



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No. 501
IB/778/ND/2021

IN THE MATTER OF:

L & T Finance Limited	...	Applicant
Versus		
Mabsoot Buildhomes India Private Limited	...	Respondent

Order under Section 7 of IBC, 2016.

Order pronounced on 02.05.2023

Coram:

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

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

The instant application filed under Section 7 of the Code, 2016 bearing **I.B./778 (ND)/2021 stands admitted.**

Sd/-
DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)

Sd/-
P.S.N. PRASAD,
MEMBER (JUDICIAL)



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

Company Petition No. (IB)-778(ND)/2021

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:

L & T FINANCE LIMITED

.... Applicant / Financial Creditor

VERSUS

M/S. MABSOOT BUILDHOMES INDIA PRIVATE LIMITED

.... Respondent/ Corporate Debtor

CORAM:

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

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 02.05.2023

ORDER

PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

The instant Company Application is filed by M/s. L & T Finance Limited ('applicant') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. Mabsoot Buildhomes India Private Limited ('Respondent/Corporate Debtor') having CIN: U70109DL2013PTC254691 on the ground that the Corporate Debtor



had committed a default in payment of Rs.2,37,04,10,634.89/- (Rupees Two Hundred and Thirty Seven Crores Four Lakhs Ten Thousand Six Hundred and Thirty Four only) as on 30.11.2021.

2. The Corporate Debtor i.e., M/s. Mabsoot Buildhomes India Private Limited having CIN: U70109DL2013PTC254691 is incorporated on 01.07.2013 under the provisions of the Companies Act, 1956 having its registered office situated at A-8B, Second Floor, Friends Colony East, South Delhi - 110065. Since the registered office of the 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.
3. Succinctly stated the facts of the present case as averred by the applicant are that upon an Application dated 15 November 2019 submitted by the Corporate Debtor with the Applicant, the Applicant vide its Sanction Letter dated 18 December 2019 sanctioned the grant of 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 3,70,913 sq. ft. ("Project Inventory") in a project named 'North Eye' located at Sector 74, Noida, Uttar Pradesh. It is further submitted that a Loan Agreement dated 30 December 2019 came to be entered into and executed by and between the Financial Creditor and the Corporate Debtor, for a total loan amount of INR 215,00,00,000/- (Rupees Two Hundred and Fifteen Crores only) for the purpose of: (i) purchase of Mortgage Properties out of the proceeds of Loan 1 i.e., Rs 180,00,00,000



(Rupees One hundred and eighty crores); (ii) utilized towards marketing, administration expenses in relation to the North Eye Project out of the proceeds of Loan 2 i.e., Rs 22,50,00,000 (Rupees Twenty two crores fifty lakhs) and (iii) towards stamp duty and other charges in relation to the purchase of Mortgage Properties out of the proceeds of Loan 3 i.e., Rs.12,50,00,000 (Rupees Twelve crores fifty lakhs) (“Purpose”).”

4. Further, it is submitted that the Tenor of the loan was agreed as a door to door tenor of 72 (seventy-two) months from the date of disbursement of the Loan consisting of 36 (thirty six) months of moratorium period and another 36 (thirty six) months for repayment of the Loan. It was further agreed that the aforementioned Interest Rate shall be payable monthly, on the 15th (fifteenth) day of each subsequent month (“Interest Payment Date”) or any other date as determined by the Financial Creditor. The Applicant had 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 58,05,000/- and the last 23rd disbursement on 15 March 2021 to the tune of INR 4,50,00,000/-, in accordance with the terms of the Loan Agreement.
5. It is submitted that the Corporate Debtor had remitted the interest till 15 April 2021, but thereafter, the Corporate Debtor failed to pay full amount towards the interest component till date, amounting to an “Event of Default” under Clause 13.1 (i) of the Loan Agreement, apart from committing various other “Events of Default” under Clause 13.1. It is submitted that given the Corporate Debtor’s failure to honor 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 August 2021 in terms of guidelines issued by RBI.

