

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH**

C.P (IB) NO. 1029 OF 2021

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4
of the Insolvency and Bankruptcy
(Application to Adjudication Authority)
Rules, 2016

In the matter of

IREP Credit Capital Private Limited

Plot C-20, "G" Block, Near MCA, Bandra
Kurla Complex, Bandra East,
Mumbai – 400 051

.....Financial Creditor/Petitioner
Vs

**Rajesh Landmark Projects Private
Limited**

139, Seksaria Chamber, 2nd Floor,
Nagindas Master Road, Fort,
Mumbai- 400 023

.....Corporate Debtor

Order reserved on: 05.09.2022

Order Pronounced on: 10.10.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Adv. Rohit Gupta a/w Adv. Krushi N Barfiwala
& Adv. Rima Desai i/b Parinam Law Associates

For the Corporate Debtor/ Respondent: Adv. Nausher Kohli a/w
Adv. Aneesa

Per: Anuradha Sanjay Bhatia, Member (Technical)

Order

1. The above Company Petition is filed by IREP Credit Capital Private Limited, hereinafter called as “**Petitioner**” seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Rajesh Landmark Projects Private Limited hereinafter called as “**Corporate Debtor**” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “**Code**” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 26,96,49,413/-which includes:

- a. Rs.18,00,00,000/- being the redemption of 18 fully paid up unrated, unlisted, Secured, Redeemable, Non-Convertible Debentures issued by the Respondent;*
- b. Rs. 3,64,31,833/- being the Redemption Premium accrued;*
- c. Rs.64,71,708/- being the Penal Interest;*
- d. Rs.4,67,45,872/- being the Interest.*

2. The Petitioner enclosed the following documents, that records and evidence of default, categorically demonstrating the financial debt “due” and “payable” by the Corporate Debtor to the Petition:

- i. Debenture Trust Deed dated 17.03.2018, executed between the Debenture Trustee and the Respondent;
- ii. Supplemental Debenture Trust Deed, dated 19.03.2018, executed between Debenture Trustee and the Respondent;

- iii. Pledge Agreement dated 19.03.2018, between Mr. Priyal Kantilal Patel (Pledgor One); Ratik Harish Patel (Pledgor Two); Respondent and Vistra ITCL (India) Limited (Debenture Trustee)
- iv. Promissory Note issued by the Respondent in favor of Debenture Trustee dated 19.03.2018;
- v. Consent Terms dated 14.10.2020 entered between Respondent and the Petitioner;
- vi. Bank Statement of the Petitioner;

Brief Facts:

- 3. The Petitioner holds 18 fully paid up Unrated, Unlisted, Secured, Redeemable, Non-Convertible Debentures (Series 1 Debentures) worth Rs. 18,00,00,000/- issued by the Corporate Debtor in terms of the private placement letter dated 24.09.2018 and the Transaction Documents.
- 4. The Petitioner entered into the Debenture Trust Deed ("**DTD**") dated 17.03.2018 and Supplemental Trust Deed ("**Supplemental DTD**") dated 19.03.2018. As per the terms of the Debenture Trust Deed, Supplemental Debenture Trust Deed and other transaction documents, the Corporate Debtor was liable to pay a quarterly interest at rate as per the Debenture Trust Deed dated 17.03.2018 to the Financial Creditor and all the payments due thereafter and a default interest at the rate of 2%p.a. over and above the interest rate, from the date of default, till the default is cured.
- 5. The Petitioner submits that for the quarter ending 30.09.2019 the Respondent defaulted in the payment of interest and all subsequent payments thereafter. Due to the Respondent's

failure to comply with the terms of the DTD and Supplemental DTD the Petitioner issued a letter dated 28.11.2019, calling upon the Respondent Company to repay the sums due and payable under the DTD and other transaction documents and thereby, called upon the Corporate Debtor to pay Rs. 19,84,93,345/- within five business days. However, the Corporate Debtor failed to pay pursuant to this, Vistra ITCL (India) Limited, issued a letter dated 24.01.2020 confirming the occurrence of Default under the DTD and declared that series 1 Debentures were due along with redemption premium, interest and penal interest.

