



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 881 of 2020

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

**G.S. Buildtech Pvt. Ltd.
A-4, Front LGF,
Malviya Nagar,
New Delhi-110017
Email-id: accounts@gsbuildtech.com**

...Financial Creditor

Versus

**Adree Infrastructure Venture Pvt. Ltd.
17th Floor, Dr. Gopal Das Bhawan,
28 Barakhamba Road,
New Delhi-110001
E-mail Id: rajnish_m@theardeeschool.com**

...Corporate Debtor

Order pronounced on: 06.03.2023

Coram:

SHRI P.S. N. PRASAD, HON'BLE MEMBER (J)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (T)

Appearances (through video conferencing):

For the Financial Creditor : Bhargav Thali

For the Corporate Debtor :



PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

ORDER

1. This Court was convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by G.S. Buildtech Pvt. Ltd. (hereinafter referred to as 'Financial Creditor'), represented by Mr. Gopal Dass Khandelwal, Senior Manager authorized through a letter of authorisation dated 04.03.2020, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against Adree Infrastructure Venture Pvt. Ltd. [CIN: U70109DL2010PTC202345] ("Corporate Debtor").
3. The Corporate Debtor was incorporated on 06.05.2010, having CIN: U70109DL2010PTC202345, under the Companies Act, 1956. Its registered office is at 17th Floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, New Delhi-110001. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 20.03.2020 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 39,00,000/- (Rupees Thirty-nine Lakh only) as on 31.03.2017 (date of default).

Submission of learned Counsel appearing for the Financial Creditor

5. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) Corporate Debtor approached the Financial Creditor seeking a loan amount of Rs. 1,30,00,000/- (Rupees One Crore Thirty Lakhs Only) ("principal amount") and agreed that the principal amount would carry an interest of 12% per annum. It was also agreed that the Corporate Debtor would pay the principal amount along with the applicable interest, on demand by the Financial Creditor. Therefore, there was an oral agreement between the Financial Creditor and the Corporate Debtor.



- b) Pursuant to the terms agreed between the Financial Creditor and the Corporate Debtor, the Financial Creditor made disbursements to the Corporate Debtor of an amount of Rs. 1,27,00,000/- on 08.05.2014 and Rs. 3,00,000/- on 18.06.2014. The principal amount was disbursed by the Financial Creditor on the promise by the Corporate Debtor that the principal amount would bear an interest of 12% per annum.
- c) The Corporate Debtor carried out repayment of part of the loan amount in installments between 02.06.2015 and 05.03.2016. An amount of Rs. 10,00,000/- was paid on 11.06.2015, an amount of Rs. 30,00,000/- was paid on 29.06.2015 and an amount of Rs. 51,00,060 was paid on 15.03.2016.
- d) The Corporate Debtor, in its Balance Sheet for the FY 2016-17 ending on 31.03.2017, signed on 01.09.2017 and filed on 28.03.2018 (date of filing Form AOC-4 with the Ministry of Corporate Affairs) has admitted that an amount of Rs. 39,00,000/- is due and payable to the Corporate Debtor as of 31.03.2017, being a “short term borrowing” and therefore the financial debt to the extent of at the very least Rs. 39,00,000/- is due and payable and within the period of limitation as of the date of filing this petition.
- e) The Financial Creditor sent written communication to the Corporate Debtor for confirmation of accounts between the parties, and thereby sent a written communication to the Corporate Debtor seeking payments of the amounts due, but received no response from the Corporate Debtor. Thereafter, the Financial Creditor through their legal counsel issued legal notice dated 31.01.2020 to the Corporate Debtor demanding payment of the amount due and informing the Corporate Debtor that failure to repay within 7 days will constrain the Financial Creditor to proceed under Insolvency and Bankruptcy Code, 2016.
- f) Therefore, the Corporate Debtor has clearly defaulted in its obligations to repay the said loan amount to the Financial Creditor and the said default of the financial debt to the extent of (at the very least) Rs. 39,00,000/- is admitted/undisputed by the Corporate Debtor and as on the date of filing the petition within the prescribed period of limitation.



- g) From the record it is evident that the Financial Creditor has disbursed a loan amount of Rs. 1,27,00,000/- on 08.05.2014 and Rs. 3,00,000/- on 18.06.2014 to the Corporate Debtor and the Corporate Debtor has also acknowledged the sum of Rs. 39,00,000/- to be due and payable to the Financial Creditor under the category 'Short-Term Borrowings' in its Balance sheet for the period ending on 31.03.2017.
6. The Financial Creditor has placed the following documents on record:
- a. Copy of Bank's Statement.
 - b. Copy of Balance Sheet of the Corporate Debtor for the period ending 31.03.2017.
7. The Financial Creditor has proposed the name of Mr. Munish Kumar Sharma, registration number IIBI/IPA-002/IP-N00050/2016-17/10094, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.
8. Despite several notice to the Corporate Debtor by the Financial Creditor and e-notice by the Court Officer, the Corporate Debtor failed to appear. Therefore, wide order dated 07.09.2022 the Corporate Debtor was proceeded ex-parte.

