

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 4412/IBC/MB/2019

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4
of the Insolvency and Bankruptcy
(Application to Adjudication Authority)
Rule 2016)

In the matter of

IDBI Trusteeship Services Limited.

Asian Building, Ground Floor, 17, R
Kamani Marg, Ballard Estate, Mumbai-
400001

.....FINANCIAL CREDITOR

Vs

Nirmal Lifestyle Limited

(CIN: U92411MH1999PLC122542)

3rd Floor, Mutiplex Building, Nirmal
Lifestyle, LBS Marg, Mulund-
Est, Mumbai 400080

.....Corporate Debtor

Order delivered on: 05.08.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Rohit Gupta, Advocate

For the Respondent: Mr. Simil Purohit, Advocate

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company petition is filed by IDBI Trusteeship Services Limited (hereinafter called "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Nirmal Lifestyle Limited (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016

(hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of 2,86,89,35,109/- and the Financial Creditor sought resolution in a sum of 2,86,89,35,109/- under certain facilities granted to the Corporate Debtor.

Submissions of the Financial Creditor

- i. The captioned application is being filed by the Financial Creditor in view of the default committed by the Corporate Debtor in honouring its repayment obligations towards facilities provided by the Financial Creditor under Facility Agreements.
- ii. The Corporate Debtor approached one Altico Capital India Ltd. (erstwhile Altico Capital India Pvt. Ltd) (“Altico”) for grant of certain facilities amounting to Rs. 300 crores for refinancing of its then existing debt. In view of the aforesaid request, Altico and the Corporate Debtor entered into a Term Sheet dated 26.07.2016. Pursuant to the Term Sheet, on 23.09.2016, a Debenture Trust Deed (DTD) was executed by and between the Corporate Debtor, being the Issuer and the Mortgagor No. 1, one M/s Nirmal Developers, one Sujyoti Developers Pvt. Ltd. and one Mr. Dharmesh Jain and the Financial Creditor in the capacity as the Debenture Trustee in respect of the said NCD’s. Pursuant to the aforesaid Terms Sheet and the said DTD, Altico subscribed to the said NDCs for an aggregate principal amount of Rs. 2,90,49,54,000/- . The Corporate Debtor had also availed term loan of Rs. 1,120,00,00,000/- from Altico and Corporate Debtor has also issued a guarantee in relation to the term loan of Rs. 1,280,00,00,000/- by one Nirmal Lifestyle Holdings Private Limited (being the holding company of the Corporate Debtor) vide deed of Guarantee dated 27.03.2019 under Facility Agreement dated 27.03.2019. The Corporate Debtor has defaulted with respect to the said guarantee.
- iii. In view of the said default, the Financial Creditor, addressed Acceleration and Enforcement Notice dated 06.11.2019, Guarantee Invocation Notice dated 11.10.2019, Payment default notice dated 17.07.2019, Covenant default notice

dated 17.07.2019 and Guarantee Invocation Notice dated 18.07.2019 to the Corporate Debtor as well as to the Guarantors of the Corporate Debtor, however to no avail. Hence this petition.

3. The Corporate Debtor did not choose to file any reply contesting above Company Petition despite taking so many adjournments and also did not comply the conditional order dated 07.07.2021 wherein he was directed to file reply. Therefore, the Corporate Debtor's right to file reply was forfeited.
4. Heard the counsel appearing for the Financial Creditor. The counsel appearing for the Financial Creditor invited the attention of this Tribunal to the relevant documents filed in proof of debt and default in support of above company petition. The counsel appearing for the Financial Creditor also invited the attention of this Tribunal to the Debenture Trust Deed executed between the Corporate Debtor and its group entities and the Financial Creditor. He also invited the attention of this Tribunal to the relevant clauses dealing with the petition and the Events of Default and Notice of Default etc for resolution of a total debt.
5. Mr. Simil Purohit, Advocate appeared through virtual hearing on behalf of Corporate Debtor on 28.07.2021 when the matter was listed for final hearing. The only submission of Mr. Purohit is that his client is in the process of settling the claims of all creditors and some time may be granted to him. Since the Respondent/Corporate Debtor did not file any reply, the claim of the Financial Creditor remains unchallenged.
6. The Financial Creditor successfully proved the existence of the debt and default and the debt is also within limitation. The petitioner has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary requirement for admission.
7. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -4412(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Nirmal Lifestyle Limited.
- b. This Bench hereby appoints **Mr. Ajit Gyanchand Jain**, Chartered Accountant, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00368/2017-18/10625 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)