

**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.49/Chd/Pb/2019

**Under Section 7 of the Insolvency
& Bankruptcy Code, 2016**

In the matter of:

M/s Master Trust Limited

Through Authorised Signatory, Mr. Ajit Baluni
SCO-19, Feroze Gandhi Market,
Ludhiana-141001

....Petitioner-Financial Creditor

Vs.

M/s Future Colonizers & Construction Limited

Rani Di Kothi, H.No.263
Ward No.12, Opposite PWD Rest House,
Sangrur-148001, Punjab.
CIN No.U70102PB2008PLC031664

....Respondent-Corporate Debtor

Judgment delivered on: 13.10.2022

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

Present through Video Conferencing:

For the Petitioner/Financial Creditor : Mr. Nahush Jain, Advocate

For the Respondent/Corporate Debtor : Mr. Shivam Grover, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition has been filed by Ms/ Master Trust Limited through its Authorised Representative Mr. Ajit Baluni under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against a M/s Future Colonizer & Construction Limited (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Ajit Baluni, Authorized Representative of the Financial Creditor and the affidavit verifying the contents of the application is on page 110-13 of the petition. The Authorisation by the Board in favour of the petitioner is attached as Annexure-1 of the petition.

2. The Corporate Debtor is stated to be incorporated on 13.02.2008. The company having its registered address at Rani Di Kothi, House No.263, Ward No.12, Opposite PWD Guest House, Sangrur, Punjab-148001, IN. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be filed as Annexure-2 of the petition.

3. It is averred that the corporate debtor approached Financial Creditor with Board Resolution dated 20.12.2012, 20.12.2012 and 01.02.2013 (Annexure-A5) to raise three loans of two crore each (at 15%p.a. interest) vide its offer letter dated 08.01.2013, 15.01.2013 and 08.02.2013 (Annexure-A) and Corporate Debtor accepted the offer of loan vide its acceptance letter dated 08.01.2013, 15.01.2013 and 08.02.2013 (Annexure-A9). A sum of Rs.20,000,00/- was paid by Corporate Debtor on 18.04.2013 by cheque No.566219 in respect loan-1 dated 08.01.2013,

thereby reducing balance to Rs.1,80,00,000/-. The remaining loan amount was renewed for a further period of 180 days (06.07.2014, 13.07.2014 and 06.08.2014 against the board resolution) and 365 days (04.07.2015, 13.07.2015 and 06.08.2015) thereby. The corporate debtor made payments towards outstanding liability. The corporate debtor issued two cheques against Loan-1, cheque bearing No. 105305 dated 27.08.2016 for an amount of Rs. 1,50,00,000/- and cheque bearing No. 105306 dated 01.09.2016 for an amount of Rs. 30,00,000/-. However, both the cheques were dishonored and returned with Memos dated 30.08.2016 and 30.09.2016. For second loan of Rs. 2,00,00,000/- dated 13.07.2014 corporate debtor issued cheque bearing No. 105303 dated 16.08.2016. The cheque was dishonored and returned with Memo dated 17.08.2016. For third loan of Rs. 2,00,00,000/- dated 06.08.2014 corporate debtor issued cheque bearing No. 105304 dated 19.08.2016. The cheque was dishonored and returned with Memo dated 22.08.2016. The cheques were signed by Mr. Vikas Jain, Director.

4. In Part-III of Form No.1, Mr. Suresh Kumar Bansal, Registration No.IBBI/IPA-002/IP-N00605/2018-19/11863 has been proposed as Interim Resolution Professional (IRP). However, his AFA Certification expired on 21.10.2021. Therefore, vide IA No.1284/2022 dated 28.09.2022, Mr. Rajeev Bhambri is proposed as IRP. Form No.2 dated 13.09.2022 along with the Certificate of Registration issued by the Indian Institute of Insolvency Professional of ICAI and the certificate of IBBI issued in favour of proposed Interim Resolution Professional i.e. Mr. Rajeev Bhambri is submitted. This application was allowed vide order dated 06.10.2022 of this Bench.

5. It is stated in Part-IV of Form No.1 that the petitioner has provided a loan amount of Rs.8,96,90,890/-. The total amount claimed to be in default is Rs.8,96,90,890/- (including interest amount) and the last payments for loan were received on 13.01.2016, 21.01.2016 and 26.02.2016, the limitation has to be counted from the said dates, so date of default is 26.02.2016. Copy of computation for amount and days of default (Annexure-A4), board resolutions(Annexure-A5), loan facility agreement (Annexure-A6), demand promissory notes (Annexure-A7), offer letter (Annexure-A8), acceptance letter (Annexure-A9), Cheques (Annexure-A10) are attached with the main petition.