6. The Petitioner filed CP (IB) 45 of 2020 before this Tribunal under Section 7, of the Code against the Corporate Debtor with a view to settle the disputes amicably and at the behest of the Petitioner. The parties agreed to file the said Consent Terms dated 14.10.2020 (**“Consent terms”**). The said Consent Terms were taken on record vide order dated 07.01.2021 by this Tribunal. Under Clause 8(B)(a)(i) of the Consent Terms, the Corporate Debtor unconditionally acknowledges that it is liable to pay an outstanding amount to the Financial Creditor under the DTD, which was Rs. 22,99,99,002/- along with interest and premium accrued up to the date of payment. As per the Consent Terms, the Respondent were to make payments dated 31.07.2021, 31.08.2021 and 30.09.2021. The Respondent issued post-dated cheques on 31.07.2021, 31.08.2021 and 30.09.2021, the same were returned as “dishonored”, thereby breaching the Consent Terms.
7. The Petitioner addressed a notice dated 28.09.2021, to the Respondent and the Debenture Trustee, informing occurrence of default, in the obligations, under the Consent Terms wherein the Petitioner will be entitled to claim the entire amounts due

and payable under the DTD and the Transaction Documents. The Debenture Trustee vide email dated 01.10.2021 acknowledged the event of default and advised the Petitioner to take appropriate legal action.

Reply Filed by the Corporate Debtor

8. The Respondent Company in its reply denied each and every averments, allegation and/or contention contained in the present Petition.

9. The Respondent submitted that, the Petitioner is not the only holder of NCDs under the DTD. In fact, the Petitioner holds only 11% of the total NCDs by value. Evidently, the Petitioner represents a miniscule minority of the NCD Holders of the Respondent.

10. The Respondent submits that the Petition is filed without there being any default. Thus, it is not maintainable, and contended as under:
 - a. The Debenture Trustee can only act on the basis of Approved Instructions of the Debenture Holders.
 - b. The DTD requires that the pursuant to an Event of Default, the Debenture Trustee must give Notice of Default to the Respondent.
 - c. In the facts of the case, there are no Approved Instructions from the Debenture Holders to the Debenture Trustee to issue a Default notice. Further there is no Default Notice issued by the Debenture Trustee.

11. The Respondent further submits that DTD provides the Debenture Trustee shall only act on the basis of “*Approved*”

Instructions" of the Debenture Holders. The term "Approved Instructions" is defined in the DTD.

12. The Respondent further submits that, the key action that converts an event of default, is a Notice, as is contemplated under Clause 9.2 of the DTD, Clause 9.2 of the DTD Stipulates as follows:

'9.2 Consequence of Default

On and at any time after the occurrence of a Default, in addition to the levy of Default Interest in accordance with the clause 9.6 (Default interest), the Debenture Trustee may, upon the delivery of 1 (one) Business days' notice, which notice the Issuer acknowledges herein as being reasonable, take any or all of the following action:.....'

13. The Respondent in its reply submitted that, the Petitioner has failed to place on record any Default Notice issued by the Debenture Trustee in accordance with the DTD. Further, the Petitioner has even failed to place on record any decision by the majority of the Debenture Holders declaring or calling upon the Debenture Trustee to issue a Default Notice.

14. The Respondent in its reply submitted that execution of the Consent Terms, also does not do away with the requirement of issuance of a "Default Notice" as contemplated in Clause 9.2. of the DTD. This is because the Consent Terms clearly contemplates that in case of breach of Consent Terms, the recourse continues to be under the DTD itself. This is specifically recorded under Clause 9 of the DTD. In any event, the present Petition is not filed on the basis of breach of the consent terms, but on the basis of default under the DTD as

the date of default is stipulated as 30.09.2019, which is prior to the Consent Terms.

Rejoinder Filed by the Petitioner

15. The Petitioner in its Affidavit in rejoinder, denied each and every allegation, made by the Respondent in its reply.
16. The Petitioner submits that the Respondent has nowhere in its Reply denied the Occurrence of Default. The Petitioner further submits, that this is proof that the Respondent is liable for the breaches under the DTD and other Transactional Documents and the Consent Terms.
17. The Petitioner, in its Affidavit in Rejoinder, submitted that the status of the Petitioner, being a minority debenture holder, is in no manner, a bar for its right to initiate appropriate proceedings under the Code. The Petitioner submitted that a Debenture Holder is a 'financial creditor' under Section 5(7) of the Code. The Petitioner then relied upon clause 9.8.3 of the DTD which narrates as:

