

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO. 701

CP (IB) 777/ND/2021

IN THE MATTER OF:

**M/s. L&T FINANCE LIMITED V/s. COAST TOWN PLANNERS
PRIVATE LIMITED**

Order under Section 7 of Insolvency and Bankruptcy Code, 2016.

Order delivered on 10.08.2023

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

CP (IB) 777/ND/2021 stands admitted.

SD/-

(Rahul Bhatnagar)
Member Technical

SD/-

(P.S.N Prasad)
Member Judicial



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-777/(ND)/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

L&T FINANCE LIMITED

Having its Registered Office at:

7TH FLOOR, TECHNOPOLIS,
A-WING, PLOT NO. 4, BLOCK
BP, SECTOR – V, SALT LAKE,
KOLKATA, WEST BENGAL,
PIN – 700091, INDIA

...Petitioner/ Financial Creditors

Versus

M/S COAST TOWN PLANNERS PRIVATE LIMITED

Having its Registered Office at:

A-8B, SECOND FLOOR,
FRIENDS COLONY EAST,
SOUTH DELHI, PIN – 110065, INDIA



...Respondent/ Corporate Debtor

Coram:

Shri. P.S.N Prasad, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

PRESENT

Counsel for Petitioner: Mr. Aseem Chaturvedi, Ms. Wamika Trehan, Ms. Mathiali Moondra and Mr. Siddhant Kumar, Advs.

Counsel for Respondent: Mr. Kanishk Khetan, Adv.

ORDER

PER: P.S.N PRASAD, MEMBER (JUDICIAL)

Date: 10.08.2023

1. This petition has been filed by M/s L&T Finance Limited, through Authorised Signatory of Financial Creditor, Mr. Ruchir Jauhari duly authorised vide Board Resolution dated 18.10.2019 to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Coast Town Planners Private Limited under Section 7 of




the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of debt of Rs. 239,26,85,424.48 (Indian Rupees Two Hundred and Thirty Nine Crores Twenty-Six Lakhs Eighty Five thousand Four Hundred and Twenty Four) due and payable as on 30 November 2021. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant/Financial Creditor is a Company incorporated under the provisions of the Companies Act, 1956, and is registered as a nonbanking financial company with the Reserve Bank of India.
- ii. That a Term Sheet was duly signed and executed by the Applicant/Financial Creditor as well as the Corporate Debtor
- iii. The Applicant/Financial Creditor vide Sanction Letter dated 18.12.2019 sanctioned a loan to the Corporate Debtor, amounting to INR



2,15,00,00,000/- (Rupees Two Hundred and Fifteen Crores) for purchase of inventory admeasuring 4,36,696 sq. ft. in a project named 'North Eye' located at Sector 74, Noida, Uttar Pradesh and other related costs in connection with purchase of the said inventory

- iv. That as per Clause 4 of th`e Loan Agreement, the Loan together with all interest, taxes, liquidated costs, charges, expenses and other sums whatsoever due and payable to the Financial Creditor under the Loan Agreement were agreed to be secured by the Security as set out in Schedule III of the Loan Agreement.
- v. That accordingly, the Financial Creditor made the first disbursement in terms of the Loan Agreement on 31 December 2019, to the tune of INR 30,00,00,000/- and INR 46,44,000/-, and the last disbursement on 12 July 2021 to the tune of INR 3,39,73,000/-, in accordance with the terms of the Loan Agreement.



vi. That the Corporate Debtor acknowledged receipt of the loan amount as well admitted its liability towards repayment of the same along with other interests and charges as follows:

- The Corporate Debtor paid interest in terms of the Loan Agreement from 15.02.2020 till 15.04.2021
- On 21.07.2020, the Chartered Accountants of the Corporate Debtor issued a certificate confirming that the Corporate Debtor has availed a loan facility from the Applicant/Financial Creditor.
- The audited financial statements of the Corporate Debtor acknowledged the fact that the Corporate Debtor has availed a loan facility from the Financial Creditor.
- Balance Confirmation certificate dated 9 April 2021 (duly accepted by the Corporate Debtor) confirming the balance in respect of the Loan Amount as on 31.03.2021 as




