

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**I.A. 151 OF 2021**

Under Section 60(5) of Insolvency &  
Bankruptcy Code, 2016

**Vistra ITCL Limited & Others**

...Applicants

In the matter of

C.P.(IB) No. 1632/MB/2019

Vistra ITCL (India) Limited

**Financial Creditor**

Vs.

M/s Satra Properties India Limited

**Corporate Debtor**

***Order delivered on: 01.03.2024***

*Coram:*

**Shri Prabhat Kumar**

Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**

Hon'ble Member (Judicial)

*Appearances*

For Resolution Professional:

Mr. Pulkit Sharma a/w Mr. Varun Nathani,  
Advocates i/b Amit Tungare, Advocate

For the Applicant :

Mr. Rohan Agarwal, a/w Ms. Vidisha,  
Advocates i/b Pragya Legal

**ORDER**

*Per: Justice V.G. Bisht (Retd.)*

1. This Application IA 151/2021 is filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the NCLT Rules, 2016 by Vistra ITCL Limited (“Applicant”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Satra Properties (India) Limited (“Corporate Debtor”), seeking following reliefs:
  - a. This Tribunal in exercise of its inherent powers be pleased to set aside the Interim Resolution Professional's email decision on email communication dated 28th September, 2020 (Exhibit 'S' hereto) whereby the financial claim of the Applicants of Rs. Rs. 51,15,74,129/- (Rupees Fifty One Crores Fifteen Lakhs Seventy Four Thousand One Hundred and Twenty Nine) has been not admitted;
  - b. This Tribunal be pleased to pass an Order declaring that the applicable rates of interest is 18% p.a and 6% p.a. penal interest on the financial debt amount thereby approving the total financial claim as on date of 17th August 2020 is Rs. 131,02,82,634/- (Rupees One Hundred and Thirty One Crores Two Lakhs Eighty Two Thousand Six Hundred and Thirty Four), with further interest, as submitted by the Applicants/Financial Creditors vide their FORM CA dated 17th August, 2020;
  - c. That in furtherance to prayer clause (b), this Tribunal be pleased to direct the appointed Interim Resolution Professional to admit the entire/ total financial claim of Rs. Rs. 131,02,82,634/- (Rupees One Hundred and Thirty One Crores Two Lakhs Eighty Two Thousand Six Hundred and Thirty Four), as submitted by the Applicants/Financial Creditors vide their FORM CA dated 17th August, 2020;

2. The captioned Company Petition was filed by the Applicants herein for initiation of Corporate Insolvency Resolution Process ("CIRP") under section 7 of the Insolvency and Bankruptcy Code, 2016 with respect to the financial debt transaction claimed by the Applicants/ Petitioners Nos. 2 and 3 (hereinafter collectively referred to as the said "Debtors"), against Satra Properties (India) Limited, the Corporate Debtor herein.
  - 2.1. The captioned Company Petition was heard for admission and this Tribunal vide its order dated 3rd August, 2020 admitted the above Petition and one Mr. Devarajan Raman has been appointed as the Interim Resolution Professional (hereinafter referred to as the said "IRP") to overlook and carry out the function of suspended Board of Directors/management of the Corporate Debtor and perform the duties of Interim Resolution Professional.
  - 2.2. Following admission and initiation of CIRP, a Public Notice was published by the said IRP, first on 8th August, 2020 and a revised notice was later published on 15th August, 2020 calling upon the creditors of the Corporate Debtor to submit their respective financial claims for the purpose of collating and adjudicating the same. Accordingly, the Applicants herein have submitted their financial claim to the said IRP on 17th August, 2020 by way of FORM CA as required under Regulation 8A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016.
  - 2.3. The Applicants state that the said IRP in consideration of the financial claim of the Applicants herein, has partially rejected the financial claim of the Financial Creditors, which the Applicants is of the view that entire Claim amount is required to be part of the financial claim and which should have been admitted by the said IRP in its entirety. The said claim made by the Applicants is well

supported documents which are on records and the same have been submitted to the IRP with FORM CA.

2.4. The Applicants have therefore filed the present Interlocutory Application to the extent of raising their limited objection of partial rejection of their financial claim due to wrongful reduction of rates of interest, instead of accepting/admitting full claim amount based upon applicable rates of interest by the said IRP and also for seeking appropriate directions from this Tribunal with respect to the same for proper adjudication of the claims of the Applicant for the reasons and on the grounds more particularly provided hereinafter.