6. Moreover, the Corporate Debtor continued to remain in default and committed various other Events of Default. Therefore, the Financial Creditor, in exercise of its rights under the Loan Agreement had recalled the loan vide its Recall Notice dated 25 November 2021 ("Recall Notice"), declaring the entire outstanding amounts of INR 2,36,77,41,927.89 (Rupees Two Hundred and Thirty Six Crore Seventy Seven Lakh Forty One Thousand Nine Hundred and Twenty Seven and Eighty Nine paise Only) as on 25 November 2021 as due and payable together with further interest and other applicable charges on the aforesaid sum at the rate as given in the Loan Agreement along with other applicable charges till the actual date of realisation of payment of the same to the Financial Creditor/Applicant.
7. Per contra in the reply filed by the Corporate Debtor, the Corporate Debtor has espoused that the present application under Section 7 of the Code, 2016 is not maintainable as no financial debt is due and payable and the entire loan transaction is fraudulent. It is submitted that the Applicant has deliberately and illegally pushed two entities into bankruptcy by withdrawing the entirety of the sanctioned loan amounts, despite the moratorium on payment of the principal amount by orchestrating an expansive banking fraud.



8. It is submitted that the Sanction Letter dated 18.12.2019 and consequent Loan Agreement dated 30.12.2019 sanctioning a loan of Rs. 215,00,00,000/- (Rupees Two Hundred and Fifteen Crores) was entered into solely at the behest of the Financial Creditor by pressuring and coercing the Corporate Debtor and its Guarantor and developer – M/s Supertech Ltd (hereinafter referred to as 'M/s Supertech'). Moreover, the terms of the said loan were wholly one sided to the detriment of M/s. Supertech Limited, however, given the immense liquidity crunch which had plagued the entire real estate sector, Supertech was constrained to accede to such unfair terms. It is submitted that M/s. Supertech (the developer of the Corporate Debtor) stood as a Corporate Guarantor for the purpose of the loan.

9. Further, it is submitted that M/s. Supertech was also coerced into entering into wholly unlawful escrow agreements with the Financial Creditor and HDFC Bank on 03.11.2017 for the three projects, wherein all effective control of the Escrow Accounts were with the Financial Creditor/Applicant. In January-February 2020, the Financial Creditor, in complete violation of the provisions of the RERA Act and RBI's Fair Practice Code issued to NBFCs as well as the loan agreement, illegally withdrew and recovered the loan amount so sanctioned to the Corporate Debtor by illegally withdrawing the same from the Corporate Debtor's developer's escrow account. Hence, the loan which was to be utilized in construction of the project was fraudulently and illegally withdrawn immediately upon disbursement by Financial Creditor from the escrow account maintained by Supertech even before it became due and payable, against Supertech or the Corporate Debtor.



10. Moreover, it is submitted that in order to bring attention to the fraudulent actions of the Financial Creditor, M/s Supertech has filed a Writ Petition (Civil) No. 1479 of 2022 before Hon'ble High Court of Delhi against the Applicant for misappropriation/illegal withdrawal of money from the escrow accounts, wherein the loan amount was deposited for utilization in construction of the project and had consequently, deprived the Corporate Debtor to meet its contractual and statutory obligations. In addition, the actions of the Financial Creditor are in clear violation of the RERA Act, as well as RBI's Fair Practice Code issued to NBFCs. The Hon'ble High Court of Delhi was pleased to issue notice in the above -mentioned Writ Petition, and directed the Financial Creditor to reply to the charges therein.

11. It is submitted that as per the Loan Agreement dated 30.12.2019, the repayment of the loan would only commence after a moratorium of 36 months. Despite this, the Financial Creditor violated the contractual scheme by fraudulently withdrawing the entire amount from the escrow accounts – even before it became due or payable – and making the completion of the projects an impossibility. Accordingly, it is submitted that no debt exists in law and hence the present Application is not maintainable.

12. The Details of the transactions showing Disbursal of amount by Applicant to Corporate Debtor, Disbursal by Corporate Debtor to its Developer and Transfer of Amount by Corporate Guarantor to Escrow account is tabulated overleaf :



Loan disbursed by Financial Creditor to Corporate Debtor

Date	Amounts Disbursed (in Crores)
01.01.2020	30
15.01.2020	30
23.01.2020	40
30.01.2020	100
Total	180

Amount disbursed by Corporate Debtor to its developer

Date	Amounts Disbursed (in Crores)
02.01.2020	30
16.01.2020	30
23.01.2020	40
30.01.2020	45
01.02.2020	35
Total	180

