

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-380 (PB)/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

IIFL PRIVATE EQUITY FUND

APPLICANT/FINANCIAL CREDITOR

Vs.

THREE C GREEN DEVELOPERS PRIVATE LIMITED

RESPONDENT/CORPORATE DEBTOR

Judgment delivered on: 23.12.2021

CORAM:

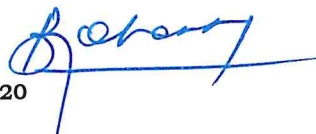
SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SH. PRASANTA KUMAR MOHANTY, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: Sh. DHARMINDER SINGH, MEMBER, (J)

1. The IIFL Private Equity Fund has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Three C Green Developers Private Limited, referred to as the corporate debtor.



2. It is appropriate to mention that the applicant IIFL Private Equity Fund, is a trust fund established by IIFL Holdings Limited by way of Deed of Trust Dated 23.07.2012 the registration number of applicant with Securities Exchange Board of India is IN/AIF2/12-13/0015, having its Registered Office at 6th Floor, IIFL Centre, Kamala City, Senapati Bapat Marg, Lower Parel, Mumbai-400013.
3. Mr. Himanshu Suman, duly authorized on behalf of applicant vide Board Resolution dated 25.07.2019, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the Code. A copy of the Board Resolution dated 25.07.2019 has been placed on record.
4. The Respondent Company M/s. Three C Green Developers Private Limited (CIN No. U 70102 DL 2010 PTC 211958) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 30.12.2020 having its registered office situated at C-23, Greater Kailash Enclave, Part-1, New Delhi - 110048. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
5. The case of the applicant precisely is that in the year 2014-15, the applicant subscribed to 13688 secured, redeemable cumulative, to-be listed, non-convertible debentures having face value Rs. 1,00,000/-



issued by the corporate debtor. The debentures were issued by the corporate debtor vide Trust Deeds dated 27.12.2014, 29.12.2014 and 19.10.2015 executed between the Corporate Debtor, Piyush IT Solutions Pvt. Ltd. and IDBI Trusteeship Services Limited (debenture trustee). The applicant purchased the said debentures from Piramal Enterprises Limited, in three tranches on 05.11.2015-10,000 debentures, on 24.11.2015-2300 debentures and on 29.12.2015-1388 debentures.

6. It is the case of the applicant that the corporate debtor has agreed to repay the amount in 10 equal installments from the 15th months from the disbursement of the subscription amount. The corporate debtor has defaulted in payment of 7 installments totaling to Rs. 95,80,70,867/-. Further interest in terms of clause 2.1 and 2.2 of schedule-2 of the debenture trust deed is also pending to be paid by the corporate debtor.
7. Therefore, as per part IV of the application it is claimed that as on 16.01.2020 a sum of Rs. 180,09,41,001/- is due and payable by the respondent company.
8. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Vikram Bajaj, for appointment as Interim Resolution Professional having registration number IBBI / IPA-002 / IP-N00003/ 2016-17 / 10003 resident of 308, 3rd floor, Pearls Business Park, Netaji Subhash Place, Pitampura, Delhi- 110034 with email - id bajaj.vikram@gmail.com. Mr. Vikram



Bajaj has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Vikram Bajaj as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

9. The applicant has placed following documents on record to prove its claim:

- i. Debenture Trust Deed Dated 27.12.2014, entered between Three C Green Developers Pvt. Ltd., Piyush IT Solutions Pvt. Ltd. and Debenture Trustee.
- ii. First supplementary debenture trust deed dated 29.12.2014.
- iii. Second supplementary debenture trust deed dated 19.10.2015.
- iv. Debenture Trustee appointment agreement dated 26.12.2014 executed between Three C Green Developers Pvt. Ltd. and Debenture Trustee.
- v. Statement of Demat Account of applicant showing the debentures held by applicant as available on the website NSDL.



10. The applicant has also placed on record a copy of record of default filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor. The said record shows that the claim of applicant is deemed authenticated as no objection has been recorded by corporate debtor.
11. The respondent corporate debtor has filed its reply. Both the parties were heard on 03.12.2021 and the order was reserved.
12. The main objection raised by the respondent is that neither any default has been occurred nor the respondent corporate debtor is bankrupt or in position of not being able to pay off its debts.
13. The respondent has stated that the said debentures were issued for a construction and development project at Noida and these are proportional to the project only. Apparently, due to delay in execution of project on account of Noida Development Authority and other legal factors, the company is facing huge monetary losses.
14. The case of the respondent is that despite the fact that the debentures are proportional to the project and project has been delayed, the respondent has already paid huge sums to applicant and the respondent is still a monetarily viable company. The applicant had knowledge of the issues faced by respondent and the respondent has already requested the applicant to reconcile the accounts and restructure the payment schedule.
15. The respondent corporate debtor has not denied the fact that debentures were issued and terms of deed as mentioned by applicant

is false, in fact the respondent has agreed to repay the amount to the applicant after completion of the project.

16. Needless to say, that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs.1 Lakh. In view of the Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

17. In the facts, it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditor had subscribed debentures from the respondent corporate debtor and the respondent has not denied the fact that the debentures were issued to applicant and committed default in repayment of the outstanding financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

18. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.



19. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

20. Mr. Vikram Bajaj, having registration number IBBI / IPA-002 / IPN00003/ 2016-17 / 10003 having email - id bajaj.vikram@gmail.com is appointed as an Interim Resolution Professional for the corporate debtor.

21. In pursuance of Section 13 (2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

22. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Neeraj Bhatia to meet out the expenses to perform the functions /duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

23. The moratorium is declared 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, tribunal, 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.”

24. 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.

25. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 &



21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

26. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than three days from today.



(PRASANTA KUMAR MOHANTY)
MEMBER (T)



(DHARMINDER SINGH)
MEMBER (J)