



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

(IB)-419(ND)/2022

IN THE MATTER OF:

IndusInd Bank Limited
(Acting through its Authorised officer)

Branch Office at:
Hyatt Regency Complex,
11th Floor, Block – A,
District Centre, Bhikaji Cama Place,
R.K. Puram, New Delhi - 110066

Registered Office at :
2401, Gen. Thimmayya Road,
(Cantonment) Pune - 411001

...Applicant/Financial Creditor

VERSUS

Hacienda Projects Private Limited

Registered Office at:
C-23, Greater Kailash Enclave Part-I
South Delhi, New Delhi – 110048

Also at :
Tech Boulevard, Central Block,
Plot No. 6, Sector 127,
Noida, Uttar Pradesh - 201301

...Respondent

Section: 7 of IBC, 2016

Order Delivered on: 11.11.2022

CORAM

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Sumesh Dhawan, Adv. VatsalaKak,
Adv. Shaurya Shyam

For the Respondent : Adv. Abhijeet Sinha, Adv. Neeha Nagpal,
Adv. Rajat Bector, Adv. Supriya Julka

(IB)-419(ND)2022 
IndusInd Bank Ltd. Vs. Hacienda Projects Pvt. Ltd.



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

IndusInd Bank Limited (for brevity, the '**Applicant/ Financial Creditor**') has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against Hacienda Projects Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, Hacienda Projects Private Limited is a Company incorporated on 23.02.2010, under the provisions of erstwhile Companies Act, 1956 with CIN U70200DL2010PTC199426 having its registered office situated at C-23, Greater Kailash Enclave Part-I, South Delhi, New Delhi – 110048, which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 6,00,00,000/- and Paid-up Share Capital is Rs. 5,63,04,100/- as per the master data annexed with the Petition.

3. The Applicant has made the following submissions:

3.1 It had sanctioned a term loan amounting to Rs.70 Crore, out of which an amount of Rs.64.5 Crore was disbursed to the Respondent as on 28.11.2017.



3.2 Since the borrower failed to pay the loan instalments in respect of the credit facility availed by it, the account of the Respondent was declared "Non-Performing Asset" on 29.12.2020 as per the Reserve Bank of India guidelines.

3.3 The Applicant vide the Loan Recall cum Guarantee Invocation Notice dated 29.06.2021 recalled the credit facility and invoked the guarantees with respect to the said facility and thereby requested the Respondent to pay the total outstanding amount of Rs.29,54,48,176.09/- together with the further interest from 1.06.2021.

3.4 Subsequently, the Applicant also issued a Notice dated 30.06.2021 to the Respondent under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act").

3.5 Despite issuance of the Loan Recall Notice dated 29.06.2021 and the Notice under section 13(2) of the SARFAESI Act dated 30.06.2021, neither the Respondent nor its Guarantors came forward to discharge the loan amount due to the Applicant herein.

3.6 The particulars of the total amount of debt/default and the date of default are mentioned in Part IV of the application, which is reproduced overleaf for the sake of convenience :