'Notwithstanding anything to the contrary contained in this Deed, the Issuer acknowledges the Debenture Trustee's and Debenture Holder's unqualified right to take all such actions as may be available to them under various policies and schemes promulgated by the RBI from time to time (including but not limited to such actions in accordance with the RBI's Strategic Debt Restructuring Scheme under the RBI's Distressed Assets Framework to convert the Secured Obligations into paid-up equity share capital of the Issuer and other measures available therein) and other remedies available to lenders in general in accordance with the

provisions of the Applicable Laws, at any time until the Final Settlement Date'

Relying upon the aforesaid, the Petitioner submitted that the Petitioner in no manner is precluded from exercising its right and adopt appropriate remedies under the DTD, and other Transactional Documents.

18. The Petitioner, in its Affidavit in Rejoinder, submits that the Respondent accepted its liability and default as recorded in Clause 3 of the Consent Terms. The Petitioner further submits that, the Debenture Trustee vide email dated 24.01.2020, issued an expression of event of default notice to the Respondent. Thereafter the Petitioner addressed a letter dated 28.09.2021 informing the Debenture Trustee about continuous breach of Consent Terms by the Respondent. The Petitioner also submits that vide Email dated 22.10.2021, the Debenture Trustee stated, that it has received 'Approved Instructions' with regard to Petitioner's claim.

19. The Petitioner in its Affidavit submits that vide Enforcement Notice dated 25.02.2022, The Trustee of Majority Debenture holder also made its intention clear to take action against the Respondent company under the DTD and against the Respondent's group companies either through Debenture Trustee or by itself.

20. The Petitioner further submits that after perusal of the Consent Terms, the Petitioner is entitled to claim the entire amount, the same has been accepted by the Respondent.

FINDINGS:

21. Upon perusal of the petition, after hearing both the parties, it is established that the Corporate Debtor is liable to pay the Petitioner and it has defaulted in making the payment to the Petitioner. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under Section 5 (8) of the Code. It has also been established that there is a “Default” as defined under Section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘**debt**’ and ‘**default**’, for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.
22. It is pertinent to note that, The Corporate Debtor by the virtue of Clause 3 recorded in the Consent Terms, has accepted its liability and default. Pursuant to the default under the Consent Terms, the Petitioner addressed a letter to the Debenture Trustee, of the blatant and continuous breach of the Consent Terms, committed by the Corporate Debtor. Consequently, the Debenture Trustee, under its sole discretion and in accordance with clause 9.2 directed the Petitioner to take legal action as mandated under the DTD and under law once again acknowledging the default on part of Corporate Debtor.
23. On going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced, which are placed on record, it is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the I&B Code.
24. The Corporate Debtor having admitted their liability in the earlier Company Petition 45 of 2020 through Consent Terms is estopped from disputing of the existence of “debt” and “default”

since this Company Petition is nothing but second round of litigation in respect of same debt and default.

25. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding debt from the Corporate Debtor and that the formalities as prescribed under the code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves 'Admission'.
26. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/Petition by the Petitioner and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
27. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Bhrugesh Amin, having address at - BDO India LLP, The Ruby - Level 9, NW Wing Senapati Bapat Marg Dadar, Mumbai City, Maharashtra, 400028, Email ID- bhrugeshamin@bdo.in and having registration No. IBBI/IPA-002/IP-N00353/2017-2018/11003, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
28. Accordingly, the above Petition is Admitted by passing the following:

ORDER

The above Company Petition No. 1029/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency

Resolution Process (CIRP) is ordered against **Rajesh Landmark Projects Private Limited.**

- a. This Bench hereby appoints Mr. Bhrugesh Amin, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00353/2017-2018/11003 having Registered at BDO India LLP, The Ruby - Level 9, NW Wing Senapati Bapat Marg Dadar, Mumbai City, Maharashtra, 400028, having Email ID- bhrugeshamin@bdo.in as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- b. The Petitioner shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- c. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- d. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- e. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- f. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- g. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- h. During the CIRP period, the management of the corporate debtor will vest in the IRP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP.
- i. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- j. Accordingly, C.P. No. 1029/IBC/MB/2021 is **admitted**.

- k. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)