

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

IB-321/(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:

Shivani Gupta

Resident of 1-C, 2nd Floor, Court Road, Civil Lines,
New Delhi- 110054

...Applicant/ Financial Creditor

Versus

M/s H L Buildwell Pvt. Ltd.

Registered office at:

Unit No. 14, Plot No. 31, Lower Ground Floor, Road No. 44,
Vikas Tower Building, Rani Bagh, Pitampura
New Delhi- 110034

...Respondent/ Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)



Counsel for Applicant: Mr. Sanjeev Kumar & Associates,
Advocates
Counsel for Respondent: Mr. Varun Jain, Advocate

ORDER

Per SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 15.02.2022

1. This is an application filed by the applicant Shivani Gupta to initiate corporate insolvency resolution process ("CIRP") against M/s H L Buildwell Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 14,60,00,000/- (Fourteen Crore Sixty Lakhs) to be paid to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The applicant had entered into agreement dated 04th May 2018 and 18th May 2018 with the Corporate Debtor herein to purchase 04 units developed namely "H L Heights" at Plot No. 05, Sector-70, District SAS Nagar, Mohali, Punjab,



measuring 4.6 Acres approximately 22273.31 square yards, which was acquired through auction from CMADA (Greater Mohali Area Development Authority) vide allotment letter 13517, dated 29.05.2017 (Herein after referred to as The Project).

- ii. In accordance with the terms and conditions of the aforesaid agreement, the Financial Creditor herein had transferred an amount of Rs. 14,19,07,020.00 including TDS (Rupees Fourteen Crore Nineteen Lakh Seven Thousand and Twenty only) on various dates during 2017 and 2018. The same was duly acknowledged by the Corporate Debtor.
- iii. That due to market downturn, especially in the Real Estate market, the Corporate Debtor could not fulfill their promise to hand over the possession of the units within the stipulated period of time and entered into another agreement dated 26.11.2018 and mortgaged its restaurant namely "Darbar" at "H L Heights" sector-70, Mohali.
- iv. That in pursuance of MOU dated 26.11.2018, a memorandum of entry of mortgage by



deposit of title deeds dated 13-09-2019 was executed between the parties herein and the title deeds of the mortgaged property were deposited with the lender ("the Mortgagee") to create the security against the amount paid to borrower ("the Mortgagor").

- v. That, the parties herein had entered into another agreement dated 11.11.2019 treating the aforesaid amount i.e. Rs. 14,19,07,020 as loan and the Corporate Debtor agreed to make the payment of maturity amount of Rs.18,50,00,000.00 (Rupees Eighteen Crore Fifty Lakh only) to the Financial Creditor on or before 10.04.2021 towards full and final settlement of loan amount.
- vi. That the Corporate Debtor towards their outstanding liability mentioned above, have paid an amount of Rs.3,90,00,000.00 (Rupees Three Crore Ninety Lakh only) and failed to pay the outstanding balance amounting of Rs. 14,60,00,000.00 (Rupees Fourteen **Crore** Sixty Lakh only) despite being served with the notices dated 14.04.2021 and



21.04.2021 to repay the loan. The Corporate Debtor did not pay the entire loan amount but paid the amount mentioned above and surprisingly, vide their letter dated 22.04.2021 expressed their inability to repay the same by citing financial difficulty.

vii. Hence, the present petition for initiation of insolvency under S.7 of the IB, Code, 2016.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- i. That the present petition is not maintainable either on law or on facts, hence, the same is liable to be dismissed in limine.
- ii. That the present petition is nothing but abuse of the process of the law. The debt on which strength the present petition has been filed, is not a financial



debt within the meaning of Section 7 of the IB Code, 2016.

iii. That the Corporate Debtor could not run its business in view of the ongoing pandemic crisis and due to that the financial viability of the Corporate Debtor went low.

iv. That no relief may be granted to the Financial Creditor against the Corporate Debtor and the application under section 7 of the Insolvency and Bankruptcy Code, 2016 of the financial creditor may be dismissed with exemplary costs being false, frivolous and vexatious and also being not maintainable in the eyes of law.

3. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. That while

 6

dealing with an application under section 7 the Adjudicating Authority is not required to consider the question of dispute between the parties as long as the 'debt' and 'default' is proved.

4. In the light of the aforesaid facts, we find that the agreements executed between the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment of loan amount.
5. It is also to be noted that the debt created by Agreement dated 11/11/2019 was a sequel to the failure of the Corporate Debtor to hand over possession of residential units to the Financial Creditor who was the home buyer and had paid the cost of residential units to the Corporate Debtor.
6. In light of the above discussion, 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.

7. 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. Deepak Kumar Garg, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-N00624/ 2018-19 / 12560 resident of 411, Essel House, Asaf Ali Road, New Delhi- 110002, with email - id deepakgarg07@rediffmail.com. Mr. Deepak Kumar Garg 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. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Deepak Kumar Garg as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.



8. 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, and as no disciplinary proceeding against the proposed IRP is pending.
9. 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 facility and has committed default in repayment of the outstanding loan amount.
10. We are satisfied that the present application is complete in all respect 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.
11. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.



12. Mr. Deepak Kumar Garg, having registration number IBBI / IPA-002 / IP-N00624/ 2018-19 / 12560, resident of 411, Essel House, Asaf Ali Road, New Delhi- 110002, with email - id deepakgarg07@rediffmail.com is appointed as the Interim Resolution Professional.
13. 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.
14. 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;

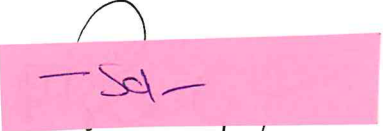
(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

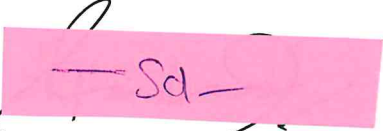
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

15. 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.



16. 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. He shall file his report within 30 days before this bench.


(SHRI. RAHUL BHATNAGAR)
MEMBER (TECHNICAL)


(SHRI. P.S.N. PRASAD)
MEMBER (JUDICIAL)