



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT - IV**

**CP No.: IB 143(ND)/2024**

*(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 SC Credit Fund**

**... Financial Creditor / Applicant**

**VERSUS**

**M/s Dancy Builders Private Limited**

**... Corporate Debtor / Respondent**

**Pronounced on: 27.11.2024**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For Applicant : Adv. Utsav Mukherjee, Adv. Saksham Ahuja,  
Adv. Vikalp Wange, Adv. Mayulen Roy

For Respondent : Mr Adv. Iswar Mohapatra

**ORDER**

**PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)**

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by M/s **SC Credit Fund** (“**Applicant**”) seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against M/s Dancy



Builders Private Limited [CIN: U11100DL2019PTC345711] (“**Corporate Debtor**”).

2. The Corporate Debtor was incorporated on 09.02.2019, under the Companies Act, 2013. Its registered office is at H. No. 804, Ground Floor, Seqno-Gtv-1932, Flat No, B-1, Ghitorni, Gadaipur, South West Delhi, India, 110030. Therefore, this Bench has jurisdiction to deal with this petition.
3. The Corporate Debtor namely M/s. Dancy Builders Private Limited is engaged in the business of inter alia extraction of crude petroleum and natural gas and dealing in drilling equipment and allied machineries and spares and parts related to well drilling.
4. The present petition was registered on 20.03.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in payment of a sum of (Principal + Interest) Rs. 35,87,88,577/- (Rupees Thirty-Five Crores Eighty-Seven Lacs Eighty- Eighty Thousand Five Hundred Seventy-Seven only) (*as per Part IV of Form 1 and Exhibit “4” annexed to the Petition*).
5. Ld. Counsel for the Applicant submits that:
  - 5.1 Pursuant to internal approvals of the Corporate Debtor, the Corporate Debtor had issued 300 Non-Convertible Debentures (“NCDs”) of face value of Rs. 10,00,000/- (Rupees Ten Lakhs Only) each on 27.03.2019, with a maturity up to 10.02.2022, with a cash coupon of 20.05% p.a. payable monthly.
  - 5.2 The Financial Creditor was the initial subscriber in March 2019 for 50% of the NCD Issue for Rs. 15,00,00,000/- (Rupees Fifteen Crores Only) and thereafter on 15.07.2019, acquired the balance outstanding NCDs of Rs. 14,73,75,000/- (Rupees Fourteen Crores Seventy-Three



Lakhs and Seventy-Five Thousand Only). That the proceeds of the Issue were to be utilized towards part-funding of certain activities for investment purposes as enshrined in the present application.

- 5.3 Beacon Trusteeship Limited was appointed as the Debenture Trustee for the benefit of the Debenture Holders by execution of the Debenture Trustee Appointment Agreement dated 19.03.2019 and Debenture Trust Deed dated 19.03.2019. An Escrow Agreement dated 19.03.2019 was also duly entered into between the Corporate Debtor, Debenture Trustee, and the Escrow Bank. Thereafter, security documents pursuant to the terms of sanction were duly executed in favour of the debenture trustee.
- 5.4 On 23.09.2019, a Corporate Guarantee from Simplex Oil & Gas Consultancy Pvt. Ltd. was also provided as security in terms of the provisions of the First Amendment to the Debenture Trust Deed executed in September 2019.
- 5.5 In accordance with the requirement of financing the Corporate Debtor to the extent of Rs. 30 crores, the Financial Creditor invested Rs. 15 crores and the remainder were invested by another investor namely Dalmia Principal Strategies LLP from whom the Financial Creditor had purchased the NCDs at par on 15.07.2019. Thus, effectively, the Financial Creditor had advanced a total debt of Rs. 30 crores to the Corporate Debtor.
- 5.6 On 01.02.2022, the Financial Creditor sent a letter for payment for the NCDs issued by the Corporate Debtor which were falling due on 10.02.2022. The Corporate Debtor admitted the claim but sought time due to financial constraints vide letter dated 04.02.2022. Again on 12.08.2022, the Corporate Debtor informed that it was still trying to



negotiate with the lessee of the oil rig for payments and again sought time till March 2023 for clearing the dues.

5.7 Thereafter, upon expiry of the time sought by the Corporate Debtor, another letter dated 12.04.2023 was sent by the Corporate Debtor informing that they are still awaiting update on the rig from the lessee and were also looking for buyers for the rig so that the payment can be made. Furthermore, the Corporate Debtor had sought 90 days' time to settle the dues of the NCDs.

5.8 However, vide letter dated 04.07.2023 the Corporate Debtor again informed that they were in-process of gathering the funds and expected the dues to be cleared by 15.09.2023 and thus, sought time till 30.09.2023 to pay the dues. That, despite expiry of the tenor of the Agreement and repeated requests of the Financial Creditor, the Corporate Debtor was unable to redeem the debentures by making payment of the outstanding amounts payable to the Financial Creditor.

