

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

IB-71/ND/2022

IN THE MATTER OF:

Noble Cooperative Bank Ltd.

....Applicant

Vs.

Mr. Vivek Prakash

.....Respondent

SECTION

U/s 95 IBC

Order delivered on 11.03.2022

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Govind Bhardwaj

For the Respondent : Mr. Prateek Gupta, Advocate

ORDER

In the order dated 11.03.2022, due to typographical error in place of "List the matter on 18.04.2022", it is typed as "List the matter on 15.04.2022". This typographical error is hereby corrected, the order dated 11.03.2022 shall be read as List the matter on 18.04.2022 in place of List the matter on 15.04.2022.


-Sd-

(HEMANT KUMAR SARANGI)
MEMBER (T)


-Sd- 2*

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 71 (ND)/2022

IN THE MATTER OF:

**NOBLE CO-OPERATIVE BANK LIMITED
M. P. ROAD-1, RAGHUNATHPUR,
SECTOR 22, NOIDA-201301
UTTAR PRADESH**

....APPLICANT/FINANCIAL CREDITOR

VERSUS

**VIVEK PRAKASH
MANAGING DIRECTOR OF JARVIS INFRATECH PRIVATE LIMITED
201, SECTOR 75,
THE JEWEL OF NOIDA,
GAUTAM BUDDH NAGAR-201301**

.... RESPONDENT /PERSONAL GUARANTOR

SECTION: U/S 95 of IBC, 2016

Order delivered on: 11.03.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

Present-

For the Applicant: Adv. Govind Bhardwaj

For the Respondent: Adv. Prateek Gupta



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 95 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), by Noble Co-operative Bank Limited praying for initiation of Insolvency Resolution Process against Mr. Vivek Prakash, who is the Managing Director of the Corporate Debtor i.e. M/s Jarvis Infratech Private Limited.

2. The facts mentioned in the application in brief are as follows:

- i. That the Respondent/Personal Guarantor had applied for availing Overdraft Loan facility from the Applicant and executed Loan Application Form dated 18.02.2019 and further executed Loan Agreement, Documentation and Security Kit on behalf of the Corporate Debtor on 06.03.2019. The total loan amount of Rs. 69,00,000/- was sanctioned and disbursed on 06.03.2019. As a part of security, the Applicant had created a charge over the movable assets of the Corporate Debtor.
- ii. That after the lapse of two months, the Corporate Debtor committed its first default on 30.04.2019 and did not deposit dues against the interest due on the said date. Due to absence of any credit transactions and lack of sufficient turnover, the said Overdraft Limit became irregular. Thereafter, the loan account became Non-Performing Asset on 31.07.2019.
- iii. That the Applicant filed a Section 7 IBC application against the Corporate Debtor to recover the defaulted amount of Rs. 76,54,410/- and this Adjudicating Authority vide its order dated 10.02.2020 **admitted** the same. Further, the Corporate Debtor was admitted into liquidation vide order dated 16.02.2021.



- iv. That the Applicant, vide Claim Form dated 05.03.2021, filed its claim before the Liquidator for Rs. 1,27,69,628/- and in respect of the same, the total claim of Rs. 1,25,69,628/- was admitted vide email dated 01.04.2021. That a payment of Rs. 22,00,000/- was made on 30.06.2021, out of the total distribution of Liquidation Proceeds. Hence, the Applicant is having the outstanding balance dues of Rs. 1,03,69,628/- against the Corporate Debtor.
- v. That a Demand Notice dated 10.11.2021 in Form B was sent to the Personal Guarantor for payment of total outstanding net balance dues of Rs. 1,03,69,628/-. Neither any reply nor any payment has been made till the date by the Personal Guarantor. Further, the said default amount is admitted and recorded with the NESL Information Utility Portal.

3. Limited notice was served upon the Personal Guarantor, but non appears.

4. We have heard the Ld. Counsel for the applicant and perused the averments made in the application.

5. That as per the different provisions contained under chapter III of the Code, whenever an application under Section 94 or 95 is filed, the first stage is to appoint a Resolution Applicant, who after enquiry is required to submit a report under Section 99 of the Code. We further observed that the question of admission or rejection of the application under Section 100 of the Code can only be decided after the submission of the report by the Resolution Professional under Section 99 of the Code, when the matter will be taken up under Section 100 of the Code. At present, the question is only for the appointment of Resolution Professional under Section 97 of the Code.

6. For the purpose of appointment of Resolution Professional, the Adjudicating Authority is required to examine the details and the



documents accompanied with the application as required under Section 95(4) of the Code. In terms of the provisions contained in Section 95(4) of the Code, we consider the averments made in the application and we are of the considered view that there is default in payment of the debt and the CIRP against principal borrower has already been initiated vide order dated 10.02.2020 in an application filed by the Applicant Financial Creditor vide Petition No. 2354/ND/2019 under Section 7 of the Code, therefore, default in payment is admitted. We further observed that a demand notice had already been sent to which no response was received.

7. We further notice that the Applicant has also proposed the name of Resolution Professional at Page 24 Part-IV of the application; therefore, in our considered view that the applicant has fulfilled all the criteria as laid down in Section 95(4) of IBC, hence, we are inclined to proceed in the matter in accordance with law. Since the applicant has proposed the name of the Resolution Professional, therefore, we hereby appoint Mr. Nirmal Kumar Bhesoni, Email:-ipnirmalkumar@gmail.com as Resolution Professional. The Resolution Professional shall exercise all the powers enumerated under Section 99 of the Code read with relevant rules made thereunder. He is further directed to examine the application and make recommendations along with the reasons in writing for acceptance or rejection of this application within the stipulated period as mentioned in the provision of Section 99 of the Code and submit a report in terms of Section 99(7) of the Code.

8. In terms of Section 96(1) IBC, the interim moratorium commences on the date of the application in relation to all the debts and shall seize debts of the personal guarantor and shall cease to have effect on the date of admission of such application.

9. The applicant and the Registry are directed to serve a copy of this order along with the copy of documents immediately on the Resolution



Professional for information and compliance. List the matter on
15.04.2022

18

A
-Sd-

HEMANT KUMAR SARANGI

Member (T)

-Sd-

15.03.2022

ABNI RANJAN KUMAR SINHA

Member (J)