Amount transferred by the developer/Corporate Guarantor to its Escrow Account

Date	Amounts Disbursed (in Crores)
03.01.2020	30
17.01.2020	30
24.01.2020	40
31.01.2020	45
02.02.2020	35
Total	180

Amount withdrawn from Financial Creditor from Escrow Account of developer/Corporate Guarantor

Date	Amounts Disbursed (in Crores)
06.01.2020	30
20.01.2020	30
27.01.2020	40
31.01.2020	13.5
01.02.2020	31.5
03.02.2020	35
Total	180



13. The Applicant filed Rejoinder to the reply filed by the Corporate Debtor, wherein the submissions of the Corporate Debtor are rebutted and it is submitted that as per Section 3(12) of the Code, 'default' means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the corporate debtor. It is submitted that the interest is due and outstanding since 15 May 2021 when the Corporate Debtor defaulted in payment of interest and continued to default in payment of interest as per the agreed terms successively for each month thereafter. It is submitted that the total outstanding debt of INR 2,36,77,41,927.89 (Rupees Two Hundred and Thirty-Six Crore Seventy-Seven Lakh Forty-One Thousand Nine Hundred and Twenty-Seven and Eighty Nine paise Only) fell due and payable on 25 November 2021 (i.e., date of issuance of Recall Notice recalling entire outstanding under the Loan Agreement).

14. Further, it is submitted that Writ Petition pending adjudication before the Hon'ble High Court is not at all maintainable, and in any event, the Loan Agreement dated 30 December 2019 is not at all a subject matter of the said Writ Petition, wherein the Corporate Debtor herein is not even a party. It is submitted that that the Writ Petition filed by Supertech Limited was merely an after-thought and a method to arm twist the Applicant/ Financial Creditor to withdraw the Section 9 Petition under the Arbitration and Conciliation Act, 1996 / Arbitral Proceedings, which have been initiated by the Applicant/ Financial Creditor as per law. Moreover, the Corporate Debtor has numerous admissions and acknowledgments by them of



their liability to pay the outstanding dues in terms of the Loan Agreement prior to the filing the aforesaid Writ Petition by Supertech Limited.

15. To prove the existence of debt and default therein, the Applicant/ Financial Creditor had placed reliance on following documents:-
- a) Detailed tabular computation showing the default dates and amount of debt in default as on 30 November 2021
 - b) Copy of the Sanction Letter dated 18 December 2019.
 - c) Copy of the Loan Agreement dated 30 December 2019.
 - d) Copy of the balance Confirmations dated 13 April 2021 issued by the Corporate Debtor admitting their liability of INR 2,18,80,23,381.00 @ 9% applicable interest towards payment of outstanding amounts as on 31 March 2021.
 - e) Copy of the Corporate Debtor's independent auditor's report along with its balance sheets as on 31 March 2020.
 - f) Copy of the Record of default with information utility dated 22 November 2021.
16. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused.
17. From the records, we find that this Adjudicating Authority had admitted the present Section 7 Application vide its order dated 17.02.2022. On appeal, the Hon'ble NCLAT had vide its order dated 20.05.2022 in C.A (AT)(Ins) No. 313/2022 had set aside the admission



order dated 17.02.2022 on the ground that at least one opportunity ought to have been given to the Respondent to file his Reply. The relevant extract of the Hon'ble NCLAT's order dated 20.05.2022 is extracted below:-

“The present is the case where the counsel appeared and made a request for filing 'Vakalatnama' and 'Reply'. Learned Adjudicating Authority has simply observed in paragraph 9 that despite notice was served, no one has appeared. We have no reasons to disbelieve the Affidavit filed by the Counsel in this Appeal, that he appeared and made a request to file the 'Vakalatnama' and 'Reply'. **We are of the view that at least one opportunity ought to have been given to the Respondent to file his Reply. The Order dated 17.02.2022 being virtually Ex-Parte deserve to be set aside.** The Corporate Debtor is allowed one week time from today to file its 'Reply' before the Learned Adjudicating Authority and the Financial Creditor may also file their Rejoinder within two weeks, thereafter. Further, with regard to the amount deposited by the Financial Creditor in pursuance of the Para-16 of the impugned order Learned Adjudicating Authority shall pass appropriate Order in the pending proceedings. Learned Counsel for the Parties are at liberty to make an Application for fixing a date after three weeks before the Learned Adjudicating Authority.”