6. Replying to the averments of the Ld. Counsel for the Applicant, the Ld. Counsel for the Corporate Debtor submits the following:

6.1 The Corporate Debtor is facing financial crunch which is arising out because of non-payment of rental by lessee. The respondent is the owner of Oil & Gas Drilling Rig named Rig ZJ 40 of make SJ Petroleum Machinery Co. of 1000 HP capacity and its allied Equipment (Drilling Rig-39) (hereinafter referred to as "Rig") having purchased from Simplex Oil and Gas Consultancy Private Limited (hereinafter referred to as "SOGCPL") and is engaged in the business of leasing out the same.



- 6.2 On 14.03.2019, the Respondent and QOGIL entered into a Lease Agreement whereby the QOGIL took the said Rig on lease (hereinafter referred to as the "Rig").
- 6.3 As per the terms and conditions of the lease agreement dated 14.03.2019, monthly rental of Rs. 75,00,000/- per month had to be paid for the entire duration of the Rig's deployment. It is submitted that the Respondent had raised monthly invoices for lease rent for the month of April and May, 2019. It is further submitted that the QOGIL released only a part payment against two invoices only.
- 6.4 The QOGIL has illegally kept the possession of the said Rig and therefore, the Respondent is unable to participate in other tenders and thus is incurring opportunity cost. This is affecting the business of the Respondent severely and it is facing great amount of financial stress. On one hand, the Respondent is losing out on tender opportunities amounting to foreclosure of income source and on the other hand, the Respondent is paying huge amounts to repay the loan taken for the purchase of its rigs.
- 6.5 Pursuant to the refusal of the QOGIL to handover the said Rig, an application under Section 9 of the said Act (hereinafter referred to as the "Application") was filed by the Respondent against the QOGIL before the Learned Commercial Court at Rajarhat bearing Misc. Arbitration Case No. 49 of 2022 (CC) seeking urgent relief to preserve the subject matter of the dispute which is Drilling Rig – 39 as well as for securing the amount in dispute, a sum of Rs. 35.08 crores, the lease rental from 2018 to May 31, 2022, excluding interest and also lease rental beyond May 31, 2022 till the date Rig is delivered back to the Respondent.



- 6.6 Further to the filing of the said Application, an order dated 18.07.2022 was passed by the Learned Commercial Court at Rajarhat restraining the QOGIL from alienating or creating third party interest in respect of the said Rig. The said Ad-interim Order of injunction dated 18.07.2022 was extended on 8.08.2022, 16.11.202, 19.11.2022, 20.01.2023 and 09.03.2023
- 6.7 Keeping in mind the circumstances as mentioned in the above paragraphs, the Respondent was left with no other option but to invoke Clause 12.3 (Arbitration Clause) of the said Lease Agreement dated 14.03.2019 and issued a notice dated 24.02.2023 under Section 21 of the said Act.
- 6.8 In such circumstances, there are disputes between the parties which require adjudication before an arbitral tribunal in terms of Clause 12.3 of the said Lease Agreement and hence this Respondent has filed petition before High Court to appoint a sole arbitrator in terms of Section 11 of the Act. The Lease agreement dated 14.03.2019 containing the arbitration clause is wide and comprehensive in nature and encompasses the gamut of disputes and differences between the parties. Copy of the Order dated 28.03.2024 Learned Commercial Court at Rajarhat is enclosed as Annexure-R2 & Copy of Petition filed before HC of Calcutta is enclosed as Annexure-R3.
- 6.9 That without prejudice to above, the Corporate Debtor is also in the process of negotiation with the other parties for financial assistance to meet out the outstanding liability of the petitioner financial creditor and the corporate debtor has no intention to skip the liabilities of the financial creditor.
- 6.10 That Corporate debtor is also still awaiting update on the rig from the lessee and also looking for buyers for the rig so that payment can be



made to the petitioner and is not shying away from the financial debt due but only need some more time as it is running under severe financial crisis on account of non payment of lease rental by lessee.

6.11 It is submitted that the respondent also approaching petitioner financial creditor to give some more time rather than pushing the Corporate Debtor into Corporate Insolvency Resolution Process.

6.12 Proper reconciliation of accounts of the Corporate Debtor & Financial Creditor is required to find out the debt amount if any which the Corporate Debtor is liable to pay to financial creditor.

7 We have heard the learned Counsels appearing for Applicant and Corporate Debtor and perused the documents on records.

7.1 In adjudicating upon the matter at hand, it is observed that the total amount invested towards the Non-Convertible Debentures (NCDs) issued by the Corporate Debtor sums up to (Principal Amount) Rs. 30,00,00,000/- (Rupees Thirty Crores) to the Corporate Debtor, contingent upon adherence to the repayment terms. While partial payments were tendered by the Corporate Debtor, it is undisputed that there is a default regarding the outstanding sum, with its repayment presently in arrears.

7.2 Upon a comprehensive evaluation of the facts of the present case and a detailed analysis of the Investment Management Agreement dated 10.11.2017 and the Trust Deed of SC Credit Fund annexed to the Petition as (Annexure-7) and (Annexure-19), this Adjudicating Authority finds that the Applicant, (SC Credit Fund), is a "**Trust**" under incorporated under the provisions of the (Trusts Act, 1882).



