



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

IB-288(ND)/2021

Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. Indiabulls Housing Finance Ltd.

.... Financial Creditor

Vs.

M/s. Shipra Leasing Pvt Ltd.

.... Corporate Debtor

Order delivered On: 04.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Petitioner : Mr. Sumesh Dhawan, Mr. Manish Jha, Ms. Vishrutyi Sahni, Mr. Ankit Tripathi, Mr. Raghav Dembla, Advocates

For Respondent : Ms. Amrita Sarkar, Mr. Tushar Randhawa, Advocates

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by M/s. Indiabulls Housing Finance Ltd. the Financial Creditor under Section 7 of IBC, 2016 seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Shipra Leasing Pvt. Ltd. the Corporate Debtor herein, for a default of an amount of Rs. 165,81,78,655/- as stated in Part-IV of the Section - 7 application.
2. The Financial Creditor is a housing finance company regulated by the National Housing Bank. The Financial Creditor is India's second largest housing finance company and provides housing finance including home loans.



3. During the period from December 2017 to March 2020, the Financial Creditor entered into various loan agreements with the Corporate Debtor and its group companies, under which it provided financing to such entities, inter alia, for the construction and/or development of housing/residential projects. The details of the various credit facilities extended to the Corporate Debtor, which are more particularly described in the Application are summarized below:
 - a. On December 7 2017, the Financial Creditor entered into a loan agreement under which it agreed to provide loan facility up to Rs. 75,00,00,000/- to the Corporate Debtor; and
 - b. On March 31, 2020, the Financial Creditor entered into another loan agreement under which it agreed to provide loan facilities of up to Rs. 122,00,00,000/- to the Corporate Debtor.
4. The aggregate loan amount sanctioned vide the above loan agreements is Rs. 197,00,00,000/- and the aggregate loan amount disbursed is Rs. 136,07,68,537/-.
5. The above loan facilities were secured by way of mortgage, pledge of shares, personal guarantees and corporate guarantees issued by the Corporate Debtor and its group companies.
6. Against the loan facilities, Verve Construction LLP ("**Verve**") and Regalia Homes LLP ("**Regalia**") group concern(s) of the Corporate Debtor had mortgaged plot bearing no. GH1-C situated at Sector- 43 Noida, Gautam Budh Nagar, Uttar Pradesh and Plot no. GH-1B situated at Sector -43, Noida, District Gautam Budh Nagar, Uttar Pradesh in favour of the Financial Creditor. Such mortgage of land was a part of the security cover created in favour of the Financial Creditor by the Corporate Debtor and its group companies in lieu of the various loan agreements. However, the NOIDA authority by way of letter(s) dated September 4, 2020 revoked the permission given to Verve and Regalia to mortgage such land, thereby impairing the security cover. Accordingly, a



contractual default occurred under the loan agreement(s) in terms of Clause 12.1.9(h) read with Clause 15.

7. The Financial Creditor issued a notice dated October 20, 2020 to cure the default under the loan documents within a period of 15 days as provided under the loan agreements.
8. Since the Corporate Debtor failed to cure the contractual default, the Financial Creditor issued a Loan Recall Notice dated 15.12.2020 for repayment of the outstanding amounts under the Loan Facilities within 7 days of the receipt of the notice. The Corporate Debtor failed to pay the recalled loan amounts within the time provided in the Notice.
9. The Corporate Debtor had issued two post-dated cheques bearing No. 757852 dated 05.04.2021 from Vijaya Bank for an amount of Rs. 2,59,98,996/- (Rupees Two Crore Fifty-Nine Lakhs Ninety Eight Thousand Nine Hundred and Ninety Six Only) and Cheque No. 805252 dated 05.04.2021 from Vijaya Bank for an amount of Rs. 15,70,14,000/- (Rupees Fifteen Crores Seventy Lakhs Fourteen Thousand Only) at the time of entering into loan facility which were dishonored on 05.04.2021 on account of "Funds insufficient". The Financial Creditor has sent a notice dated 08.04.2021 to the Corporate Debtor intimating the same.
10. The Applicant has therefore has filed this application on the ground of default of outstanding principal amount of Rs. 134,99,26,444/- (Rupees One Hundred and Thirty Four Crores Ninety Nine Lakhs Twenty Six Thousand) and interest Rs. 16,27,19,255/- (Rupees Sixteen Crore Twenty-Seven Lakh Nineteen Thousand Two Hundred and Fifty-Five Only) as on 14.04.2021.
11. A table showing Amount in default is given below:



Date	14-Apr-21	14-Apr-21	Total
LAN	S000240240	S000241452	
Company	IHFL	IHFL	
Customer Name	SHIPRA LEASING PRIVATE LIMITED	SHIPRA LEASING PRIVATE LIMITED	
Group Name	Shipra Group	Shipra Group	
First Date of Disbursal	21-Dec-17	31-Mar-20	
Maturity Date	05-Apr-23	05-Apr-25	
Sanction Amount	75,00,00,000	1,22,00,00,000	
ROI	20.7	14.3	
FC Rate	3	3	
Principal Due	13,81,97,103	1,21,17,29,341	134,99,26,44
Interest Due	23,83,900	16,03,35,355	16,27,19,255
Accrued Interest	7,15,170	43,31,932	
Accrued 2 Per Cent Interest	6,87,456	-	
Default Interest	1,05,585	9,48,834	
Foreclosure Charges	48,92,177	4,28,95,219	
NON SCC	-	9,09,56,583	
Total Payable wo TDS Pending	14,69,81,391	1,51,11,97,264	1,65,81,78,655
TDS Pending	14,21,592	36,64,662	50,86,254
EMI Cycle	5	5	
Per Day Default Interest	54	-	
Per Day Accrued Interest	79,463	4,81,326	
Per Day 2 Per Cent Interest	7,605	66,396	

12. The Applicant has submitted that the first date of default occurred on 04.09.2020 when the NOIDA Authority revoked the permissions given to Verve Construction LLP (“Verve”) and Regalia Homes LLP to mortgage the



land consequent upon which a contractual default occurred under the loan agreement in terms of clause 12.1.9 (h) read with clause 15 and the security covered created in favour of the Financial Creditor and its group companies in lieu of the loan agreement was impaired.

13. The Applicant issued a notice dated 20.10.2020 to the Corporate Debtor/Obligator to cure default under the contract within a period of 15 days. The obligators failed to cure the default under the contract and therefore, the outstanding loan amount became payable.
14. Further the Applicant-Financial Creditor issued a loan recall notice on 15.09.2020 for payment of the outstanding amount under the loan facilities within 7 days after the receipt of the notice. However, the Corporate Debtor failed to pay the outstanding amount which resulted in default.
15. It is further stated that the event of default occurred on 15.04.2021 when the two cheques given by the Corporate Debtor were dishonored. Consequent to which the Financial Creditor has sent notice dated 08.04.2021 to the Corporate Debtor
16. Hence this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.
17. The Corporate Debtor/Respondent has filed a reply affidavit denying the contentions and allegations made by the Applicant/Financial Creditors.
18. The Corporate Debtor has submitted that the alleged default under the present Petition does not amount to a default under Section 3(12) of the Code. The default is based on an alleged impairment of one of the many securities provided by the Borrower Companies 4 whereby the NOIDA Authority had on 4th September 2020 cancelled permission granted to mortgage in favour of two mortgagors which lead to the consequent recall of the entire loan facility by the Financial Creditor. That admittedly, while the aforesaid alleged “event of default” remains under challenge before the Hon’ble High Court of Allahabad as shall be detailed hereinbelow, the aforesaid default does not qualify as a default of non-payment



of any debt or part of instalment of the amount as stipulated under Section 3(12) of the Code.