INR 2,17,63,11,598 (Indian Rupees Two Hundred and Seventeen Crores Sixty Three Lakhs Eleven Thousand Five Hundred and Ninety Eight).

vii. That though the Corporate Debtor remitted interest till April 15, 2021 however, thereafter, the Corporate Debtor failed to clear the dues till date,

viii. That given the Corporate Debtor's failure to honour the payment terms under the Loan Agreement, the Financial Creditor was constrained to have the Corporate Debtor's Account classified as a Non-Performing Asset ("NPA") on 13.08.2021 in terms of guidelines issued by RBI.

ix. That as the Corporate Debtor continued to remain in default and committed various other Events of Default, the Financial Creditor, in exercise of its rights under the Loan Agreement,



recalled the loan vide its Recall Notice dated 25.11.2021.

- x. In view of the above Financial Debt and Defaults thereof, it is submitted that the present Application under Section 7 of the Code, was filed.

2. The Corporate Debtor filed its reply in which the following contentions were made:

- i. That the Corporate Debtor herein is being harassed and arm twisted by the Petitioner via the aforementioned Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP). It is submitted that in the instant case no financial debt has been disbursed by the Petitioner to the Corporate Debtor the entire transaction camouflaged as a loan agreement is nothing but a sham transaction on the part of the Petitioner to gain wrongful benefit at the cost of the



Corporate Debtor and an entity by the name of Supertech. It is pertinent to mention here that Petitioner has been consistently flouting and violating all guidelines of Reserve Bank of India and in a strategic manner even got the account of the Respondent/Corporate Debtor declared as a Non-performing Asset, thereby making it difficult for the Respondent/Corporate Debtor to repay the loan, followed by the Company Petition No. (IB)-777 (ND)/2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process(CIRP) vis a vis the present Respondent/Corporate Debtor.

- ii. That by way of the present petition, Petitioner has not only misrepresented and mislead this Tribunal but has also abused the provisions of the Insolvency & Bankruptcy Code, 2016 for purposes other than resolution.
- iii. That a group company of the Corporate Debtor, Supertech Limited entered into a loan agreement



with the Petitioner herein for an amount of Rs. 360,00,00,000/- for the project Eco Village - 1. The repayment of the principal amount for the said loan was to commence from March 2020 @ Rs.10 Cr per month (Loan Agreement 1). That Supertech Limited and Supertech Infrastructure Private Limited entered into another loan agreement with the Petitioner herein for an amount of Rs.650,00,00,000/- for the projects Supertech Capetown, North Eye, Crown Towers and Upcountry. The repayment of the principal amount for the said loan was to commence in October 2020 for the construction finance @ Rs.9.03Cr per month and from October 2021 for the takeover funding @ Rs.6.77Cr per month (Loan Agreement2)

iv. That in terms of Loan Agreement 1, Supertech Limited, the Petitioner herein, and IndusInd Bank Limited entered into an Agreement for opening escrow accounts. In terms of Loan Agreement 2, the parties executed three Escrow Agreements




between Supertech Limited and Supertech Infrastructure Private Limited, Petitioner herein, and HDFC Bank Limited in relation to Capetown, North Eye, and Crown Towers. It is relevant to mention here that Supertech Limited and Supertech Infrastructure Private Limited provided securities including project lands and receivables from Supertech Capetown, Supertech North Eye, Supertech Crown Tower, and Supertech Upcountry and later on, also provided additional securities to the Petitioner on 14.05.2019 for securing the loans granted to Supertech including hypothecation of receivables / movables from Radiant Towers situated at GH01/A, Sector 74, Noida.

- v. That along with aforementioned Loan Agreement, three Escrow Agreements between Supertech Limited and Supertech Infrastructure Private Limited, Petitioner herein, and HDFC Bank Limited in relation to Capetown, North Eye, and Crown Towers were executed wherein Petitioner retained




all rights under the Agreement and left very limited powers for the Supertech Limited and Supertech Infrastructure Private Limited. That under the terms of the Escrow Agreements, Account I or the Master Escrow Account — The said account was opened for the purpose of collection 100% of the project receivables from the customers a standing instruction was given to the Escrow Agent i.e. the bank to transfer 70% of the amounts lying in the Account I or Master Escrow Account to Account II to RERA Escrow Account at the end of each business day to cover the cost of construction and land cost in relation to the project and the balance 30% of the amount was to be transferred to Account III or Escrow Account. Moreover, the Escrow Agent i.e. HDFC Bank were under instructions that any withdrawal made from the RERA Escrow Account has to be in accordance with the provisions of RERA and submissions of the Quarterly compliance certificates by an



engineer, an architect and a chartered accountant or self-declaration from promoter in compliance of RERA that the withdrawal is in proportion to the percentage of completion of the project.

