



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**Company Petition No. (IB)-258(ND)/2023**

**IN THE MATTER OF:**

**VINSAN CREDIT & SECURITIES LIMITED**

E-10, Prashant Vihar,  
New Delhi – 110085

**... Petitioner/Financial Creditor**

**VERSUS**

**M U BUILDCON PRIVATE LTD.**

728, 1<sup>st</sup> Floor, Gali Abdul Salam Qureshi  
Green Market. Baratooti Chowk  
Delhi – 110006

**... Respondent/Corporate Debtor**

**Section: 7 of IBC, 2016**

**Order Delivered on: 01.08.2023**

**CORAM**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Palash S Singhai

**For the Respondent** :



## **ORDER**

### **PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)**

The captioned petition has been preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of the Insolvency Resolution Process against the Respondent. The Petitioner (hereinafter referred to as FC) viz. Vinsan Credit Securities Pvt. Ltd. was incorporated on 09.11.1994 vide Identification No. U65100DL1994PLC062571. The Respondent hereinafter referred to as CD viz. MU Buildcon Private Ltd. was incorporated on 05/08/2011 vide Identification No. U45400DL2011PTC223329.

2. As can be gathered from the pleadings and documents available on record in May 2012, the CD approached the FC to seek credit facility of Rs.10 Crores to expand its business activities. In acceptance of the request made by the CD, in terms of the letter dated 31.05.2012, the FC informed the CD that an amount of Rs.4,00,00,000/- was sanctioned to CD for its business, subject to the terms and conditions mentioned in the letter. In terms of the conditions mentioned in the letter, the loan amount was to be disbursed by FC to CD through RTGS/NEFT/Cheque, on demand by the CD and the disbursed amount would be legal and legitimate money of the FC. The CD was liable to pay interest @ of Rs.6% per annum, which was to be settled at the end of each Financial Year. The interest rate could vary in future. In the event of there being default in payment of interest by due date, the entire interest amount was added to the principal loan amount. On request of the Borrower/CD, the FC/Lender could enhance the loan amount up to Rs.10 Crores. The



FC/Lender was free to demand refund of loan amount or outstanding balance at any time till completion of repayment by the Borrower. In the event of default in repayment, the CD/Borrower could be liable to pay penal interest @ of Rs.0.01% per annum over and above the rate of interest already specified i.e. 6%. The FC disbursed the amount of loan to CD between June, 2012 to March, 2013 in part i.e. an amount of Rs.3,30,00,000/-. The interest payable on said amount i.e. Rs.12,50,433/- was paid by the CD on 06.05.2013. Thereafter, the FC disbursed the amounts of Rs.35,00,000/- and 15,00,000/- to CD on 07.03.2014 and 24.03.2014 respectively. Resultantly, on 07.04.2014, the CD paid an amount of Rs.18,01,087/- on outstanding amount of loan of Rs.3,80,00,000/-. Later, between April 2014 to March 2015, the FC disbursed the amounts of Rs.6,00,000/-, Rs.10,00,000/-, Rs.18,00,000/-, Rs.12,00,000/-, Rs.40,00,000/-, Rs.13,00,000/-, Rs.10,00,000/-, Rs.12,00,000/-, Rs.7,00,000/-, Rs.50,00,000/-, Rs.12,00,000/-, Rs.5,00,000/-, Rs.35,00,000/-, Rs.18,00,000/- to CD. Then, at the end of Financial Year 2015, the CD paid an amount of Rs.34,14,439 to FC as interest on principal outstanding amount of Rs.6,28,00,000/-. Nevertheless, the CD could not adhere to the time schedule for payment of interest due in June 2015, and committed default for the first time. Thereafter, upon closing of the Financial Year ending in March 2016, the FC charged interest on the total outstanding amount of Rs.6,62,14,439/- @ of 9% per annum i.e. total amount of Rs.47,67,439/-. It is the case of the FC that the CD defaulted in payment of interest in March 2015 as also in March 2016. Nevertheless, the CD paid Rs.11,65,000/- and Rs.7,40,000/- to FC on 01.12.2016 and 15.12.2016 respectively towards the interest due and



payable. However, the payment was only qua partial amount of interest only and the default still persisted. Again, as per the agreed terms between the parties the FC charged interest @ 7% on total outstanding amount of Rs.6,90,76,878/- at the end of Financial Year 2017.

3. In sum and substance, the plea espoused by the FC is that the CD defaulted in paying the interest for the financial years ending on March 2017, 2018, 2019, 2019 and 2020 respectively. On 30 March 2021, the CD paid to FC an amount of Rs.50,00,000/- towards part payment of outstanding interest. However, the FC declared the loan account of the Respondent as NPA and issued legal notice to CD demanding the amount of Rs.8,22,32,703/- due as on 31.03.2021. According to the FC, the CD sent reply to notice through his counsel and asked the Applicant to give it one month time to settle the outstanding dues (ibid). Nevertheless, vide notice dated 24.03.2023, the FC recalled the entire loan facility extended to CD and called upon it to pay Rs.10,66,10,613/- due as on 24.03.2023 to FC within 10 days of the receipt of recall notice.

