

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
(IB)-496/ND/2023

IN THE MATTER OF:

DCB Bank Limited

Office at:
A-SET House, 3rd Floor,
7/56, Desh Bandhu Gupta Road,
Karol Bagh, New Delhi—110005

**... Applicant/
Financial Creditor**

Versus

M/s Kalka Home Developers Pvt. Ltd.

Registered Office at:
RZ-174B, Gali 6,
Tugalkabad Ext., New Delhi

... Respondent

Under Section: 7 of IBC, 2016

Order delivered on 23.01.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant :

For the Respondent : Adv. Nitin Bindra, Adv. Mrinal Harsh Vardhan,
Adv. Kailash Ram, Adv. Yougender Singh

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

Stating in terse the facts of the case as can be derived from the pleadings of the parties are that the Financial Creditor a private sector bank extended inter alia the credit/loan facility to the CD to the extent of the following amount:

Nature of facility	Sanctioned limit (Amt in Crores)			Rate of interest
	Exiting	Change	Fresh/ continued	
Term Loan	5.00	+5.00	5.00	13.00% p.a i.e. 3.02% above the bank's 1 year MCLR (presently at 9.98% P.A)
Term Loan	0.7142	-	0.7142	As per existing terms
Term	11.6335	-	11.6335	As per existing terms

2. As can be seen from the aforementioned, the FC had sanctioned term loan to the CD and an agreement dated 19.02.2015 was executed to the

effect. The Agreement are placed on record at Annexure A-3 to A-8 of the paper book.

3. In order to avail the aforesaid facility of Rs. 15,00,00,000/- (Rupees Fifteen Crores Only), the said Corporate Debtor executed the following documents in favour of Financial Creditor.

S No	Particulars	Annexure
1.	Term loan agreement dated 19.02.2015	Annexure-A3
2.	Letter of Lien and set off dated 19.02.2015	Annexure-A4
3.	Declaration dated 19.02.2015	Annexure-A5
4.	Deed of Hypothecation dated 19.02.2015	Annexure-A6
5.	undertaking dated 19.02.2015	Annexure-A7
6.	Declaration regarding property dated 20.02.2015	Annexure-A8

4. It is borne out of the record that the FC had filed an Original Application bearing no. 852/2019 before the Debt Recovery Tribunal-III against the CD and its director praying therein:

“(i) The Corporate Debtor Nos. 1 to 5 be ordered to pay jointly and severally the sum of Rs. 5,64,41,989.02/- (Rupees Five Crore Sixty Four Lakh Forty One Thousand Nine Hundred Eighty Nine and Paise Two Only) being due in the account as on 19.06.2019 together with pendente lite and future interest and other charges thereon @ 12.94% monthly rest (flouting) p.a. linked to BR from the date of filing of this Recovery Application till the date of payment and for realization in full of above said debt due in respect of Term Loan Account No. 11955100000028.

(ii) The Corporate Debtor Nos. 1 to 5 be ordered to pay jointly and severally the sum of Rs. 25,52,099.73/- (Rupees Twenty Five Lakh Fifty Two Thousand Ninety Nine and Paise Seventy Three Only) being due in the account as on 19.06.2019 together with pendente lite and future interest and other charges thereon @ 12.94% monthly rest (flouting) p.a. linked to BR from the date of filing of this Recovery Application till the date of payment and for realization in full of above said debt due in respect of Term Loan Account No. 11955100000019.

(iii) The Corporate Debtor Nos. 1 to 5 be ordered to pay jointly and severally the sum of Rs. 4,20,39,703.96/- (Rupees Four Crore

Twenty Lakh Thirty Nine Thousand Seven Hundred Three and Paise Ninety Six Only) being due in the account as on 19.06.2019 together with pendente lite and future interest and other charges thereon @13.86% monthly rest (flouting) p.a. linked to BR from the date of filing of this Recovery Application till the date of payment and for realization in full of above said debt due in respect of Term Loan Account NO. 11955100000125.

THUS THE CORPORATE DEBTOR NOS. 1 TO 5 BE ORDERED TO PAY JOINTLY AND SEVERALLY A SUM OF RS. 10,10,33,792.71 (RUPEES TEN CRORE TEN LAKH THIRTY THREE THOUSNAD SEVEN HUNDRED NINETY TWO AND PAISA SEVENTY ONE ONLY) AS ON 19-06-2019 BEING THE TOTAL OUTSTANDING IN THE AFORESAID MENTIONED LOAN ACCOUNTS AS MENTIONED IN PARAGRAPH 6 (I) TO (III) ABOVE.