- vi. That based on the terms of the escrow agreements, 70% of the amounts received, were meant to be solely used for construction and land cost purposes in accordance with Section 4(2)(1)(D) of the RERA Act and were mandatorily required to be deposited to and transferred to the Account III. That, even after the said transfer to Account III, the said amount was to be used exclusively for the purpose of construction as mandated under the RERA Act and as agreed between the parties under the escrow agreements. Moreover, even though the Supertech Limited and Supertech Infrastructure Private Limited held 70% of the project receivables in a trust for the homebuyers and it could have been only utilised for construction purposes. Therefore, any use of the said amount for purposes



other than construction was not only violative of that trust but of the mandate under RERA Act.

- vii. That even under the escrow agreements, the Petitioner retained all the rights to operate the Escrow Account III, in which all the funds were to be transferred after submissions of the necessary RERA Quarterly Compliance Certificates and Supertech Limited and Supertech Infrastructure Private Limited was not authorised to operate the same. That Supertech Limited and Supertech Infrastructure Private Limited in effect did not have free access to the said funds which were to be utilised solely for construction purposes and were constrained to remain at the discretion of Petitioner herein under whose instructions the Escrow Agent released the funds from Account III
- viii. The Petitioner herein had in a malicious fashion, not only worded the aforesaid Escrow Agreements in a non-negotiable, unilateral, self-serving terms but also caused the withdrawals by the Escrow



Agent upon written instructions of the Petitioner herein from Account III. Moreover, the Petitioner herein had set up standing instructions for the transfer of funds from Account III in its absolute discretion along with the right to change the standing instructions as per its own whims and fancies and had the power to use the amount lying in Account III in case of Event of Default for entire payment of the Loan, whereas, Supertech Limited and Supertech Infrastructure Private Limited, who had availed the loan facility with the intention to complete the project could only access the money i.e 70% amount which they were entitled to receive, for the construction purposes under the statute as well as under the escrow agreement after sending a written request to the Petitioner herein.

ix. That even though, Supertech Limited and Supertech Infrastructure Private Limited was servicing the loans as per the agreements and



making all interest payments on time, Petitioner herein threatened Supertech Limited and Supertech Infrastructure Private Limited of foreclosure of the loans even though the principal had not even become due and coerced Supertech Limited and Supertech Infrastructure Private Limited to enter into various transactions for infusion of cash. The purported intention as showcased by the Petitioner herein was that once the cash as required is available in the Supertech Limited and Supertech Infrastructure Private Limited, they would be able to quickly complete the construction work and thus will be better placed to proceed with sales, and from such sale proceeds, they will be able to repay the principal amounts of loans which were to start becoming due from 2020/2021 onwards as per the agreements

- x. That upon such coercion and inducement by the Petitioner herein, Supertech Limited and Supertech Infrastructure Private Limited entered



into an Agreement to Sell four companies including the Respondent herein. The object behind these transactions was to infuse a huge amount of cash which would help Supertech Limited and Supertech Infrastructure Private Limited in completing the project. It is apposite to mention that the sale consideration received under these agreements were to be treated as project receivables deposited by any other home buyer i.e., they would be subject to the same treatment under the RERA Act, 2016 and the UPRERA rules and therefore, 70% of the amount received ought to be utilized only for construction as mandated under the provisions of RERA Act.