7.3 Further, by virtue of the Investment Management Agreement, M/s SC India Manager Private Limited was appointed as the "**Investment Manager**", responsible for advising, managing, and administering the investment contributions of the Investors by providing advisory services to the Trust.

7.4 The Applicant has been authorized by the Trustee as well as the Investment Manager to file the present Petition. A Copy of Authorization Letter from Vistra ITCL (India) Ltd., (the Trustee) dated 10.01.2024 and copy of board resolution dated 29.12.2023 authorizing Mr. Suraj Warriar, Managing Director of SC India Manager Pvt. Ltd. is attached to the Petition and marked as Annexure- 1(colly).

7.5 Further, considering the timelines in the present case, the Applicant invested in the NCDs in the month of March 2019 and these NCDs were due for redemption on 10.02.2022, however the CD defaulted in the repayment of the same. These NCDs had a cash coupon of 20.05% per annum payable monthly. This fact is admitted by the Corporate Debtor as well.

7.6 Furthermore, the default occurred on 10.02.2022, and since the Petition was registered on 20.03.2024, it is within the three-year statutory limitation period from the date of default or acknowledgment of debt, as prescribed by (Article 137 of the Limitation Act, 1963). Thus, the Petition is within the statutory timeframe and is maintainable.

7.7 We place reliance on the judgment of Hon'ble NCLAT in the matter of ***Budhpur Buildcon Pvt. Ltd. Vs Abhay Narayan Manudhane, CA (AT) (Ins) No. 589 of 2021*** wherein the Hon'ble NCLAT held that the



subscription towards debentures carry 'time value for money' and thus qualify as 'Financial Debt'.

7.8 Since this is a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), the pertinent questions to be addressed are whether there is a debt due, whether it is in default, and whether there is "**time value**" associated with this debt, as laid down by the **Hon'ble Supreme Court in M. Suresh Reddy v. Canara Bank, 2023 SCC Online SC 608 (Paras 10-13)**. In the present case, the existence of a financial debt of over ₹35 Crores, which fell due on 10.02.2022, and the Corporate Debtor's default in its repayment, are not in dispute. Further, the time value attached to this financial debt is supported by Section 5(8)(c) of the IBC and judicial precedents.

7.9 Further as this is a case under Section 7 of IBC, filed by a Financial Creditor, there is no question as to whether there is any pre-existing dispute as it is of relevance only in the petitions filed by an Operational Creditor. Hence, the plea of the Corporate Debtor that Arbitration proceedings are pending and a suit has been filed by the Corporate Debtor Hon'ble Calcutta High Court does not bar this Tribunal from adjudicating the present case.

7.10 It is also the plea of the Corporate Debtor that an more time be granted for the repayment of the outstanding debt, citing various reasons as justification. However, this Tribunal is bound by the mandate of the Insolvency and Bankruptcy Code, 2016, and the regulations framed thereunder, which are unequivocal in their emphasis on the strict adherence to prescribed timelines. The overarching objective of the IBC is to ensure a time-bound resolution of insolvency proceedings, thereby



safeguarding the interests of all stakeholders, including creditors and the larger economic framework. Hence this plea of the Corporate Debtor is turned down.

7.11 Considering the above-cited judgement of Hon'ble NCLAT and facts of the present case, we are of the considered view that the Applicant is a Financial Creditor holding Financial Debt which is in default of payment by the Corporate Debtor. Therefore, we are satisfied that there exists debt and default and the same is corroborated by the averments made within the application.

8. In light of the above facts and circumstances, it is ordered as follows: -

8.1 The Application bearing **CP IB-143(ND)/2024** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **admitted**.

8.2 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, Adjudicating Authority, 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.*

*(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, concessions, clearances or a similar grant or right during the moratorium period.*

8.3 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.

8.4 We also declare a moratorium in terms of Section 14 of the Code. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of



Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

- 8.5 The Applicant has proposed the name of **Mr. Ashok Kumar Gupta** as the Interim Resolution Professional (“IRP”) having address: **LD-46, LD Block, Pitampura North West, Delhi, 110034**. His Email id is **cmaashokgupt@gmail.com**. His registration number is **IBBI/IPA-001/IP-N00010/2016-17/10072**. The Applicant has filed a copy of the consent issued by **Mr. Ashok Kumar Gupta** in Form 2 and Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B (*Attached to the Application as Annexure-3 colly*). However, on perusal of the attached AFA, it appears that the same has expired on 15.11.2024. Hence, **Mr. Ashok Kumar Gupta** is hereby directed to file the duly renewed and valid AFA within 3 days of the date of this order.
- 8.6 In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 8.7 During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this



- order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- 8.8 The IRP shall perform all his functions as contemplated, interalia, by Sections 17, 18, 20 & 21 of the Code. He is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- 8.9 The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- 8.10 The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.
- 8.11 In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.



8.12 The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

8.13 The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

8.14 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, the present petition bearing CP No. **IB 143 (ND)/2024** is **admitted**. No order as to cost.

**-sd-**

**(DR. SANJEEV RANJAN)**

MEMBER (TECHNICAL)

**-sd-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (JUDICIAL)