



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-806/ND/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Bank of Baroda

At: D-65, Hauz Khas Market,
New Delhi-110016

...Financial Creditor/Applicant

Versus

M/s. Upal Buildtech Private Limited

At: Office No. 303, 3rd Floor, Balaji Chamber,
Laxmi Nagar, New Delhi-110092

...Corporate Debtor/Respondent

Coram:

**Shri. Bachu Venkat Balaram Das, Member (Judicial)
Shri. Atul Chaturvedi, Member (Technical)**



Counsel for Applicant: Mr. Sougat Singh

Counsel for Respondent: Ms. Eshna Kumar

ORDER DELIVERED ON: 25.01.2023

ORDER

Per: Bachu Venkat Balaram Das, Member (Judicial)

1. This is an application filed by Bank of Baroda to initiate the Corporate Insolvency Resolution Process (“CIRP”) against M/s. Upal Buildtech Private Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for an alleged default on the part of the Respondent in settling an amount of Rs. 9,82,88,255.17 (Rupees Nine Crores Eighty Two Lakhs Eighty Eight Thousand Two Hundred Fifty Five and Seventeen Paisa) as on 26.11.2021. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That a Term Loan facility of Rs 7,45,00,000/- (Rupees Seven Crore Forty-Five Lakhs) was sanctioned by the Financial Creditor vide



Sanction Letter no.
ROD/RODGMLCC(14926)/48/2016-2017 dated
10.04.2017 in favour of the Corporate Debtor.

- ii. That the Corporate Debtor had approached the Applicant Bank for another Term loan of Rs 2,50,00,000/-. The second term loan was sanctioned by the Applicant Bank vide Sanction Letter no. ROD/RODGMLCC(14926)/20/2017-2018 dated 12.07.2017. Therefore, the aggregated term loan facility sanctioned to the Corporate Debtor was Rs. 9,95,00,000/- (Rupees Nine Crores Ninety-Five Lakhs).
- iii. That the Corporate Debtor had availed the Term loan facilities granted to them by the Applicant Bank but was highly irregular in maintaining the same and neglected the financial discipline and regularity in repayment. That the Corporate Debtor failed to pay dues of the Applicant Bank, therefore the term loan accounts of the Respondent were classified as Non-Performing



Asset (NPA) on 31.03.2021 in accordance with RBI guidelines.

- iv. That the Corporate Debtor failed and neglected to make payments against the Cash Credit facility as per the agreed terms and conditions of loan agreement and the other loan/transaction documents executed by the Respondent in favor of the Applicant Bank. The Corporate Debtor also committed defaults in making payment of monthly interest and other monies on due dates and on demand.
- v. That consequently, the Applicant Bank on 05.04.2021 issued notices in accordance with provisions of Section 13(2) of SARFAESI Act, 2002 to the Corporate Debtor and the Guarantors.
- vi. That thereafter, on the failure of the Corporate Debtor to make payment, the Applicant Bank also issued possession notice u/s 13(4) of SARFAESI Act, 2002 dated 03.09.2021 to the Corporate Debtor in respect of assets security interest



created by the Corporate Debtor in favor of the Applicant Bank.

vii. That the respondent company has evidently lost its substratum and has become commercially insolvent as it is unable to pay its debts.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply and contended as follows⁹:

i. That vide letter dated 10.03.2022, the Respondent Company submitted the OTS proposal before the Applicant Bank in order to settle the dispute. The Respondent Company submitted revised OTS after negotiations which was accepted by the Applicant Bank vide letter dated 24.02.2022.

ii. That CIRP should not be initiated in view of the ongoing settlement between parties.