- xi. That Petitioner in a strategic manner first approached the Respondent herein to enter into Loan Agreement dated 30.12.2019 for purchase of properties which were already provided as securities including project lands and receivables from the aforementioned "North Eye Project" by



Supertech Limited and Supertech Infrastructure Private Limited to the Petitioner. Thereafter, the Petitioner herein coerced Supertech Limited to enter into an Agreement to Sell dated 01.04.2021 for the infusion of cash via sale of properties i.e 258 residential units of "North Eye Project" mortgaged to Supertech Limited which were even provided as securities including project lands and receivables from the aforementioned "North Eye Project" by Supertech Limited and Supertech Infrastructure Private Limited to the Petitioner for a consideration of Rs.2,25,00,00,000/- (Rupees Two Hundred Twenty Five Crores) out of which Rs.1,80,00,00,000/- (Rupees One Hundred And Eighty Crores) were paid to Supertech Limited on or before the execution of the said Agreement to Sell. That vide the aforementioned Loan Agreement dated 30.12.2019 entered into between the Petitioner and Respondent herein for a total loan amount of INR 2,15,00,00,000/- (Rupees Two




Hundred and Fifteen Crores) for purchase of above-mentioned inventory admeasuring 4,36,696 sq. ft. ("Project Inventory") in a project named 'North Eye' located at Sector 74, Noida, Uttar Pradesh. ("said Project"), administrative and marketing expenses related to Project Inventory & stamp duty and other related charges for purchase of Project Inventory, wherein Supertech Limited were even made a corporate guarantor. That a total amount of INR 2,12,46,17,000/- (Rupees Two Hundred and Twelve Crores Forty Six Lakhs and Seventeen Thousand) was disbursed in favour of the Respondent herein under the Loan Agreement. That the Petitioner herein not only made the Respondent herein enter into one -sided, non-negotiable loan documents for infusion of cash in Supertech Limited and Supertech Infrastructure Private Limited but several large value of securities were also provided by the Respondent herein under the loan agreement along with additional



securities for securing the loans including hypothecation of receivables from the aforesaid project etc. That it is the own admission of the Petitioner herein that the estimated value of the security held by the Petitioner herein is to the tune of INR 292.7 Crores alone from the net receivables from the afore said project.

xii. Therefore, Supertech Limited and Supertech Infrastructure Private Limited received a total of Rs.435,00,00,000/- in the respective Account I or Master Escrow Account towards project receivables. As per the statutory provisions of RERA 2016, UPRERA rules and Regulations as well as the Escrow Agreements between the parties, 70% of the said amount i.e. Rs.304,50,00,000/- were duly transferred to respective Account II or RERA Master Account and the remaining 30% was transferred to respective Account III or Escrow Accounts. Thereafter, the said Rs.304,50,00,000/- which were to be used



exclusively for the purposes of construction of the project and land costs were also transferred to respective Account III, however, the said amount could still only be used towards construction purposes and no other purpose as per the mandatory provisions of RERA.

xiii. However, the Petitioner herein misused its powers under the escrow agreements and withdrew the entire amount of Rs. 435, 00, 00,000/- from Account III. By doing so, the Petitioner illegally and malafidely deprived Supertech Limited and Supertech Infrastructure Private Limited from Rs. 304,50,00,000/- i.e., 70% of the amount towards consideration which could only have been used by the Supertech Limited and Supertech Infrastructure Private Limited towards construction of the project. That this illegal misappropriation / diversion of funds on part of the Petitioner herein was not only in breach of trust as well as mandatory provisions of the RERA




2016, derogation from which attracts penal consequences. The Petitioner, being an NBFC was duty bound and obligated to comply with the statutory provisions thereby ensuring that there is no violation of the RERA provisions.

xiv. The Petitioner herein, by committing such fraudulent transactions and withdrawing the said amount intended to repay the full amount of the loan to itself thereby violating the guidelines laid down by RERA as well as the RBI regulations, being a NBFC. This speaks volumes about the malicious intent of Petitioner herein to usurp the monies of the Supertech Limited and Supertech Infrastructure Private Limited intended for the development of the project and assets of the Respondent herein. The Petitioner herein has totally failed to dispose of its duty as a public institution.

xv. It is relevant to mention herein that the above mentioned nature of transaction as entered



between the parties i.e., the Petitioner, Corporate Debtor, Supertech Limited clearly demonstrates that the instant case is not a case of disbursal of any financial debt from the Petitioner to the Corporate Debtor. The Petitioner in the garb of the alleged loan agreement dated 30.12.2019 sought to advance money for the purposes of purchasing the mortgaged property in the North Eye Project. These mortgaged properties were so vested as security for the loans disbursed to Supertech Limited and Supertech Infrastructure Pvt. Ltd. This security interest was thereafter, sought to be converted into financial debts by purchasing the said assets. This purchase had the impact of the alleged loan amount being routed back to the account of Supertech Ltd, the control whereof was illegally being exercised by the Petitioner. The legal position is well settled that what cannot be done directly cannot be done indirectly.



