



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

C.P.(IB) No. 283 of 2023

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

In the matter of

Vistara ITCL (India) Limited,

IF&FS Financial Centre, Plot C-22, G-
Block, Bandra-Kurla Complex, Bandra
(East), Mumbai – 400 051

.....Financial Creditor/ Petitioner

Vs

Envirant Developers Private Limited,

C/o. Mont Vert Associates, Sr. No. 239,
Behind Datta Mandir, Wakad, Pune-
411057

.....Corporate Debtor/ Respondent

Order Pronounced on: 19.05.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)



Appearances (via Video conferencing)

For the Financial Creditor: Adv. Ryan D'Souza a/w. Adv. Zaid Mansuri i/b.
DSK Legal

For the Corporate Debtor: Adv. Agam H Maloo

Per: Kuldip Kumar Kareer (Judicial)

ORDER

1. This Company Petition is filed by Petitioner, namely Vistara ITCL (India) Limited, (hereinafter called "**Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Envirant Developers Private Limited, (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Financial Creditors. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Financial Debt of **Rs. 65,08,05,433/-**.

FACTS OF THE CASE

2. The Envirant Developers Private Limited ("**EDPL**") had proposed to develop two projects namely Project-Panorama and Project-Vedanta for which it authorised the issuance of 5,790 fully secured, unlisted, redeemable, cumulative, non- convertible Series A debentures of par value of Rs. 1,00,000/- each ("**EDPL Serie A NCDs**") by way of private placement.
3. The Debenture Holders viz, India Realty Excellence Fund III ("**IREF III**") and India Realty Excellence Fund IV ("**IREF IV**"), agreed to invest by subscribing to 3,441 EDPL Series A NCDs.



4. Pursuant to this, a Debenture Trust Deed dated 26.11.2018 ("**EDPL DTD**") was executed, wherein Vistra ITCL (India) Limited was appointed as the Debenture Trustee. It has been submitted that the Debenture Holders are managed by Motilal Oswal Real Estate Investment Advisors II Private Limited (now MO Alternate Investment Advisors Private Limited) ("**Fund Manager**").
5. Subsequently, a total of 3,441 EDPL Series A NCDs has been subscribed by the Debenture Holders thereby investing a total of Rs. 34,41,00,000/- , which was disbursed as under:

Date	Amount (in Rs.)	Fund
13.02.2019	2,30,00,000/	IREF III
25.10.2019	2,11,00,000/	IREF III
06.11.2019	30,00,00,000/	IREF IV

6. Subsequently, First Supplemental and Amendment Deed to the EDPL DTD came to be executed on 27.09.2019.
7. After the subscription, the Corporate Debtor started committing various Payment Defaults along with non-compliances as per the obligations set-out in the EPDL DTD. On account of the failure of EDPL to pay the outstanding amounts, the Debenture Holders and the Fund Manager addressed several notices and emails to the Corporate Debtor. The Debentures were to be redeemed in 8 Quarterly instalments commencing from 31.03.2022.
8. Despite the repeated reminders/default notices, the Corporate Debtor and the Obligors continued to be in Default and did not take any steps to remedy the breaches. Pursuant to the event of default and in terms of the EDPL DTD, the Financial Creditor issued a Put-Option notice dated 12.01.2023 ("Put- Option Notice), to the Corporate Debtor, calling upon



the Corporate Debtor to redeem 3,441 EDPL Series A NCDs or purchase the 3,441 EDPL Series A NCDs from the Debenture Holders and remit an amount of Rs. 65,08,05,433/- towards the Event of Default Premium as contemplated in the EDPL DTD, within a period of 30 days.

9. Despite the issuance of the aforesaid Put-Option Notice, the Corporate Debtor has failed to redeem the EDPL Series A NCDs and remit the due amount of Rs. 65,08,05,433/-. It has been submitted that The Corporate Debtor is under legal obligation to discharge its liability against the financial debt in terms of DTD and other finance documents. The date of default for the present petition is mentioned as 11.02.2023 under part IV of the petition.
10. The failure on the part of the Corporate Debtor to repay the outstanding amount necessitated the filing of the present petition under the Code for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

REPLY FILED BY THE CORPORATE DEBTOR

11. The Corporate Debtor, in its reply, has submitted that due to circumstances beyond its control the Corporate Debtor could not pay the amount due and payable to the Financial Creditor.
12. The Corporate Debtor has further submitted that the Real Estate Industry is going through a changing phase and there is an overall slowdown across the industry due to various macro market factors. Therefore, the projects of the company could not take off due to financial as well as other market adversities.
13. The Corporate Debtor has further submitted that the industry of the Corporate Debtor has been adversely hit by the COVID-19 Lockdown, which resulted in decline in the revenue and cash flow. Therefore, the



Corporate Debtor could not pay the debt amount to the Financial Creditor on time.