PART-IV

PARTICULARS OF FINANCIAL DEBT																										
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	IndusInd Bank Limited vide Sanction Letter dated 26.09.2016 had sanctioned Rupee Term Loan facility for Rs.70,00,00,000/- (Rupees Seventy Crores only) to the Corporate Debtor. Out of the total sanctioned term loan amount of Rs.70 Crores, an amount of Rs.64,50,00,000/- (Rupees Sixty-Four Crores Fifty Lakh only) was disbursed by the Financial Creditor to the Corporate Debtor on 28.11.2017. <u>Details of Disbursement:</u> <table border="1"> <thead> <tr> <th>S. No.</th><th>Amount (in Crores)</th><th>Date</th></tr> </thead> <tbody> <tr> <td>1.</td><td>Rs. 30.00</td><td>10.02.2017</td></tr> <tr> <td>2.</td><td>Rs. 5.00</td><td>15.05.2017</td></tr> <tr> <td>3.</td><td>Rs. 5.00</td><td>21.06.2017</td></tr> <tr> <td>4.</td><td>Rs. 2.50</td><td>01.08.2017</td></tr> <tr> <td>5.</td><td>Rs. 14.00</td><td>31.08.2017</td></tr> <tr> <td>6.</td><td>Rs. 8.00</td><td>28.11.2017</td></tr> <tr> <td>Total</td><td colspan="2">Rs. 64.50 Crores</td></tr> </tbody> </table>	S. No.	Amount (in Crores)	Date	1.	Rs. 30.00	10.02.2017	2.	Rs. 5.00	15.05.2017	3.	Rs. 5.00	21.06.2017	4.	Rs. 2.50	01.08.2017	5.	Rs. 14.00	31.08.2017	6.	Rs. 8.00	28.11.2017	Total	Rs. 64.50 Crores	
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Total	Rs. 64.50 Crores																									
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE	The total amount in default due to the Financial Creditor by the Corporate Debtor as on 28.02.2022 is Rs. 33,00,42,833.09/- (Rupees Thirty-Three Crores Forty-Two Thousand Eight Hundred Thirty-Three Nine Paise Only) including the total outstanding interest. The account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on																								



WORKINGS FOR COMPUTATION OF THE AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	29.12.2020. That thereafter, the Government of India through the Ministry of Law and Justice, introduced Section 10A in the Insolvency and Bankruptcy Code, 2016 vide the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 in terms of which no proceeding under Section 7 of the Code shall be initiated for any default arising on or after 25.03.2020 for a period not exceeding one year i.e., till 24.03.2021. That the next instalment of the Loan from the Corporate Debtor after the expiry of the period under Section 10A i.e., on 24.03.2021, fell due on 30.04.2021. Furthermore, as on the date of the filing of the present Petition, the total amount due from the Corporate Debtor to the Financial Creditor, after excluding the amount which became due under the period of Section 10A of the Code, is Rs. 28,43,07,323.39/- (Rupees Twenty-Eight Crores, Forty-Three Lacs, Seven Thousand, Three Hundred, Twenty-Three and paise thirty-nine Only) and the same is pending till date. Also, it is pertinent to mention herein that in the meantime, the Financial Creditor issued a Loan Recall Notice 29.06.2021 to the Corporate Debtor, recalling the entire outstanding loan amount along with the interest, due and payable by the Corporate Debtor. <u>Date of Default</u> – 30.04.2021 (Default of 1st Instalment by the Corporate Debtor, after
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		exclusion of amount in terms of Section 10A of the Code) 29.06.2021 (Date of Loan Recall Notice) and the default is still continuing.
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4. From the perusal of the Part IV of the Application, it is observed that the Applicant has claimed an amount of Rs. 33,00,42,833.09/- as an unpaid financial debt. Further, 29.06.2021 has been relied as the date of default.

5. The Financial Creditor has relied on the following documents to prove the existence of financial debt -

- a) Copy of Sanction Letter dated 26.09.20216 from Applicant to the Respondent.
- b) Copy of Board Resolution dated 06.10.2016 passed by Respondent to avail the credit facilities.
- c) Copy of Term Loan Agreement dated 23.11.2016 entered into between the Respondent and the Applicant.
- d) Copy of Deed of Hypothecation dated 23.11.2016 executed by the Respondent in favour of the Applicant.
- e) Copy of Debt Service Reserve Account Agreement dated 23.11.2016.



- f) Copy of Escrow Account Agreement dated 23.11.2016.
- g) Copy of Declaration of Mortgage dated 02.02.2019 given by Respondent.
- h) Copy of Memorandum of Entry for Deposit of Title Deeds dated 02.02.2017.
- i) Copy of Addition of Security Interest Challan dated 20.02.2017 by Central Registry of Securitization Asset Reconstruction and Security Interest of India.
- j) Copy of Letter Recalling the Credit Facilities and invoking the Guarantees dated 29.06.2021 issued by the Applicant to the Respondent.
- k) Copy of Demand Notice u/s 13(2) of SARFAESI Act, 2002 dated 30.06.2021
- l) Copy of Certificate of Registration of Charge issued by the ROC.
- m) Copy of Receipt of Fee Form - CHG-1 filed by Respondent with the Ministry of Corporate Affairs.