18. Accordingly, the Corporate Debtor had filed reply and the Financial Creditor had submitted rejoinder and the oral arguments were also heard on behalf of both the parties by this Adjudicating Authority.
19. Coming to the factual matrix of the present case, it is an undisputed fact that the Applicant and the Corporate Debtor had entered into a Loan Agreement dated 30.12.2019, pursuant to which a total of 8 disbursement aggregating to Rs.2,10,18,05,000/- were made from 31.12.2019 to 15.03.2021 at such interest rate payable on the 15th (fifteenth) day of each subsequent month for a door to door tenor of 72 (seventy-two) months from the date of disbursement of the Loan



consisting of 36 (thirty) months of moratorium period and another 36 (thirty six) months for repayment of the Loan. Further, the clause 13.1 (Events of Defaults) of the Loan Agreement dated 30.12.2019 provides that, “if the Borrower fails to pay/repay any sum whether principal or interest or otherwise due under this Agreement at any time stipulated herein and in the manner specified herein or in accordance with the terms of any Transaction Document executed in pursuance hereof.” Moreover, the Applicant had issued a Loan Recall Notice dated 25.11.2021 to the Corporate Debtor on the ground that the Corporate Debtor had failed to pay full amount towards the interest component due and the account of the Corporate Debtor was declared Non-Performing on 13.08.2021.

20. The Corporate Debtor had admitted the disbursement of the debt along with the interest liability and the same stands corroborated with the balance Confirmations dated 13 April 2021 issued by the Corporate Debtor admitting their liability of INR 2,18,80,23,381.00 @ 9% applicable interest towards payment of outstanding amounts as on 31 March 2021 and from the audited Financial Statements as on 31.03.2020 of the Corporate Debtor.
21. The sum and substance of the argument of the Corporate Debtor is that the Corporate Debtor was coerced by the Applicant to enter into Loan Agreement dated 31.10.2019, terms of which are inclined in favor of the Applicant only. Further, it was contended that the Applicant with fraudulent intention had entered into various other Loan Agreements with M/s. Supertech Limited and disbursed Loan to Supertceh Limited by taking advantage of the negative sentiments in the real estate market



and had illegally withdrawn amount from the escrow account maintained with M/s. Supertech, which is in contravention of Section 4(2)(1)(D) of the RERA Act. From the submission of the Corporate Debtor, it seems that the Corporate Debtor is attempting to divert the attention of this Adjudicating Authority from adjudicating the present application under Section 7 of the Code, 2016 and expects this Adjudicating Authority to investigate the inter related transactions, end use of loan disbursed and intention of the parties, which cannot be done considering that the proceedings under Section 7 of the IB Code, 2016 are summary in nature.

22. Be that as it may, the Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407,** held as follows :-

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code. 30. On the other hand, as we have seen, **in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due”** i.e. payable unless interdicted by some law or has not yet become due in the



sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

“30. On the other hand, as we have seen, **in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due** in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

23. Thus, it is clear that when a default takes place i.e., the debt becomes due and payable and is not paid, the Insolvency Resolution Process shall begin against the corporate debtor. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects. The Applicant Bank/financial creditor is entitled to move the application against the corporate debtor in view of outstanding financial debt in default above the pecuniary threshold limit as provided under Section 4 of the Code, 2016. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the instant petition **I.B./778/ND/2021** stands admitted and CIRP of **M/s. Mabsoot Buildhomes India Private Limited** is initiated.
24. The petitioner in Part-III of the petition has proposed the name of Mr. Ajit Gyanchand Jain as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-001/IPP00368/2017-2018/10625. Mr. Ajit Gyanchand Jain, having



registration number IBBI/IPA-001/IPP00368/2017-2018/10625 and email – id ajit@vcanca.com is hereby appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The AFA attached with the Application expired on 25.10.2022. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within Five (5) days of pronouncement of this order.

25. 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.

(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.

26. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and 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.
27. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 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.
28. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Ajit Gyanchand Jain to meet out the expenses to perform the initial functions 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, is subject to adjustment towards Resolution Process cost as per applicable rules

29. The Interim Resolution Professional shall perform all his functions as 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.
30. 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 appropriate orders.
31. 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 his 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.
32. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In



addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

33. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./778 (ND)/2021 stands admitted.**

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. P.S.N PRASAD)
MEMBER (J)**