- (iv) The Corporate Debtor Nos. 1 to 5 be ordered to pay jointly and severally a sum of **RS. 10,10,33,792.71 (RUPEES TEN CRORE TEN LAKH THIRTY THREE THOUSNAD SEVEN HUNDRED NINETY TWO AND PAISA SEVENTY ONE ONLY) AS ON 19-06-2019 BEING THE TOTAL OUTSTANDING IN THE AFORESTATED** together with pendente lite and future interest and other charges thereon @ 13.86% monthly rest (flouting) p.a. linked to BR with monthly rests from the date of filing of this Recovery Application till the date of payment and for realization in full of above said debt due in respect of Term Loan Top Up.
- (v) The Corporate Debtor No. 1 immovable property Exclusively charged by way of equitable mortgage over the borrower's immovable property (including the flats/ units constructed/to be constructed thereon) situated at Khasra No. 387, Village Kalka, The Tijara, Dist Alwar, Rajasthan be ordered to be sold and the net sale proceeds to be realized there from be paid to the Applicant for appropriation towards the satisfaction of amounts mentioned in para (iv) hereinabove with liberty to the Applicant to recover the balance amount from other assets of Corporate Debtor;
- (vi) The Corporate Debtor No. 1 immovable property Exclusively Second charge by way of equitable mortgage over the borrower's immovable property (including the flats/units constructed/to be constructed thereon) situated at Khasra no 231, Sector 39 Thada road, Tehsil Tijara, Bhiwadi District Alwar, Rajasthan (presently

- mortgaged to Allahabad Bank on First Charge basis. DCB Bank shall have first charge post vacation of Allahabad bank Charge) be ordered to be sold and the net sale proceeds to be realized there from be paid to the Applicant for appropriation towards the satisfaction of amounts mentioned in para (iv) hereinabove with liberty to the Applicant to recover the balance amount from other assets of Corporate Debtor Nos. 1 to 5;*
- (vii) For an order of attachment and appropriation of sale proceeds of the borrower's entire present sale proceeds/ receivables of the sold/booked / alienated units of the above mentioned "Kalka The Pearl" Project at Khasra No.387, Village Kalka, Tehsil Tijara, Dist. Alwar Rajasthan towards the satisfaction of amounts mentioned in para (iv) hereinabove with liberty to the Applicant to recover the balance amount from other assets of Corporate Debtor Nos.1 to 5;*
- (viii) For an order of attachment and appropriation of sale proceeds of the borrower's (Second charge entire present & future sale proceed/receivable of the unsold units and existing sold/booked/alienated units of the "Royal Residency" project situated at Khasra No. 231. Sector 39, Thada Road, Tehsil Tijara, Bhaiwadi, Dist Alwar, Rajasthan towards the satisfaction of amounts mentioned in para (iv) hereinabove with liberty to the Applicant to recover the balance amount from other assets of Corporate Debtor Nos. 1 to 5;*
- (ix) For an order of attachment and sale of other personal immovable properties belonging to Corporate Debtor Nos. 1 to 5 with the directions to adjust the sale proceeds with further right to claim the remaining dues against the Corporate Debtor Nos. 1 to 5 by other means.*
- (x) This Hon'ble Tribunal be pleased to issue an order of permanent injunction to restrain Corporate Debtor Nos. 1 to 5 by themselves or through its servants, agents, attorneys or through any other person or party acting for or on behalf of Corporate Debtor from selling, alienating, encumbering, leasing or creating any type of third party rights in respect of the movable fixed assets of the Corporate Debtor Nos. 1 to 5 and/or the afore stated mortgaged/ charged Immovable properties personal or any part thereof or any rights therein;*
- (xi) This Hon'ble Tribunal be pleased to issue an order of permanent injunction to restrain Corporate Debtor Nos. 1 to 5 by themselves, or through its servants, agents, attorneys or through*

any other person or party acting for or on behalf of Corporate Debtor Nos. 1 to 5 from selling, alienating, encumbering, leasing or creating any type of third party rights in respect of the personal properties or any part thereof or any rights therein;

(xii) This Hon'ble Tribunal be pleased to pass an order for attachment before judgment of personal properties of the Corporate Debtor Nos. 1 to 5;