3. The Applicant has filed written submissions stating as follows:



- i. That the Financial Creditor has filed evidence of default along with the Application as per the requirement of section 7(3)(a) of the IBC, 2016.
- ii. That the Corporate Debtor has filed its reply dated 31.03.2022 admitting the offer of OTS proposal by the Corporate Debtor of Rs. 8.97 Crores and its approval by the Financial Creditor. However, the Corporate Debtor had failed to honour the said OTS till date inspite of making part payment of Rs.30,00,000/- (Rupees Thirty Lakhs) as on 07.06.2022.
- iii. That the amount of default as mentioned in Form 1 is the amount that was outstanding as on 31.03.2021 and has become due and payable on 31.03.2021 i.e. Rs. 9,09,66,431.74 plus interest calculated thereafter. The date of default is therefore 31.03.2021 when the entire debt became payable and such default could not have been by any probability prior to 31.03.2021. Therefore, the Application does not



attract the prohibition laid down u/s 10A of the IBC, 2016.

4. The Respondent has filed written submissions stating as follows:

- i. That the present application under Section 7 of the Code has been filed on the basis of incorrect date of default.
- ii. That the Application under Section 7 of the Code has been filed on the basis of date of declaration of account as NPA being taken as date of default. However, as a matter of record, the amount claimed by the Applicant had become due and the Respondent defaulted in payment of the same prior to the date of NPA.
- iii. That the actual date of default falls within the period as falling under Section 10A of the Code. Therefore, the alleged financial debt is not due and payable in law and the present application under Section 7 of the Code is not maintainable.



5. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The Applicant is claiming a default on the part of the Respondent for an amount of Rs. 9,82,88,255.17 (Rupees Nine Crores Eighty Two Lakhs Eighty Eight Thousand Two Hundred Fifty Five and Seventeen Paisa) as on 26.11.2021.

6. A mere plain reading of the provisions u/s 7 of the IBC, 2016 shows that in order to initiate CIRP under Section 7, the Applicant is required to establish financial debt and show that a default has been committed in respect of said debt. What constitutes a 'default' must be determined under the provisions of the Code. Section 3(12) of the Code defines default as:

“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

7. The documents submitted by the Financial Creditor substantiate the Financial Creditor's claim that the



Corporate Debtor has indebted and defaulted the repayment of debt. The Corporate Debtor has nowhere denied the existence of debt. However, the Corporate Debtor has pleaded that CIRP should not be initiated against the Corporate Debtor as the Applicant has accepted the OTS submitted by the Corporate Debtor. However, it is seen from the records that the Corporate Debtor has failed to honour the OTS. Further, the Corporate Debtor has contended that the present Application is barred by Section 10A, IBC, 2016. However, on perusal of the documents on record, it is observed that even if the loan installments which are barred by Section 10A i.e, failure to pay interest between from 24.03.2020 to 24.03.2021 amounting to Rs. 83,04,395/-(Rupees Eighty Three Lakhs Eighty Four Thousand Three Hundred Ninety Five) are excluded from the debt amount of Rs. Rs. 9,82,88,255.17 (Rupees Nine Crores Eighty Two Lakhs Eighty Eight Thousand Two Hundred Fifty Five and Seventeen Paisa), the debt amount is well above the threshold limit u/s 4 of IBC, 2016.



8. After giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

9. Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Anup Kumar for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00333/2017-2018/10911. Mr. Anup Kumar has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 08.12.2021. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.



10.It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete as no disciplinary proceeding against the proposed IRP is pending.

11.Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Anup Kumar has submitted the declaration in Form 2 dated 08.12.2021.



- 12.**It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding amount.
- 13.**We are satisfied that the present application is complete in all respects and the applicant Financial Creditor is entitled to claim its outstanding financial debt from the Corporate Debtor and that there has been default in payment of the financial debt.
- 14.**As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
- 15.**Mr. Anup Kumar having registration number IBBI/IPA-002/IP-N00333/2017-2018/10911 is appointed as an Interim Resolution Professional.



16.In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

17.We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

18.It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.



19.The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the ‘Corporate Debtor’. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a



part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

20.The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of ‘Corporate Debtor’ and specific mention regarding admission of this petition must be notified to the public at large.

SD/-
Atul Chaturvedi
Member (Technical)

SD/-
Bachu Venkat Balaram Das
Member (Judicial)