2.5. Shorn of facts, the basis and purpose of the present Application are provided hereinafter:

a. The Applicants are subscribers of 4330 Secured Unlisted Non-Convertible Debentures of the Corporate Debtor. The parties hereto have entered into a Secured Redeemable Non-Convertible Debenture Subscription Agreement dated 1st March, 2014 ("Subscription Agreement") and Debenture Trust Deed dated 1st March, 2014 ("DTD") which provide for the mechanism in which the secured debentures are to be redeemed and details as to the applicable rates of interest/ penal interest, as agreed to and accepted between the parties.

i. Article 2 of the Subscription Agreement (refer internal page no. 4) provides for the details of the subscription arrangement, which guarantee 18% of interest on the debentures, as agreed to between the parties prior to the execution of the Subscription Agreement vide their Term Sheet dated 20th November, 2013 and signed by the Promoter/ Director of Satra Properties India Limited. It is also stated that Clause 2.4 (internal page no. 5 of the said Subscription Agreement) records the various tranches/date/s of subscription of the secured debentures. Further Schedule I of the Agreement (refer

internal page no. 30 of the said Subscription Agreement) enlists the dates of redemption of such debentures. The debentures were to be redeemed within 12 months of its subscription, which was agreed understanding between the parties prior to and at the time of the execution of the said Subscription Agreement.

- ii. Article 3 of the Subscription Agreement (refer internal page no. 5 of the said Subscription Agreement) -which bears the detail of the purpose of subscription and applicable interest rate and interest calculation basis, also records that the debentures shall bear interest at the rate of 18% per annum to be compounded every 9 months. Further, the provision for penal interest at the rate of 6% p.a., over and above the normal rate of interest, is also provided in favour of the Debenture Holders, in the event of late/delayed redemption of debentures by the Corporate Debtor.
- b. On the request of the Corporate Debtor, the redemption dates of the debentures were extended by a period of 12 months from the actual due dates vide letter dated 2nd February, 2015 addressed by the Corporate Debtors which was accepted by the said Debenture Holders and the same have been recorded in the letter dated 10<sup>th</sup> February, 2015 addressed by the said Debenture Holders.
- c. Following the revision of abovementioned dates, the Corporate Debtor, citing its failure in its business and financial difficulties in redemption of the debentures, sought for reduction in the interest rate from 18% to 12% p.a. by its letter dated 10<sup>th</sup> March, 2016 and also requested for further extension of the dates of redemption by a period of further one year.

- d. Thereafter, Corporate Debtor once again cited similar reasons and grounds of lower realization of amounts from commercial sales of its project at Jodhpur and due to rigid liquidity crunch, for failure to redeem the said Debentures on the new dates. Accordingly the Corporate Debtor sought revision/extension of the redemption dates, by their letters dated 1st March, 2017 and 10th March, 2017 addressed to the said Debenture Holders and the Applicant No. 1 herein. The said request was accepted by the said Debenture holders vide their letter dated 1st April 2017.
- e. Accordingly, a revised term sheet was executed, to bring about the aforesaid changes. The revised term sheet dated 20th April, 2017 confirmed the new dates of redemption starting from 2nd April, 2019. The revised term sheet accordingly recorded the interest to be paid at 12% p.a. The mid reduction of rates of interest from 18% was purely on the understanding that the redemption of the debenture would be paid/redeemed off to the Debenture Holders on the revised dates recorded in the revised Term Sheet. The Corporate Debtor's compliance report dated 25 April, 2017 records the said revision of dates and interest.
- f. In the following year 2018, the Corporate Debtor citing similar situation of consistent liquidity crunch due to lower booking amounts from its commercial project at Jodhpur, once again requested the Debenture Holders, to further revise the applicable rate of interest from 12% p.a. to 9% p.a. by their letter dated 14 February, 2018 on the oral assurance of the Corporate Debtor for redemption of the subject Debentures on the revised dates. In consideration of such request, the Applicant Nos. 2 and 3 by their letter dated 26th March 2018 accepted the reduction of rates of interest from 12% p.a. to 9% p.a. purely on the understanding and arrangement that the subject Debentures would be redeemed on the revised agreed dates. The Debenture Trustee (Original Petitioner No.1 in the subject Company Petition) vide their letter

dated 27th March, 2018 also inter alia recorded the following which not only secures the rights of the Applicants under the transaction documents including the said DTD but also entitled the Applicant to not waive any of their rights and raise claim with original rates of interest:

"All the capitalized terms not defined herein shall continue to have the meaning as referred to in our previous letter/transaction documents, and nothing contained in this letter/transaction documents shall be construed at or deemed to be any wolver(express or implied).of the rights and remedies available to us or to the Debenture Holdera".