14. The Corporate Debtor has submitted that it has the intention to pay the outstanding Financial Debt and, therefore, has requested for settling the matter by getting some investors.
15. The Corporate Debtor has further placed its reliance upon the judgement of Hon'ble Supreme Court in **Vidarbha Industries Power Limited Vs Axis Bank Limited dated 12.07.2022 (Civil Appeal No. 4633 of 2021)** wherein it has held that the Adjudicating Authority is ought to exercise discretion before admitting a Petition under Section 7 of the Code.
16. With the above averments, the Corporate Debtor has prayed for the dismissal of the present petition.

FINDINGS

17. During the course of arguments, it has been pointed out by the Counsel for the Petitioner that for the development of two projects namely Project Panorama and Project Vedanta, the Corporate Debtor along with other entities authorized issuance of 5790 non-convertible debentures of Rs. One Lac each by way of private placement. The debenture holders namely India Reality Excellence Fund III and India Reality Excellence Fund IV agreed to subscribe to 3441 EDPL Series A/NCDs. In this regard Debenture Trust Deed dated 26.11.2018 was executed between the parties where one Vistara ITCL Limited was appointed as the Debenture Trustee. The Counsel for the Petitioner has referred to Schedule 9 attached with the Debenture Trust Deed which gives the detail of 5 tranches by way of which Rs. 57.90 Crores was to be disbursed. The Counsel for the Petitioner has further referred to the Bank Statement (Exhibit-F) showing the disbursement of money. The Counsel for the Petitioner has further pointed out that not even a single Debenture was redeemed by the Corporate Debtor with the result that put option notice



dated 12.01.2023 was issued to the Corporate Debtor and the other Debenture Holders stating that there has been payment default of the moratorium interest due and payable on 31.12.2020 and a further default in coupon due from 31.12.2020 onwards. Since the money was not repaid nor any reply was sent to the said notice, this amounted to admission of its liability on the part of the Corporate Debtor. The Counsel for the Petitioner further contended that it is a fit case of admission of Petition under Section 7 of the Code as the ingredients of Financial Debt and the default committed by the Corporate Debtor are writ large.

18. On the other hand, in the reply filed by the Corporate Debtor no solid defence has been raised. It has simply been stated that due to circumstances beyond its control, the Corporate Debtor could not pay the amount due and payable to the Financial Creditor. It has also been stated in the reply that the Real Estate industry was going through a lean patch and there was overall slowdown in the Real Estate Industry at the national level and owing to low demand and slow convertibility, the projects of the Company could not take off. Besides, the business was hit hard by COVID lockdowns. The Corporate Debtor has further stated in the reply that he was trying to settle the matter by getting some investors and, therefore, the Corporate Debtor ought not be admitted into CIRP.
19. Considering the fact that no substantive defence has been raised in the reply filed by the Corporate Debtor and the factum of disbursement of loan by way of issuance of NCDs and the subsequent default committed by the Corporate Debtor has also not been disputed, it stands established that there has been a Financial Debt in respect of which a default has been committed. The loan was disbursed between 31.12.2020 and 31.12.2022 and the default was committed on 11.02.2023 after the payment was not made even after issuance of put option notice dated 12.01.2023. Therefore, the present Petition is well within the period of limitation.



20. As a corollary to the above discussion, we hold that the Petitioner/Financial Creditor has been able to establish the existence of Financial Debt and the default committed by the Corporate Debtor. Therefore, a clear cut of admission of Section 7 of the Code is made out.
21. Accordingly, the Petition is admitted in the following terms:

ORDER

- a. The above Company Petition No. (IB) 283 of 2023 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Envirant Developers Private Limited.**
- b. This Bench hereby appoints **Mr. Jayesh Natvarlal Sanghrajka**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00216/2017-18/10416 and having Email Id: jayesh@jsandco.in as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of **Rs. Five 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.
- d. 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.

- e. 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.
- f. 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.
- g. 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. 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/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition no.283 of 2023 is **admitted**.



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

Sd/-

MADHU SINHA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)