6. The Respondent has filed its reply and stated that the Respondent is a reputed company engaged in the business of real estate projects since 2010. In July 2011, the Respondent had launched a project called 'Lotus 3001 situated at Plot No. CH 01A, Sector 107, Noida, Uttar Pradesh (hereinafter referred to as '**Project**'). The Respondent has opposed the prayer made by the Applicant contending the following -



6.1. The Project consists of 6 Towers, out of which construction of 04 towers is 100% complete and for the remaining 02 towers is 99% complete. All the 330 apartments / units in the Project have been sold and possession offered. Possession in respect of 301 apartments has already been taken by the respective homebuyers. Further, external development of central park and other surrounding area is at final stage and construction of the community club is 80% complete.

6.2. The Respondent has duly completed the Project and it still remains a financially viable entity, which is only going temporary period of hardship. Since the Project in question is the only asset of the Respondent which has duly been constructed and all apartments have been sold, thus, as such there will be no value to be unlocked for any Resolution Applicant if CIRP is initiated against the Respondent.

6.3. Out of the total disbursed amount of Rs.64.5 Crore, the Respondent has already repaid an amount of Rs.33 Crore. The Respondent had duly repaid all instalments until various events led to a delay in repayment of the loan instalments.

6.4. The present Petition is completely dehors the law laid down by the Hon'ble Supreme Court in *Vidarbha Industries Power Ltd v. Axis Bank Ltd.*, 2022 SCC OnLine SC 841, wherein it has been held that existence of a debt and default merely give an Applicant the right to apply for initiating CIRP but the Adjudicating Authority on such application must apply its mind to a spectrum of relevant factors, including the financial health and viability of the Respondent, and the feasibility of CIRP - considering that the object of the IBC is also



to try and revive a company/debtor and not spell its death knell. It was held by the Hon'ble Supreme Court in the Vidarbha case -

*“61. In our view, the Appellate Authority (NCLAT erred in holding that the Adjudicating Authority (NCLT) was only required to see whether there had been a debt and the Respondent had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. **The existence of a financial debt and default in payment thereof only gave the Applicant the right to apply for initiation of CIRP.** The Adjudicating Authority (NCLT) **was required to apply its mind to relevant factors including the feasibility of initiation of CIRP** against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of APTEL referred to above and the **overall financial health and viability of the Respondent under its existing management.**”*

6.5. That 2016 onwards, when the construction activities began and were being carried out in full swing, the first blow to the Respondent was dealt when the policy of demonetization was introduced by the Govt. of India. The customers started defaulting in their payments and the Respondent had to undergo severe losses. As of result, the construction of project was delayed significantly and some homebuyers of the Project filed FIR against the Respondent and its directors. As a result, the company significantly lost its credibility amongst suppliers as well homebuyers. Further, due to Covid-19 and the restrictions of lockdown, the Respondent could not carry on the construction activities.

6.6. The Respondent is a financially sound and viable entity and initiation of CIRP against the such a company would be an exercise in futility. The status of the project as stated by the Respondent is reproduced overleaf :



Tower	Tower Completion Status	Total Number of Units	Units Unsold
Tower No.1	100%	48	All sold
Tower No.2	100%	54	All sold
Tower No.3	100%	58	All sold
Tower No.4	100%	58	All sold
Tower No.5	99%	54	All sold
Tower No.6	99%	58	All sold

6.7. The Applicant Bank has been provided with a security/comfort letter amounting to Rs. 20 Crore issued by a Company namely, Three C Residency Private Limited in lieu of the outstanding dues of the Respondent.