- 19.** The Applicant/Financial Creditor issued a satisfaction letter dated 09.10.2020 duly certifying that the Loan Account of the Borrower 5 due was standard and satisfactory, which shows that there could not have been any incident for any event of default as per the loan agreement.
- 20.** It is also contended that the application is not maintainable being volative of Section 10A of the Code, since the event of default occurred for the first time on non-payment of outstanding amount in relation to the loan facility when the loan was recalled on 15.12.2020, during which period the provisions of Section 7, 9 and 10 of the Code, were under suspension due to Covid-19.
- 21.** The Respondent/Corporate Debtor has further contended that during the period from 2017 – 2020 out of the sanctioned loans amounting to Rs. 2478 crores in favour of Shipra Estate Limited, Shipra Leasing Private Limited and Shipra Hotels Limited (Borrower Companies) an amount of Rs. 1686 Crores had been disbursed.
- 22.** The details of the loan facilities availed by the Borrower Companies are as under:

S. No	ENTITY	LOAN ACCOUNT NO.	SANCTIONED AMOUNT	DISBURSED AMOUNT
			Rs. In Cr	Rs. In Cr
1	Shipra Estate Limited	S000240243	300.00	300.00
2	Shipra Estate Limited	S000240245	232.00	151.23
3	Shipra Estate Limited	S000240246	119.00	103.49
4	Shipra Estate Limited	S000241454	184.00	183.45
5	Shipra Estate	S000241482	90.00	90.00



	Limited			
6	Shipra Estate Limited	S000241483	75.00	76.13
7	Shipra Estate Limited	S000240558	175.00	59.13
8	Shipra Estate Limited	S000240559	77.00	77.00
1	Shipra Hotels Limited	S000240239	165.00	48.74
2	Shipra Hotels Limited	S000240242	323.00	287.25
3	Shipra Hotels Limited	S000240244	402.00	41.79
4	Shipra Hotels Limited	S000241453	139.00	138.09
1	Shipra Leasing Private Limited	S000240240	75.00	8.63
2	Shipra Leasing Private Limited	S000241452	122.00	121.17
	Grand Total		2,478.00	1,686.10

- 23.** The above Loans were always treated as one single loan and the Borrower Companies always paid one single installment towards repayment which was adjusted by the Financial Creditor.
- 24.** The Borrower Companies created various Securities in favour of the Lender/Applicant by way of Mortgage on immovable properties, Pledge of Shares, Hypothecation, Personal Guarantees etc.
- 25.** We have heard the submissions made by Mr. Sumesh Dhawan, Ld. Counsel appearing for the Applicant/Financial Creditor as well as Ms. Amrita Sarkar, Ld. Counsel appearing for the Respondent/Corporate Debtor and also carefully perused the records.



- 26.** The Applicant/Financial Creditor has placed on record a copy of the loan agreement dated 07.12.2017, loan agreement dated 31.03.2020 and submitted that in terms of the loan agreement, loan facility were extended and the amount under default was disbursed to the Corporate Debtor. He has relied upon the account statement dated 14.04.2021 for the period 31.03.2020 and 14.04.2021 in order to show that the amount in question was disbursed to the Corporate Debtor.
- 27.** Mr. Sumesh Dhawan, Ld. Counsel appearing for the Applicant/Financial Creditor has submitted that the Corporate Debtor was under a contractual obligation under the loan agreements and the addendum to the agreements to re-pay the loan amount.
- 28.** He further submitted that as a security to the said loan amount the Corporate Debtor had mortgaged certain properties which were subsequently cancelled by the NOIDA Authority resulting in default. This resulted in impairment of security constituting “Event of Default” under Clause 12 (a) and (h) read with Clause 12.2 of the Loan Agreement.
- 29.** The Applicant gave a cure notice dated 20.10.2020 to provide an alternative security as per Clause 2.3/Clause 15 of the Loan Agreement which was not done by the Corporate Debtor.
- 30.** Therefore, the Applicant issued a Loan Recall notice dated 05.11.2020 under the Loan Agreement Dated 07.12.2017 whereunder Rs. 75 crores was sanctioned and a Loan Recall Notice dated 15.12.2020 under the Loan Agreement dated 31.03.2020 whereunder Rs. 122 Crores was sanctioned.
- 31.** Since the Corporate Debtor did not repay the amount, the Applicant/Financial Creditor deposited the post-dated cheques issued by the Corporate Debtor to recover the outstanding dues. However, two cheques by the Corporate Debtor were dishonored on 05.04.2021 on account of “funds insufficient”.