xvi. That the Petitioner herein has in a strategic manner not only caused a colourable transaction but has also attempted to evergreen the loan given to Supertech Limited and Supertech Infrastructure Private Limited by way of granting a loan to the Respondent herein for purchase' of property mortgaged to Supertech Limited which was even provided as a security including project lands and receivables from the aforementioned "North Eye Project" by Supertech Limited and Supertech Infrastructure Private Limited to the Petitioner under the loan agreement dated 20.03.2017 and 28.09.2017 entered into between the Petitioner and Supertech Limited and Supertech Infrastructure Private Limited, thereby causing Supertech Limited to enter into Agreement to Sell dated 01.04.2021 between the Supertech Limited and Respondent herein/Coast Town Planners Pvt. Ltd for the aforementioned mortgaged property which was already provided as a security including



project lands and receivables from the aforementioned "North Eye Project" by Supertech Limited and Supertech Infrastructure Private Limited to the Petitioner herein. Therefore, a colourable transaction ever greening the loan given to Supertech Limited and Supertech Infrastructure Private Limited does not make a case of default under section 3(12) of the Code in repayment of any financial debt towards the Petitioner.

xvii. From the above factual matrix, it is evident that the present matter is a case where there has been absolute coercion on the part of the Petitioner. The action of the Petitioner in debiting the Escrow Accounts of Supertech Limited has restricted them to construct the units which were sold to the Respondent, which has in turn made it difficult to liquidate the debts of the Petitioner.

xviii. The Hon'ble Supreme Court, recognizing the difficulty in such type of matters had pronounced the Judgment in *Vidarbha Industries Power Limited*



vs. Axis Bank Limited Civil Appeal No. 4633 of 2021

wherein it was held that in case there are circumstances where the Corporate Debtor awaits receipt of certain sums which are enough to liquidate the debts of a creditor, the proceedings ought to be kept in abeyance till such funds are received.

xix. Accordingly, and without prejudice, in such circumstances, it is appropriate that the present matter be kept in abeyance till the units sold to the Corporate Debtor are received by which the debts of the Petitioner can be liquidated.

- 3.** We have gone through the Rejoinder and have heard the Ld. Counsel appearing for the Petitioner and the Respondent and perused the averments made in the application and reply filed on behalf of the parties.

- 4.** The Corporate Debtor, in its reply, has made various allegations with respect to the conduct of the Financial



Creditor including coercion by Financial Creditor against the Corporate Debtor. It is also submitted that the Petitioner has failed to dispose of its duty as a public institution. Firstly, no documentary evidence has been placed on record in support of the aforesaid allegations. Secondly, this Tribunal is not the appropriate forum in which the Corporate Debtor can make such allegations. The Court in plethora of judgements, time and again have held that in a section 7 petition we only have to see the debt and the default. Support can be taken from judgement of Hon'ble National Company Law Appellate Tribunal in the matter of *Nishit B Patel Shareholder of Peacock Construction Private Limited v. Good Value Financial Services Private Limited, Company Appeal (AT) (Insolvency) No. 198/2020* wherein it was held that Ld. Adjudicating Authority has to only satisfy itself as to the debt and default and if the Application under Section 7 is complete in all respects, then no other criteria can be looked into for admitting the Application. Further, the Hon'ble Supreme Court *in*



Innoventive Industries Limited v. ICICI Bank Limited (2018) 1 SCC, held that the concept of default under the Code is very wide and that it is simpliciter a non-payment of debt when the same becomes due and includes non-payment of even a part thereof. It also held that even nonpayment of a disputed financial debt when due would constitute a default under the Code. In other words, as long as the debt is due and payable, it does not matter if the same is disputed. It also held that when the Ld. Adjudicating Authority is satisfied that a default has occurred, the Application filed under Section 7 of the Code must be admitted.