Issues

9. The issues in question in the present C.P are:
- a)** Whether this application can be admitted or not?
 - b)** Whether the claim of the Financial Creditor can be admitted or not?

Analysis and Findings

10. We have heard the Learned Counsel for the Financial Creditor and perused the averments made in the petition. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, therefore, is the Adjudicating



Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.

11. This application was filed by the Financial Creditor to restore the CP(IB) No. 881 of 2020, in terms of the order passed by Honorable National Company Law Appellate Tribunal (NCLAT) in Company Appeal (AT) (Insol) No. 388/2021. This Court heard and perused the order dated 23.12.2021 passed in Company Appeal (AT) (Insol) No. 388/2021, and therefore allowed the restoration of the CP (IB) NO. 881 of 2020.
12. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a debt owed to the Financial Creditor and whether there is a default with respect to such debt.
13. It is clearly evident from the records provided by the Financial Creditor, that the Financial Creditor provided a loan amount of Rs. 1.30 Crores to the Corporate Debtor and with respect to the same the disbursement of the amount was made by the Financial Creditor to the Corporate Debtor. It is evident from the Bank Statements of the Financial Creditor that the disbursement was made on 08.05.2014 for Rs. 1,27,00,000/- and on 18.06.2014 for Rs. 3,00,000/-. This loan was disbursed under an oral agreement upon a condition that it will be payable on demand by the Financial Creditor. Therefore, one major essential of Section 7 i.e. whether there is a debt owed to the Financial Creditor, stands substantiated.
14. Additionally, part payments of the Financial Debt were made by the Corporate Debtor on the following dates and through following modes:
 - a) On 11.06.2015, the Corporate Debtor made part-payment of Rs. 10,00,000/- through Cheque No. 266982.
 - b) On 29.06.2015, the Corporate Debtor made part-payment of Rs. 30,00,000/- through Cheque No. 600400.
 - c) On 11.06.2015, the Corporate Debtor made part part-payment of Rs. 51,00,060/- through RTGS (ID 500041009).



15. Even after the above-mentioned part-payments, the Corporate Debtor still owe a principal sum of Rs. 39,00,00/- to the Financial Creditor. The Corporate Debtor has also, in its Balance Sheet for the period ending on 31.03.2017 acknowledged a sum of Rs. 39,00,000/-, to be due and payable to the Financial Creditor under the category 'Short-Term Borrowings'. This Balance Sheet was signed by the Corporate Debtor on 01.09.2017. Therefore, the second essential of Section 7 of the Code i.e there has been a default with respect to the debt, also stands substantiated.

16. It is a settled law that in cases where there is no written agreement between the parties, and the Corporate Debtor has admitted to a debt in its balance sheet, it shall constitute 'financial debt' under Section 5(8)(f) of the Code.

17. In ***Shailesh Sangani V. Joel Cardoso and Ors. [2019] CLA 48***, the Hon'ble NCLAT held that-

"9. The balance sheet as on 31st March, 2017 at page 83 of the reply affidavit filed by Respondent No. 1, inter alia, reflects a non-current liability of Rs. 4,72,76,182/- treated as 'long term borrowings' and not treated as shareholder's funds.

We are convinced that the aforesaid amount outstanding as against Corporate Debtor, default whereof is not in issue, has all the trappings of a 'financial debt' and falls within the purview of Section 5 (8)(f) of I&B Code and Respondent No. 1 is covered by the definition of 'Financial Creditor'."

18. It is clear after examining the records, that there is a debt, and there has been a default by the Corporate Debtor for an amount of Rs. 39,00,000/- by the Corporate Debtor.

19. From the perusal of aforesaid facts, since the applicant is a Financial Creditor and the debt owed to him by the Corporate Debtor is a Financial Debt, and there has been a default, we would like to quote the definition of Section 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. "Default" means non-payment of debt when whole or any part or installment 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.



Section 5(7) of IBC defines Financial Creditor: “*Financial Creditor*” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

Section 5(8) of IBC defines Financial Debt. “*Financial Debt*” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

- (a) *Money borrowed against the payment of interest;*
- (b) *Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) *Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) *Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) *Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) *Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) *Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) *The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.*

20. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a



debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 20.02.2020, and the debt owed to the Financial Creditor is an amount of Rs. 39,00,000/-, this petition is maintainable as the threshold of Rs, One Crore was stipulated by the amendment through Notification dated 24.03.2020.

21. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a. The application bearing **COMPANY PETITION IB (IBC)/881(ND) 2020** filed by G.S Buildtech Pvt. Ltd., the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Ardee Infrastructure Venture Pvt. Ltd., the Corporate Debtor, is **admitted**.
- b. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- c. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- d. Shri Munish Kumar Sharma, Registration number IIBI/IPA-002/IP-N00050/2016-17/10094, email: munish@mkadvisors.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. He has a valid AFA up to 10.11.23 and submitted a valid Authorization of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.



- e. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- f. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- i. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, New Delhi, (territorial jurisdiction) by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

22. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
SHRI RAHUL BHATNAGAR
Member (Technical)

Sd/-
SHRI P.S. N. PRASAD
Member (Judicial)