6. The order dated 18.03.2019 of this Bench, the notice to the corporate debtor vide all modes including through the process of the Bench returnable on 26.03.2019. The corporate debtor through its reply vide Diary No. 7159 dated 16.12.2019 has admitted that financial creditor was approached to raise three loans of two crore each and financial creditor had entered into three agreements with corporate debtor on 08.01.2013, 15.01.2013, 08.02.2013. However, It is submitted that the application is misconceived, groundless and not maintainable. The documents attached by the petitioner are not genuine, are manipulated and fabricated. The present application is not maintainable as both parties entered into agreement at time of loan and certain terms & conditions were fixed. Also any dispute regarding agreement shall be referred for adjudication to sole arbitrator Mr. Manjeet Singh. The arbitration proceedings were initiated before the arbitrator. Also, the Financial Creditor took the blank cheques against the loan as security cheques and has fraudulently used these cheques. In the reply dated 23.09.2016 of legal notice, it is stated that Mr. Vikas Jain, Director has no relationship with the company and had applied for resignation from the post of Directorship vide Letter

dated 31.08.2013 and resignation was duly accepted by Board of Directors in a meeting held on 11.09.2013. Therefore, at the time of issuance of said cheques, Mr. Vikas Jain was neither Director of the said company nor he had any charge. Dismissal of petition is prayed for by the respondent corporate debtor.

7. We have heard the learned counsels for the petitioner and the respondent-corporate debtor 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.”*

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 26.02.2016 and the present petition is filed vide Diary No. 5122 dated 24.12.2018 and re-filed vide Diary No. 210 dated 16.01.2019. Therefore, the present petition is filed within limitation..

9. Another issue for consideration is whether there is default in payment or not. It is observed from the record that in the present case, the occurrence of default is evidenced by the copy of loan facility agreement (Annexure-A6), demand promissory notes (Annexure-A7), offer letter (Annexure-A8), acceptance letter (Annexure-A9), Cheques (Annexure-A10) are attached with the main petition. The respondent-corporate debtor has also filed a reply wherein, the application is admitted that three loans of two crore each. Also, in the reply dated 23.09.2016 of legal notice, it is stated that Mr. Vikas Jain, Director has no relationship with the company and had applied for resignation from the post of

Directorship vide Letter dated 31.08.2013 and resignation was duly accepted by Board of Directors in a meeting held on 11.09.2013. Therefore, at the time of issuance of said cheques, Mr. Vikas Jain was neither Director of the said company nor he had any charge. However, neither the Board Resolution nor resignation letter has been placed on record to construe that Mr. Vikas Jain was not carrying on the said Directorship. Therefore, the cheques were correctly endorsed. Further, the arbitration proceedings were initiated after the initiation of present petition on 07.01.2019. The Arbitrator, Mr. Manjit Singh, vide order dated 28.12.2019 stated that the counsel for parties appeared and the Arbitrator conveyed them his inability to continue further proceedings as an Arbitrator due to some personal reasons. The counsels were asked to make reference to some other Arbitrator. Further, no details of other appointed Arbitrator, if any, have been placed on record by the counsels regarding continuation of arbitration proceedings. Default in the part of corporate debtor stands proved. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, Mr. Rajeev Bhambri has been proposed as Interim Resolution Professional.

10. The Law Research Associate of this Tribunal has checked the credentials of Mr. Rajeev Bhambri, and there is nothing adverse against him. In view of the above, we appoint Mr. Rajeev Bhambri, IBBI Registration No.IBBI/IPA-002/IP-N0015212017-18110399 Email: rajeev.bhambri@gmail.com, Mobile No.9915710010, the Interim Resolution Professional. 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.

11. 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 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. Accordingly, the petitioner proved the debt and the default, which is more than the threshold limit of one crore. 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 the 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 the corporate debtor under Section 33 as the case may be.”

12. The Interim Resolution Professional shall after collation of all the claims received against the 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 the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

13. We direct the Financial Creditor to deposit a sum of Rs.2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to

adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

14. The petition is allowed and admitted accordingly.

15. A copy of the order shall be communicated to both the 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)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

October 13, 2022

SD/TB