(xiii) This Hon'ble Tribunal be pleased to appoint such person as it may deem fit as Receiver of the personal properties of Corporate Debtor Nos. 1 to 5 Or any part thereof or any rights therein; with all powers as provided by law, including the power of sale and direct the Receiver to take charge and possession of the above assets and sell the same on such terms and conditions as this Hon'ble Tribunal may deem fit and the net sale proceeds to be realized there from may be paid to the Applicant for appropriation towards the satisfaction of amounts mentioned in para (i) hereinabove with liberty to the Applicant to recover the balance amount from the other assets of Corporate Debtor Nos. 1 to 5;"

5. At the time of filing the present application, the total amount defaulted to be paid by the CD is Rs. 27,18,31,395.42/-. The details of the amount mentioned in the synopsis filed along with the application is reproduced below:

33. That at the time of filing the instant application the total amount of dues in the loan account Nos. **11955100000028** **11955100000019** & **119551000000125** are as under:-

Account Nos.	Outstanding /Dues
11955100000028	Rs. 1,51,759,997.42 Rupees Fifteen Crores Seventeen Lakhs Seventy Five Thousand Nine Hundred Ninety Seven and Paise Forty) as on 01.05.2023
11955100000019	Rs. 6,834,350.00 (Rupees Six Crores Eight Lakhs Thirty Four Thosuang Three Hundred Fifty) as on 01.05.2023
119551000000125	Rs. 113,237,048.00 (Rupees Eleven Crores Thirty Two Lakhs Thirty Seven Thousand and Forty Eight) as on 30.04.2023
Total Rs. 27,18,31,395.42	
(Rupees Twenty Seven Crores Eighteen Lakhs Thirty One Thousand Three Hundred Ninety Five and Paise Forty Two).	
Due dates as mentioned above	

inclusive of interest is due and payable by the Corporate Debtor

6. We may also refer to the amount defaulted to be paid, mentioned in Part-IV (1) of the petition which reads thus:

Part – IV

PARTICULARS OF FINANCIAL DEBT															
1.	<p>TOTAL AMOUNT OF DEBT GRANTED (DATES) OF DISBURSEMENT</p>														
	<p>Rs. 27,18,31,395.42</p> <p>(Rupees Twenty Seven Crores Eighteen Lakhs Thirty One Thousand Three Hundred Ninety Five and Paise Forty Two).</p> <p>With details as under:</p> <p>DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 30%;">119551000000028</td> <td>Rs. 1,51,759,997.42 (Rupees Fifteen Crores Seventeen Lakhs Seventy Five Thousand Nine Hundred Ninety Seven and Paise Forty) as on 01.05.2023</td> </tr> <tr> <td>119551000000019</td> <td>Rs. 6,834,350.00 (Rupees Six Crores Eight Lakhs Thirty Eight Thousand Three Hundred Fifty) as on 01.05.2023</td> </tr> <tr> <td>119551000000125</td> <td>Rs. 113,237,048.00 (Rupees Eleven Crores Thirty Two Lakhs Thirty Seven Thousand and Forty Eight) as on 30.04.2023</td> </tr> </tbody> </table> <p>ON-PAYMENT OF CONTRACTUAL DUES</p> <p>AND THE DATE FROM WHICH SUCH DEBT FELL DUE</p> <p>DATE OF DEFAULT</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Account Number</th> <th style="text-align: left;">Date of Default</th> </tr> </thead> <tbody> <tr> <td>119551000000028</td> <td>02.09.2018</td> </tr> <tr> <td>119551000000019</td> <td>02.09.2018</td> </tr> <tr> <td>119551000000125</td> <td>02.09.2018</td> </tr> </tbody> </table> <p>That the present application is well within the limitation period. It is submitted that the Hon'ble Supreme Court of India in Suo Moto Misc. Application No.2/2022 vide order dated 10.01.2022 directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under general Special Laws in respect of all judicial or quasi-judicial proceedings. That it is further submitted that the original application was filed by the Financial Creditor on 24.06.2019 and the same is still pending disposal</p>	119551000000028	Rs. 1,51,759,997.42 (Rupees Fifteen Crores Seventeen Lakhs Seventy Five Thousand Nine Hundred Ninety Seven and Paise Forty) as on 01.05.2023	119551000000019	Rs. 6,834,350.00 (Rupees Six Crores Eight Lakhs Thirty Eight Thousand Three Hundred Fifty) as on 01.05.2023	119551000000125	Rs. 113,237,048.00 (Rupees Eleven Crores Thirty Two Lakhs Thirty Seven Thousand and Forty Eight) as on 30.04.2023	Account Number	Date of Default	119551000000028	02.09.2018	119551000000019	02.09.2018	119551000000125	02.09.2018
119551000000028	Rs. 1,51,759,997.42 (Rupees Fifteen Crores Seventeen Lakhs Seventy Five Thousand Nine Hundred Ninety Seven and Paise Forty) as on 01.05.2023														
119551000000019	Rs. 6,834,350.00 (Rupees Six Crores Eight Lakhs Thirty Eight Thousand Three Hundred Fifty) as on 01.05.2023														
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Account Number	Date of Default														
119551000000028	02.09.2018														
119551000000019	02.09.2018														
119551000000125	02.09.2018														

