

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH

**CP (IB) No.2029/KB/2019**

*along with*

**IA No.164/KB/2020**

**in**

**CP (IB) No.2029/KB/2019**

*In the matter of*

An application under section 7 of the Insolvency and Bankruptcy Code, 2016

and

*In the matter of*

**CP (IB) No.2029/KB/2020**

Punjab National Bank

...

Financial creditor

Versus

Asharam Leasing and Finance Private Limited

CIN: U65910WB1986PTC040608 ...

Corporate Debtor

**IA No.164/KB/2020**

**in**

**CP (IB) No.2029/KB/2020**

Asharam Leasing and Finance Private Limited

CIN: U65910WB1986PTC040608 ...

Applicant/Corporate Debtor

Versus

Punjab National Bank

...

Respondent/Financial Creditor

**Date of Hearing: 05/04/2021**

**Date of Pronouncement: 12/05/2021**

*Coram:*

Shri Rajasekhar V.K. : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

*Appearances (via video-conference):*

For the Financial Creditor : Ms Aparajita Rao, Advocate  
For the Corporate Debtor : Mr Arik Banerjee, Advocate  
Mr Rajib Mullick, Advocate

**ORDER**

*Per: Rajasekhar V.K., Member (Judicial)*

**CP (IB) No.2029/KB/2019**

1. This Company Petition has been filed by Punjab National Bank (*Financial Creditor*) against Asharam Leasing and Finance Private Limited (*Corporate Debtor*), under section 7 of the Insolvency and Bankruptcy Code, 2016, (*'IBC' or 'the Code'*) for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
2. The Corporate Debtor was incorporated on 29.04.1986 as a private company limited by shares with the Registrar of Companies, West Bengal, Kolkata. Its Corporate Identity Number (CIN) is U65910WB1986PTC-040608. It has its registered office Godrej Waterside, Tower-I, 8<sup>th</sup> Floor, Office No.804G, Plot-5, DP Block, Sector-V, Salt Lake City, Kolkata 700091, within 24-Parganas North District, in the State of West Bengal. Therefore, this Bench has jurisdiction to deal with the present petition.
3. During the course of hearing on 08.02.2021, it was revealed that the corporate debtor is a Non-Banking Finance Company (NBFC) registered with the Reserve Bank of India (RBI). We observed that the petition in that case cannot be maintained. At this juncture, the learned counsel for the financial creditor sought time to obtain instructions in the matter. The request was granted and the matter was adjourned to 05.04.2021.
4. On 05.04.2021, learned counsel for the financial creditor submitted that the corporate debtor is indeed a NBFC. She, however, submitted that she has

no instructions to withdraw the petition, and invited the Bench to pass orders in this regard.

5. Section 3(7) of the Code defines a “*Corporate Person*” as meaning –
  - (a) a company, as defined in section 2(20) of the Companies Act, 2013,
  - (b) a limited liability partnership, as defined in section 2(1)(n) of the Limited Liability Partnership Act, 2008; or
  - (c) any other person incorporated with limited liability under any law for the time being in force,

**but shall not include any financial service provider.**
6. Section 3(8) *ibid* defines a “*Corporate Debtor*” as meaning a corporate person who owes a debt to any person.
7. Section 7 *ibid* speaks of initiation of CIRP against a corporate debtor by a financial creditor.
8. Reading the provisions together, it is clear that a section 7 petition may be initiated against any corporate debtor who is a corporate person within the meaning of section 3(7) of the Code. The Corporate Debtor herein is not covered within the definition of section 3(7) of the Code, since it is a NBFC.
9. In these circumstances, **the present petition bearing CP (IB) No.2029/KB/2019** is not maintainable and is required to be dismissed. It is ordered accordingly.

**IA No.164/KB/2020**

10. IA No.164/2020 is an application in the nature of a demurrer seeking dismissal of the main CP (IB) No.2029/KB/2019 on the ground that the corporate debtor is a NBFC and therefore the present petition is not maintainable.

11. In view of paras 5 to 7 *supra*, the demurrer application succeeds. Therefore, **IA No.164/KB/2020 is allowed.**
12. We make it clear that the dismissal of the petition is not on merit, but only because the section 7 application is not maintainable against the corporate debtor. This order shall, therefore, not prejudice the right of the Financial Creditor to initiate appropriate steps under any other law and before any other forum.
13. The Registry is directed to communicate a copy of this order to the parties and to their counsel.
14. File be consigned to the records.

**Harish Chander Suri**  
**Member (Technical)**

**Rajasekhar V.K.**  
**Member (Judicial)**

12.05.2021