- g. In spite of revision of rate of interest which was reduced to 9% p.a., the Corporate Debtor failed to redeem the subject debentures on the revised debenture redemption dates as agreed to be starting from 2nd April, 2019. The parties, while reducing the interest from time to time for accommodating the Corporate Debtor, always accorded to the arrangement that the redemption of debentures as per the agreed dates was sine qua non with the reduction of interest. It therefore raises no doubts on the fact that the Corporate Debtor was bound to redeem the debentures as per the dates agreed under the letter of the Debenture Holders dated 1 April, 2017. Thus, the arrangement between the parties as regards revision of rates of interest was conditional to the redemption of debentures on the agreed dates of the redemption. The debentures had to be instantly redeemed as per the revised dates starting from 2nd April, 2019 for the first tranche so as to extend the benefit of reduced interest rate to the Corporate Debtor.
- h. Accordingly, on such breach of terms by the Corporate Debtor, the provisions under the transaction documents (referred to

collectively for the Subscription Agreement and the DTD) were essentially revived, providing for the original agreement between the parties for interest at the rate of 18% p.a. to be compounded every 9 months and for further penal interest at the rate of 6% p.a. in the event of default. In any event, the revisions were done to accommodate the Corporate Debtor due to the stringent market conditions and based on Corporate Debtor's requests, which terms had materially collapsed due to the Corporate Debtor's gross failure in repaying the due redemption amounts to the said debenture holders as per the terms agreed therein. The act of redemption of the debentures as per the revised terms was not performed on the revised dates nor on subsequent dates therefore claims attracts an interest of 18% p.a. as contained under the transaction documents.

2.6. Subsequently, the said IRP vide its emails dated 7th September, 2020 and 16th September, 2020 sought clarifications to certain queries, including that for calculating interest at the original rate of interest at 18% p.a. in the financial claim and pertaining to penal interest. The said email came to be replied by the Advocates of the Applicants' email dated 18th September, 2020, wherein a note providing clarification to the specific queries raised with respect to application of original interest was provided alongwith the other regular clarifications. References to the provisions supporting the claim of the Applicants in the documents forming part of the financial claim was also supplied so as to give a clearer understanding/view of such applicability of interest rate of interest of 18%.p.a. instead of 9% p.a.

2.7. Thereafter, the said IRP in consideration of the financial claim submitted by the Applicants herein, by his email of 28th September, 2020 has admitted the financial claim of the Applicants to the extent of Rs.79,87,08,505/- (Rupees Seventy Nine Crores Eighty Seven Lakhs Eight Thousand Five Hundred and Five) as opposed to the

total amount of Rs. 131,02,82,634/- (Rupees One Hundred and Thirty One Crores Two Lakhs Eighty Two Thousand Six Hundred and Thirty Four), submitted by the Applicants/ Financial Creditors by FORM CA. The said IRP has therefore wrongly disregarded an amount of Rs.51,15,74,129/- (Rupees Fifty One Crores Fifteen Lakhs Seventy Four Thousand One Hundred and Twenty Nine) while computing the total financial claim, which the Applicants are entitled to and required to form part of the entire claim. The said email further notes that the IRP has based this partial admission of financial claim on the documents and affidavit submitted by the Applicants and the same is reproduced hereinbelow:

*"The rate of interest has been reduced to 9% p.a by a written document and as such we are unable to consider the interest calculated@18% p.a. On a careful examination of the document and the letter by which the rate of interest has been reduced to 9% p.a we do not find any clause which reinstates the right to charge 18% p.a on default in payment.*