4. According to FC as there was no written loan agreement, the debt became due and payable on demand by the Creditor and failure to adhere the demand of the Creditor on the part of Debtor amounts to default. To buttress the plea, the FC relied upon the order passed by this Adjudicating Authority (Hyderabad Bench) in **Quinn Logistic India Private Ltd. v Macksoft Tech Pvt. Ltd. (CP IB No. 97/7/HDB/2017)**. Relying on **(Hayvio Pty Ltd – Ottavio Pty Ltd [2011] NSWSC 1125)**, the FC has contended that there being no agreement to the effect, the loan should be repaid on demand.



5. As the CD defaulted to repay the loan amount, the FC has preferred the present petition seeking initiation of process for Resolution of Insolvency of the CD. The copy of bank statement reflecting the disbursement of loan to CD is placed on record as Annexure A-6 to the petition. The FC has also filed the ledger account from 2012 to 2021 as Annexure A-7 to the petition. The ledger accounts are duly confirmed by the CD.

6. As can be seen from reply to Legal Demand Notice dated 20.06.2022, sent on behalf of CD to Mr. Ravinder Gupta Advocate for FC (Annexure A-8 colly), the CD did not deny the debt due against it and default committed by it in repayment of the same. Relevant excerpt of reply to Legal Notice reads thus: -

*“1. That para no. 1 to 4 are matter of record and needs no reply.*

*2. That para no. 5 to 7 is wrong and denied as my client was regular in payment of interest to your client which can be checked as per the statement of 26AS. But due to some financial crisis my clients didn't paid interest since April 2021 but my clients are ready and willing to clear the outstanding of your client very soon. My clients need some time to pay the outstanding amount to your client as my clients are indulged in some litigation which will be settled very soon. So, my clients need one month time to settle the outstanding amount of your client.*

*Under the above-mentioned facts and circumstances, I through this reply of your legal notice advise you and your client to please wait for one month (provide one month time to my clients) to settle the outstanding amount.*

*You are hereby advised to guide your client to wait for one month in the meantime my clients will settle the matter.”*



7. When in reply to Legal Notice, the CD could admit the debt and default, despite service of notice, it also did not appear before this Adjudicating Authority to oppose the captioned petition. As can be seen from Section 7(5) of the IBC, 2016, on being satisfied that a default has occurred and the application filed under sub-section 2 of Section 7 of the Code is complete and there are no disciplinary proceeding pending against the proposed Resolution Professional, this Adjudicating Authority may pass the order admitting the petition for initiation of the process for Resolution of Insolvency of CD. In the present case, the reply dated 26.07.2022 sent on behalf of CD to Legal Notice is admission qua the debt and default. Besides, the CD has confirmed the ledger account maintained by the FC showing the outstanding debt amount against it. The FC has also placed on record the Statement of Bank Account maintained in Axis Bank in its branch situated at E-10 Prashant Vihar Rohini, Delhi North West to show the disbursement of loan amount to the CD. As can be seen from Regulation 2A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, certified copies of entries in the relevant account in the Banker's Book as defined in Clause 3 of Section 2 of Banker's Book Act, 1891, is sufficient evidence of default. The FC has placed on record the copy of its account statement maintained in Axis Bank. The IP namely Deepa Gupta having registered no. IBBI/IPA-002/IP-N00867/201-2020/12801 proposed by FC to act as IRP qua the CIRP sought to be initiated by way of the present petition has given a certificate that no disciplinary proceedings are pending against her. Thus, the requirement under Section 7 (5) of IBC, 2016 is found satisfied.



8. As far as the question of calculation of amount of debt defaulted to be paid by CD is concerned, we refrain from commenting upon the same. Nevertheless, since the amount of default is more than Rs.1 Crore, the captioned petition is complete and the IP who has given consent to be appointed as IRP qua the CD has certified that no disciplinary proceedings are pending against her, **the present petition is ordered to be admitted** and the process for Resolution of Insolvency qua the CD is directed to be initiated.

9. **In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and** as a necessary consequence thereof 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 Respondent 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 Respondent 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 Respondent 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 Respondent.”



10. As proposed by the Petitioner, Ms. Deepa Gupta, having Registration No. IBBI/IPA-002/IP-N00867/2019-20/12801 (Email: [advocate.deepa.gupta@gmail.com](mailto:advocate.deepa.gupta@gmail.com)) is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

*“Ms. Deepa Gupta, IRP (Registration No IBBI/IPA-002/IP-N00867/2019-20/12801) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”*

11. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

12. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

13. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

**Sd/-**  
**(L. N. GUPTA)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**