7. Ld. Counsel for the Applicant could draw our attention to the Bank statement as also the certificates issued by NeSL. The bank statement is on record at Annexure A-33 of the paper book. The NeSL certificate are found

on record at Annexure A-36, A-37 7 A-38. The certificates are dated 22.05.2023. Ld. Counsel appearing for the CD submitted that in terms of the order dated 31.10.2023, the delay in filing the application was condoned, but he is entitled to put forth his submission qua the issue now again. We heard the Ld. Counsels for the parties and perused the record.

8. As can be seen from Section 7 of IBC, 2016, the Adjudicating Authority should within 14 days of receipt of the application under sub-Section (2) ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the FC. The sub-Section (4) of Section 7 of the Code reads thus:

“7. Initiation of corporate insolvency resolution process by financial creditor.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)

[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]”

9. In terms of the provisions of Section 7 (5) of IBC, 2016 where the Adjudicating Authority is satisfied that a default has occurred and the application under sub-section (2) is complete and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application. Section 7(5) of IBC, 2016 reads thus:

“(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”

10. As can be seen from Annexure A-36, A-37 & A-38 from NeSL has issued the certificate regarding the amount defaulted to be paid by the CD. Even Mr. Mrinal Harsh Vardhan, Ld. Counsel for the CD submitted on 16.01.2024 that the CD is willing to settle the defaulted amount within the time and to come back with some fruitful result in this regard within one week. The order dated 16.01.2024 reads thus:

“The Ld. Counsel for the CD, submitted that the CD is willing to settle the defaulted amount with the DCB Bank Ltd. and would come back with some fruitful result in this regard within one week. The plea is denied by Ld. Counsel appearing for the Creditor. Nevertheless, since there is acknowledgement on behalf of the Petitioner regarding the defaulted amount and the Petitioner wants to settle the same, an affidavit in this regard may be filed by the Respondent/CD within 3 days. List the main petition on 22.01.2024.

It is made clear that we have already heard the matter substantially and it is only during the course of hearing that indulgence is shown towards the plea taken on behalf of the CD. In the wake, no request for adjournment would be entertained on the next date of hearing on any account.”

11. As can be seen from the aforementioned order, the CD had admitted the amount of default and proposed some settlement. But when the time was given to CD to report the progress regarding settlement, no such progress was reported. At this stage, when we were passing the order Mr. Mrinal Harsh Vardhan, Ld. Counsel for the CD again submitted that every day he is trying that the settlement takes place and he is still trying. Mr. Hashmat Nabi, Ld. Counsel appearing for the FC categorically submitted on 16.01.2024 and also today that no settlement talk is going on.

12. Today when the matter was taken up for hearing, Mr. Mrinal Harsh Vardhan argued that irrespective of the order dated 31.10.2023, he should be heard on the issued limitation today again. As far as such plea is concerned, we may not be oblivious of the fact that this Adjudicating Authority has no power to review the order already passed by it and more so when there is no application for review. It is not the case of the CD that any appeal could be preferred from the order dated 31.10.2023. In the wake, at this stage it is not open for us to go into the issue of limitation. The order

dated 31.10.2023 passed by this Tribunal inter alia IA-5737/2023 reads thus:

“IA-5737/2023: *In view of the averments made in the application and the submission put forth by Ld. Counsel appearing for the Applicant, the delay in filing IB-496/ND/2023 is condoned subject to payment of cost of Rs. 10,000/- to be deposited in Prime Minister’s Relief Fund.”*

12. In the wake of the aforementioned, particularly in view of the NESL certificate, we are left with no option but to admit the present petition. Ordered accordingly.

13. **In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and** as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.”

14. As proposed by the Petitioner, Mr. Mukesh Gupta, having Registration No. IBBI/IPA-001/IP-P01494/2018-2019/12254) and E-mail id: camukeship@rediffmail.com) is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and

disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

“Mr. Mukesh Gupta, IRP (Registration No IBBI/IPA-001/IP-P01494/2018-2019/12254) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”

15. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will 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.

16. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

17. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)