32. The Applicant/Financial Creditor issued two notices of default on 08.04.2021 for the default under the Loan Agreement dated 07.12.2017 as well as the default under Loan Agreement dated 31.03.2020.
33. Ld. Counsel further submitted that the date of default in the instant case is 05.04.2021 which is the date on which the two cheques given by the Corporate Debtor were dishonored giving fresh cause of action for filing an application under Section 7 of the Code and therefore, the bar under Section 10(a) of the Code will not be applicable in the present case.
34. The Ld. Counsel relied upon a Judgement dated 24.05.2023 passed by the Hon'ble NCLAT in "**Indiabulls Housing Finance Limited Vs. Revital Realty Private Limited**" and the Judgement of Hon'ble NCLAT in the case of "**Koncentric Investments Ltd. & Anr. Vs. Standard Chartered Bank & Anr. (2022 SCC Online NCLAT 1254)**", in support of his submission that every subsequent default gives fresh and new cause of default for filing an application under Section 7 of the Code.
35. On the other hand, the Ld. Counsel appearing for the Corporate Debtor has raised various issues including maintainability of the present application as being barred by Section 10(A) of the Code.
36. Be that as it may, the Respondent/Corporate Debtor has not denied the fact that loans were advanced to the Corporate Debtor by the Financial Creditor in terms of the Loan Agreement dated 07.12.2017 as well as the Loan Agreement dated 31.03.2020 and that amount involved has been disbursed. The Corporate Debtor also has not denied that the said amount has not been repaid by the Corporate Debtor to the Financial Creditor. It is a settled position of law that Section 7(5) of the Code provides that for admission of an application, the Adjudicating Authority should be satisfied with the following 3 conditions: –
- (a) a default occurred,
 - (b) the application under sub-section (2) of Section 7 is complete,



(c) there is no disciplinary proceedings pending against the proposed Resolution Professional.

- 37.** It is pertinent at this stage to refer to the decision of Hon'ble Supreme Court given in M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (Civil Appeal No. 7121 of 2022). The relevant paragraph is reproduced below for reference: -

*10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. Thus, even the non-payment of a part of debt when becomes due and payable will amount to default on the part of Corporate Debtor. In such a case, an order of admission under section 7 of IB code must follow. **If the NCLT finds that there is a debt, but it has not become due and payable, the application under section 7 can be rejected. Otherwise, there is no ground available to reject the application.***

- 38.** From the facts of the present case, it is quite clear that the default has occurred and the Respondent has admitted the same. Since all the ingredients of Section 7(2) of the Code are satisfied, We are of the opinion that the present application under Section 7 ought to be admitted and CIRP be initiated against the Corporate Debtor.
- 39.** We therefore direct that the CIRP be initiated against the Corporate Debtor.
- 40.** The Financial Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Munish Kumar having Regn. No. IBBI/IPN00050/2016-17/10094 as IRP. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.



- 41.** The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:
- 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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
 - e. The explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period".
- 42.** The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.
- 43.** The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or



any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

- 44.** The Financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor' assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.
- 45.** The Financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further, Financial Creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.
- 46.** The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.
- 47.** The application bearing IB – 288/(ND)/2021 is ***admitted.***

SD/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

ANAND DUBEY

SD/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)