandra (East),
Mumbai- 400051

.... Petitioner

v/s.

M/s Wadhwa Buildcon LLP
104, First Floor, A-wing, Wadhwa
Meadows, Kalyan (West),
Thane- 421301

.... Corporate Debtor

Order Delivered on:28.07.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Sri. V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. Manoj Kumar, Adv. Abhishek R. Mishra,
Adv. Hrushikesh Behera

For the Corporate Debtor: Adv. Priyanka Fadia, Adv. Rajesh
Nagory

Per: V Nallasenapathy, Member (T)

ORDER

1. This Company Petition is filed by Bank of India (hereinafter called "Petitioner") seeking to set in motion the Corporate



Insolvency Resolution Process (CIRP) against Wadhwa Buildcon LLP (formally known as Wadhwa Buildcon Private Limited) (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹27,32,30,721.74/- by invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter called as "Rules").

2. The Petition reveals that the Petitioner sanctioned a Term Loan of Rs.40.00 Crores vide sanction letter dated 29.01.2015 and thereafter on the request of the Corporate Debtor, the said Term Loan facility was reduced to 27.00 Crores vide letter dated 17.03.2018. The said letters were annexed to the Petition at Annexure 2 (Page No. 36) & 3 (Page No. 45).
3. The Petitioner executed the following security documents to secure the facilities sanctioned :
 - a. Demand Promissory Note dated 07.02.2015.
 - b. Deed of Term Loan Agreement dated 07.02.2015.
 - c. Hypothecation Cum Loan Agreement dated 07.02.2015.
 - d. Agreement (L-516) dated 07.02.2015.
 - e. Deed of Mortgage dated 03.02.2015 with deed of correction dated 10.02.2015 vide Document No. BWD-3/773/2015.
 - f. Deed of Re-Conveyance dated 30.03.2015.



- g. Deed of Guarantee by Mr. Suresh L. Wadhwa, Mrs. Lata S. Wadhwa, Ashish S. Wadhwa, Ankit S. Wadhwa, Aas Partners of M/s Ashish Developers dated 07.02.2015.
 - h. Deed of Guarantee by Mr. Suresh L. Wadhwa, Mrs. Lata S. Wadhwa, Ashish S. Wadhwa, Ankit S. Wadhwa, Aas Partners of M/s Ashish Developers dated 27.03.2015.
 - i. Deed of Mortgage dated 30.03.2015 vide Document No. KLN-3/1429/2015.
 - j. Deed of Mortgage dated 30.03.2015 vide Document No. KLN-3/1428
4. The Petitioner enclosed the statement of account for the loan account which shows that a sum of ₹25,76,50,063.10/-, as on 24.07.2019, is due from the Corporate Debtor. When the uncharged interest and penal interest to the extent of Rs.1,55,80,659.00 is added the due works out to Rs. 27,32,30,722 and the same is claimed as defaulted by the Corporate Debtor.
5. The Petitioner issued notice under section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtors and its partners on 18.07.18 informing that the account was classified as Non-Performing Asset in accordance with the guidelines issued by Reserve Bank of India, with effect from 30.06.18 and demanding Rs.25,48,13,466/- with uncharged interest from 30.06.18.



6. The Corporate Debtor filed its reply and raised the following contentions:

- a. Since the value of the security offered by the Corporate Debtor is around Rs.127,45,42,000/- against the outstanding dues of Rs.27,32,30,721.74/- as on 31.07.2019, which is much higher than the debt amount, the Petition does not deserves admission.
- b. Even though the Corporate Debtor has given OTS and restructuring proposals, the Petitioner conduct led to further trouble to the Corporate Debtor thereby the account becoming a Non-Performing Asset (NPA). The Corporate Debtor offered Rs. 23 Crores towards full and final settlement of dues and there is no wilfull default on the part of the corporate Debtor but the same is due to market conditions, demonetization and introduction of GST and RERA, which have gravely effected the real estate industry and construction activity.
- c. A Sum of Rs.3.41 Crores was paid by sale of certain shops at Royal Park Residency Kalyan and a Sum of Rs.2.06 Crores was contributed by one of the partners Mr. Suresh Wadhwa.
- d. The request of the Corporate Debtor to issue an NOC, for the sale of the mortgaged Bungalow in Kalyan, for Rs.12.00 Crores in July 2018, evoked no response from the petitioner, hence the Corporate Debtor could not raise funds.



- e. Even though the Corporate Debtor has sold certain flats in Bhiwandi Project, wherein purchasers of the flat obtained sanction from Banks/financial institutions to the tune Rs.3.00 Crores for making payment to the Petitioner, the failure of the Petitioner to release the said property, stalled the sale transaction by the Corporate Debtor.
- f. The offer of the Corporate Debtor to the Petitioner to take up the unsold flats in Bhiwandi Project for the official use of the Petitioner so that the consideration can be adjusted towards the outstanding amounts was not well received by the Petitioner.
- g. The request of the Corporate Debtor time and again to release certain collateral to enable the Corporate Debtor to raise fund was declined by the Petitioner
- h. Due to the non-cooperation of the Petitioner, the Corporate Debtor could not proceed further in selling the properties. The Petitioner failed to consider the request of the Corporate Debtor for rehabilitation/reschedulement/ account regularization plan as per RBI guidelines.
- i. On 08.11.2018, a request was made to the Petitioner for restructuring the loan account by listing out the difficulties faced by the Corporate Debtor which led to the account becoming NPA. Further on 30.03.2019 an one time




settlement proposal was given to settle the account for Rs. 22.68 Crores or below Rs. 23.00 Crores, but the Petitioner informed that the OTS proposal would be considered subject to deposit of Rs.23.00 Crores on same day itself which shows the bias and arbitrariness of the Petitioner.

- j. The effort of the Corporate Debtor vide its letter dated 31.05.2019, wherein once again an OTS proposal was proposed for Rs.23 Crores by assigning the Debts to Edelweiss ARC. However the Petitioner has given a period of less than 10 days to clear the outstanding and the 10 days' time is not sufficient for any financial institution to show their due diligence to disburse money.
7. On hearing the counsel on both sides and on seeing the pleadings, the following are the observations of this Bench:
- a. It is evident that Petitioner had granted Financial assistance to the Corporate Debtor, the same was disbursed to the Corporate Debtor and there was a default in repayment of the said dues.
 - b. The nature of debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Corporate Debtor.
 - c. The Corporate Debtor accepted that the account has become NPA.




- d. The contentions raised in the reply will not come in the way of the admission of the petition in view of the categorical ruling of the Hon'ble Supreme Court in the case "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors. - (2018) 1 SCC 407*" wherein it was observed as below:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to



dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of



admission or rejection of such application, as the case may be.”

8. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 7 of the Code, admits this Petition declaring moratorium with the directions as mentioned below:

(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



(d) that the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the CIRP 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.

(e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby appoints Mr. Rakesh Kumar Tulsyan, having Registration No. IBBI/IPA-001/IP-P01144/2018-19/11970 as an Interim Resolution Professional to carry out the functions as mentioned under the Code.

9. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

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V. Nallasenapathy
Member (Technical)

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Suchitra Kanuparthi
Member (Judicial)