6.8. The legislature has used the word “may” in Section 7(5)(a) while in other provisions (including in Section 9(5) of the IBC, dealing with initiating CIRP by an Applicant, it had used the word “shall”) indicating that the two words are intended to convey different meanings. Therefore, Section 7(5)(a) gives the Adjudicating Authority the discretion not to admit even where the ingredients are satisfied for any reason that the NCLT may deem fit, for meeting the ends of justice and to achieve the overall objectives of the IBC, which is revival of the company and value maximization.

7. The Applicant has also filed its Rejoinder and stated that the Respondent has itself admitted in its Reply that the Project Lotus 300 is almost complete and all the Units in the Project have been sold by the Respondent. The Applicant has further stated that -



7.1. The Respondent, in terms of the Term Loan Agreement dated 23.11.2016, was liable to repay the Loan Amount along with the applicable interest to the Petitioner in 12 equal instalments after a moratorium of 24 months i.e., repayment was to be made good by the year 2019.

7.2. The Respondent has contended that another company namely, Three C Residency Private Limited ("**Third Party**") has undertaken to pay an amount of Rs. 20,00,00,000/- to the Applicant Bank in lieu of release of original title documents for "Land on Group Housing Plot YEA-RT-03, Plot No. TS-1, Sector -18 in Yamuna Expressway Industrial Development Area" and the said amount shall be adjusted towards the loan accounts of the Respondent and another entity, namely, Cloud 9 Projects Private Limited. It is pertinent to mention that the said amount undertaken to be paid by the Third Party to the Applicant Bank is only a speculative undertaking since as per the own admission of the Respondent, the said amount shall be paid only out of the cash flows which are receivable by the Third Party. Pertinently, the said amount shall not be immediately paid by the Third Party and shall only be paid as and when the third party received such receivables from its creditors.

8. After hearing submissions of both the parties and perusing the documents placed on record, this Bench observes that the fact of commission of default made by the Respondent in payments of the debt of the Applicant has neither been denied nor challenged by the



Respondent. However, only pleas have been made that despite such a default, the CIRP may not be initiated against it.

9. The Respondent has emphasized that it is a healthy and financially viable company, since it has almost completed the Project and the initiation of CIRP of such a company will not be fruitful. Had the company been a financially sound entity, it would not have defaulted in payment of its dues to the Applicant Bank. Hence, in our view, the completion of a Project cannot be the sole parameter to judge the overall health and viability of a company.

10. It is further contended by the Respondent that initiation of CIRP will prove to be a death knell of the company. In our view, any company which is admitted into the CIRP is attempted to be revived/resolved first and mere admission of a company into CIRP does not directly result in its instant liquidation or dissolution under the Scheme of IBC.

11. It is further contended by the Respondent that a security/comfort letter amounting to Rs. 20 Crore has been issued by a Company namely, Three C Residency Private Limited (third party) in lieu of the outstanding dues of the Respondent. However, the Applicant, through its rejoinder, has shown no confidence in that undertaking and has considered it only a speculative undertaking.

12. We further observe that despite the claim of selling the most of the units (301 out of the 330 units as pleaded by the Respondent in



its Reply) in the Project, the Respondent has failed to repay its financial debt, therefore, there is no exceptional case made out whereby despite default, the CIRP shall not be initiated against the Respondent.

13. In the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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.”

14. As proposed by the Financial Creditor, this Bench appoints Mr. Ayyagari Viswanadha Sarma, IP having Registration No. IBBI/IPA-001/IP-01524/2018-19/12396 (Email: vsarma.ext@deloitte.com and avsarma@yahoo.com) as IRP subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that :

“Mr. Ayyagari Viswanadha Sarma as IRP having Registration No. IBBI/IPA-001/IP-01524/2018-19/12396, (E-mail: vsarma.ext@deloitte.com and avsarma@yahoo.com) is directed to take charge of the CIRP of the Respondent with immediate effect. The Court Officer will inform the IRP so appointed by all modes.”

The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) 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.



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

17. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer to the IBBI for their record.

—sd—

(L. N. GUPTA)
MEMBER (T)

—sd—

(BACHU VENKAT BALARAM DAS)
MEMBER (J)