*In view of the foregoing, the amounts have been admitted accordingly."*

3. The Respondent Resolution Professional has filed Reply stating that it was never agreed between the Corporate Debtor and the Applicants that failure to redeem outstanding 4330 NCD's will resuscitate provisions under subscription Agreement and the DTD and reduced interest of 9% p.a. would be revoked and original interest @ 18% p.a. would apply. Had the parties intended to revoke interest of 9% p.a. and revive interest @ 18% p.a. it would have been expressly mentioned as it was mentioned when interest was reduced from 18% p.a. to 12% p.a. Specific non-mentioning of the clause in the subsequent agreement clearly establishes the intention between the Corporate Debtor and the Applicants.
4. Heard learned counsel and perused the material available on record

4.1. On reading of Letter dated 31.3.2016 addressed by the Applicants to the Respondent, we find that there was a specific stipulation for levy of penal interest at the rate of 6% beyond the revised due date in case the debentures are not redeemed within the revised due date. It is as follows:

*Further as regards. your request for the rate of interest, considering the real estate market, we agree to consider the rate @ 12% instead of 18%. However, in case you are not able to redeem as per the above revised schedule, then you shall redeem the NCDs along with an additional penalty to be calculated @ 6% tbr the period of delay on the amount of default.*

4.2. However, on perusal of letter dt. 26.03.2018 whereby the interest rate was further reduced from 12% to 9%, we find that there was no such stipulation for levy of penal interest. The relevant part of this letter reads as under:

*“This is with reference to your letter dated 14<sup>th</sup> February, 2018 and various discussion had thereafter, we had subscribed the NCD’s out of investible surplus funds planned on a long term basis.*

*However, considering your request, the present market conditions and verifying the status of the project – (“Satra Plaaza”) at Jodhpur, we agree and confirm the reduction in rate of interest from 12% to 9% on outstanding 4,330 NCD’s as on date from the date of its subscription”.*

4.3. On reading of both the communications from the Applicant to the Corporate Debtor we are of the considered view that the letter dt. 26.03.2018 was followed by letter dt. 31.03.2016 and

subsequent letters in relation to extension of period. However, the letter dt. 26.03.2018, had no condition relating to levy of penal interest after the revised due date. The question before us is whether the condition relating to levy of penal interest as mentioned in letter dt. 31.03.2016 continues to apply the letter dt. 26.03.2018 in the absence of specific stipulation in this relation in letter dt. 26.03.2018. At this juncture we consider it appropriate to clarify that though the Applicant has referred to letter dt. 27.03.2018 stipulating such conditions; however, that letter is not forming part of the Application and the Resolution Professional has also not taken note of that. Accordingly, we are of the considered view that the Applicant by referring to letter dt. 27.03.2018, actually refers to letter dt. 26.03.2018.

4.4. The Applicant has relied upon one decision in the case of *Sanwaley Parshad Kayestha... Vs...Sheo Sarup (Manu/OU/0060/1926) dt. 19.10.1926*, wherein the Hon'ble High Court of Oudh quoted the observation from *The Mersey Steel & Iron Co. v. Naylor Benson & Co. 9 A.C. 434*, Lord Blackburn as follows:

*“The rule of law, as I always understood it is that where there is a contract in which there are two parties, each side having to do something {it is so laid down in the notes to *Pordage v. Cole [1871] 1 W.S. 548*, if you see that the failure to perform one part of it goes to the root of the contract, goes to the foundation of the whole it is a good defence to say ‘I am not going on to perform my part of it when that which is the root of the whole and the substantial consideration for my performance is defeated by your misconduct’.*”

4.5. We are of the considered view that had the Applicant intended to levy penal interest for the default period, it would have said

so in the letter dt. 26.03.2018 as he had expressly stated in the letter dt. 31.03.2016. In the absence of specific stipulation, we cannot read the stipulation for levy of penal interest from the letter dt. 31.03.2016. This is further supported by the fact that the letter dt. 31.03.2016 had reduced the rate of interest; however, it retained the levy of 18% interest in the form of penal interest in case of redemption beyond due date. Had this been the intent, the Applicant would have expressly stated to levy penal interest at the rate of 9% to make it to 18%. Accordingly, we do not find any infirmity in the act of Resolution Professional.

4.6. The Interlocutory Application bearing IA No. 151 of 2021 is dismissed. Ordered Accordingly. There would however, be no order as to costs.

**Sd/-**

**Prabhat Kumar**  
Member (Technical)

**Sd/-**

**Justice V.G. Bisht**  
Member (Judicial)