- 5.** The Corporate Debtor has pointed out the facts of the Loan Agreement of the Corporate Debtor with some parties which are not even subject matter of the present case. As far as the debt and default is concerned the Petitioner has relied on number of documents which includes the following: -



- A. Certificate issued by a CA confirming that the Corporate Debtor has availed a loan facility from the Applicant/Financial Creditor.
 - B. The audited financial statements of the Corporate Debtor acknowledging the fact that the Corporate Debtor has availed a loan facility from the Financial Creditor.
 - C. Record of default with information utility dated 22 November 2021.
 - D. Balance Confirmation certificate dated 9 April 2021 (duly accepted by the Corporate Debtor) confirming the balance in respect of the Loan Amount as on 31 March 2021
- 6.** The Copy of Record of default with Information Utility is reproduced as under: -

PART ARecord of Default for Party M/s COAST TOWN PLANNERS PVT.LTD (Debtor)

Unique Debt Identifier :AACCA1963B_6240067911
 Information as of 31-10-2021
 Received by NeSL on 10-11-2021 19:03:29
 Status of Authentication (DEBTOR) : PENDING AUTHENTICATION (as on :N.A.)
 Registered in IU : NO
 Registration Date : N.A.
 Last Login : N.A.

Submitter Information	
UIN	AACCA1963B
Name	M/s L&T FINANCE LIMITED
Relationship to the Debt	Financial Creditor

Other Party Information	
Relationship to the Debt	Debtor
Party name	M/s COAST TOWN PLANNERS PVT.LTD
Registered/ permanent Address of counterparty	A-8B Second Floor Friends Colony East New Delhi Delhi New Delhi Delhi
PIN code	110065
Legal Constitution	PVT.
PAN No. / Other ID	AAGCC0183M
Email ID	marish.goel@supertechlimited.com

Debt Information	
Type of Debt	Financial
Debt Reference No.	6240067911
Debt Start Date	31-12-2019
Debt Currency	INR
Sanctioned Debt Amount	2,15,00,00,000.00
Facility Name	LTFC CF BU4 Sec
Total Outstanding Amount	2,30,92,64,445.00
Amount Overdue	9,89,79,847.00
Account Closed Flag	No
Sanction Currency	INR
Sub Type - Debt	TLOAN
Funded Type	Funded

Default Information	
Date of default	13-08-2021
Total Outstanding	2,30,92,64,445.00
Default amount	9,89,79,847.00



7. The Corporate Debtor has relied on the judgement on Hon'ble Supreme Court in the matter of *Vidarbha Industries Power Limited vs. Axis Bank Limited Civil Appeal No. 4633 of 2021*. However, subsequently the Hon'ble Supreme Court in the matter of *M. Suresh Kumar Reddy vs. Canara Bank and Ors. (11.05.2023 - SC) : MANU/SC/0561/2023* held that there is no ground available to reject an application u/s 7 of IBC except when the NCLT finds that the debt has not become due and payable, the decision in 'Vidarbha Industries' cannot be read and understood as taking a view which is contrary to the view taken in 'Innoventive Industries' and 'E.S. Krishnamurthy' Relevant para of the aforesaid judgement is reproduced as under: -

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. Default is defined Under Sub-section 12 of Section 3 of the IB Code which reads thus:

3. Definitions: In this Code, unless the context otherwise requires, -



.....

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission Under Section 7 of the 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.

8. In the present case the material on record clearly goes to show that CD had availed the loan and has committed default in repayment of the outstanding loan amount. The Corporate Debtor has neither denied the existence of debt and nor the factum of default.

9. We are satisfied that the present application is complete in all respects 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.

10. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

11. 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. Ajit Gyanchand Jain for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P00368/2017-2018/10625. The Proposed IP has a valid AFA which is valid upto 17.10.2023. Accordingly, this Adjudicating Authority, hereby appoints Mr. Ajit Gyanchand Jain (Email – ajit@vcanca.com), to act as Interim Resolution professional. He shall take such other




and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

12. 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.

13. 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, 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.”

14. 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.

15. 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 preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (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.

16. The office 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 seven days from today. The Registrar of Companies shall update its website by



updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Let copy of the order be served to the parties.

SD/-
Rahul Bhatnagar)
Member (Technical)

SD/-
(P.S.N Prasad)
Member (Judicial)