

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. III)
Company Petition No. IB-113/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:

VISTARA ITCL (INDIA) LIMITED

...Applicant/Financial Creditor

VERSUS

ANSAL URBAN CONDOMINIUM PRIVATE LIMITED

...Respondent/Corporate Debtor

Pronounced on:10.03.2022

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**SHRI NARENDER KUMAR BHOLA
HON'BLE MEMBER (TECHNICAL)**

For the Applicant: Pooja M. Saigal/Shantanu Chaturvedi, Advocates

For the Respondent: ---

ORDER

Per: Bachu Venkat Balaram Das, Member (J)

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Vistara ITCL (India) Limited (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Ansal Urban Condominium Private Limited (for brevity 'Corporate Debtor').

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2. The Financial Creditor submits that a Debenture Subscription Agreement (DSA) dated 28.07.2015 was executed amongst Ansal Urban Condominioms Pvt Ltd, The Corporate Debtor, Ansal Landmark Township Private Limited, Ansal Landmark (Karnal) Township Private Limited, Ansal Properties and Infrastructure Limited, Mr. Sushil Ansal, Mr. Pranav Ansal, Mr. Gaurav Dalmia and Indostar Capital Finance limited. Simultaneously with execution of the DSA, the parties also executed a Debenture Trust Deed dated 28.07.2015 nominating IL&FS Trust Company Limited/now known as Vistra ITCL (India) Limited, the Applicant herein to act as Debenture Trustee for the benefit of Debenture Holders. Deed of personal guarantee was executed by Mr. Pranav Ansal and Mr. Gaurav Dalmia in favour of the applicant.
3. The Applicant submits that in terms of DSA, an amount of Rs. 105,00,00,000 was disbursed to the Corporate Debtor and a second disbursement of Rs. 45,00,00,000/- was made to the Corporate Debtor. The Corporate Debtor redeemed 50,00,000 debentures aggregating to INR 50,00,00,000/-.
4. The Applicant submits that the first default of the Corporate Debtor occurred in payment of interest for quarter ending 31.03.2016. Thereafter, various defaults occurred in payment of interest for quarters ending 30.06.2016, 30.09.2016, 31.12.2016, 31.03.2017. The Corporate Debtor continued to default in payment of interest, and on 31.07.2017 the Corporate Debtor failed to redeem the Outstanding Debentures in terms of Article 11.1 and Annexure 5 to the DSA. Therefore, when Corporate Debtor failed to fulfil its obligation under the Agreement, vide letters dated 01.08.2016 and 16.10.2017 the managers to the issue, ICICI Prudential Real

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Estate (IPRU) & IIFL Yield Enhancer Fund (IIFL) called upon the Corporate Debtor to pay the outstanding amount and redeem the Debentures. However, the Corporate Debtor failed to make the due payments, which led to an event of default in terms of Article 17 of the Agreement.

5. The Applicant submits that on occurrence of event of default, the managers to IPRU, accelerated redemption of the 83,00,000 outstanding debentures and called upon the Corporate Debtor to repay and make payment of invested amounts along with the default of IRR 27% thereon within 7 days.
6. The Applicant submits that the Financial Creditor, the applicant herein invoked personal guarantee of Mr. Pranav Ansal and Mr. Guarav Dalmia. The disputes were referred to sole arbitrator. The arbitration proceedings culminated in an arbitral award dated 25.03.2021 wherein Mr. Pravan Ansal and Mr. Guarav Dalmia were held liable to jointly and severally make payment of Rs. 187,50,93,000/- along with default annual IRR of 27% thereon from 11.12.2018 to repayment. On failure of the personal guarantors to satisfy the award, Financial Creditor filed enforcement proceedings bearing OMP (ENF) (COMM) 116 of 2019 before the Hon'ble Delhi High Court. The Applicant further submits that the Financial Creditor under instructions from SRIE, invoked the deed of corporate guarantee dated 23.10.2015 executed by Ansal API.
7. The Applicant/Financial Creditor sought certain relevant status and documents concerning the project of the Corporate Debtor. Materially, the Corporate Debtor was also requested to provide its business plan. However, the Corporate Debtor has unequivocally stated that it suffers from paucity of funds.

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8. The Applicant/Financial Creditor under instructions from SREI, issued a letter of demand asking the Corporate Debtor and both the personal guarantors to make good the outstanding payments by 31.08.2020.
9. The Applicant submits that as on date, the Corporate Debtor is liable to pay a sum of Rs. 288,22,95,200/-, which is in default and is due & payable by the corporate debtor to the Applicant/Financial Creditor.
10. The Applicant filed present Application under section 7 of IBC, 2016 and served the copy of this application through speed post at its registered address as reflected on the MCA website, which is duly delivered to the Corporate Debtor. The affidavit of service is filed.
11. The Corporate Debtor has neither filed any reply nor appeared before the bench and the corporate debtor was proceeded ex-parte on 21.02.2022.
12. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
13. The default of the corporate debtor is subsisting & continuing till date. Hence, the application was filed within the period and is not barred by limitation.
14. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the financial debt, beyond doubt. In the light of above facts and records, the present application is admitted, in terms of section 7 (5) of IBC, 2016.
15. The Applicant has proposed Mr. Rajesh Ramnani, having registration number IBBI/IPA-002/IP-N00993/2020-21/13187 (email rajeshramnani2407@gmail.com)

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to be appointed as the Insolvency Resolution Professional. Accordingly, he is hereby appointed as IRP of the corporate debtor, subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and makes disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

16. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely, Mr. Rajesh Ramnani to meet out the expense to perform the 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 for the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.
17. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.
18. A copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP above named by the Registry. In addition, a copy of the order

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shall also be forwarded to IBBI for its records. A copy of this order be also sent to the ROC, Delhi & Haryana for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



BACHU VENKAT BALARAM DAS)
MEMBER (Judicial)



(NARENDER KUMAR BHOLA)
MEMBER (Technical)