



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV**

**Item No. 501
IB/63/ND/2023**

IN THE MATTER OF:

Utsav Securities Private Limited	...	Applicant
Versus		
Transnational Growth Fund Ltd.	...	Respondent

Order under Section 7 of IBC, 2016.

Order pronounced on 29.08.2023

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.

I.B./63(ND)/2023 stands dismissed.

Sd/-

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

Sd/-

**P.S.N. PRASAD
MEMBER (JUDICIAL)**



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

Company Petition No. (IB)-63(ND)/2023

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:

M/s. Utsav Securities Private Limited

.... Applicant/ Financial Creditor

VERSUS

M/s. Transnational Growth Fund 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:29.08.2023

ORDER

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

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

The instant Company Application is filed by M/s. Utsav Securities Private 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. Transnational Growth Fund Limited ('Respondent/Corporate Debtor') having CIN: U65999DL1986PLC024089 on the ground that the Corporate Debtor had committed a default in payment of



Rs.1,46,70,321/- (Rupees One Crore Forty Six Lakhs Seventy Thousand Three Hundred Twenty One only) as on 31.12.2022.

2. The Corporate Debtor i.e., M/s. Transnational Growth Fund Limited having CIN: U65999DL1986PLC024089 is incorporated on 01.05.1986 under the provisions of the Companies Act, 1956 having its registered office situated at R-815, New Rajinder Nagar, New Delhi - 110060. 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. Briefly stated facts of the case as mentioned in the Company Application and averred by the applicant are that a Loan Agreement was entered between the Applicant and Corporate Debtor on 12.05.2022 inter-alia containing the detailed terms and conditions for the loan granted. The Applicant submitted that pursuant to the said loan agreement dated 12.05.2022, the Applicant had disbursed amount of Rs.1,37,40,000/- (Indian Rupees One Crore Thirty-Seven Lakh Forty Thousand Only) on different dates as interest bearing loan at an interest of 12% per annum repayable after a period of six months from the date of Loan Agreement. The Applicant further submitted that the execution of Loan agreement dated 12.05.2022 was duly approved and supported by the Corporate Debtor's Board Resolution dated 02.05.2022.
4. Further, it was submitted that the Applicant being aggrieved by the non-payment of principal and interest amount has demanded the outstanding payment from time to time, however, the Corporate Debtor had failed to make the payments as per the loan agreement. It was submitted that the total amount of debt payable by the Corporate Debtor to the Applicant is INR. 1,46,70,321 (Indian Rupees One Core Forty Six Lakh Seventy Thousand Three Hundred Twenty One Only) which includes principal amount of Rs.1,37,40,000/- (Indian Rupees One Crore Thirty Seven Lakh Forty Thousand Only) and interest @ 12%



up to 31.12.2022 amount Rs. 9,30,321/- (Indian Rupees Nine Lakh Thirty Thousand Three Hundred Twenty One only). Accordingly, the applicant prays for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

5. To prove the existence of debt and default therein, the Applicant has placed reliance on the following documents:-
 - i) Copy of the Loan Agreement dated 12.05.2022 executed between the Financial Creditor and Corporate Debtor.
 - ii) Copy of Confirmation of the Accounts by both the parties.
 - iii) Certificate of the Record of Default registered with Information Utility in the prescribed Form-D

6. We have heard the Learned Counsel for the Applicant and perused the records annexed with the Application. The Corporate Debtor's right to file reply was forfeited vide this Adjudicating Authority's order dated 09.03.2023.

7. Adverting to the facts of the present case, the applicant had disbursed the amount of Rs.1,37,40,000/- at an interest rate of 12% p.a. repayable within a period of Six months pursuant to the loan agreement dated 12.05.2022. The confirmation of accounts from 01.04.2022 to 31.12.2022 showing the disbursement of principal amount and the accrual of interest is confirmed by the Applicant as well as Corporate Debtor and the same is annexed as Annexure-5 to the present Company Application.

8. From the records, this Adjudicating Authority observe that the instant Company Application i.e. IB/63/2023 filed under Section 7 of the Code, 2016 was listed on 31.01.2023 for the first time wherein the Ld. Counsel for the Corporate Debtor Mr. Kartikeya Singh had appeared virtually and offered to file 'Vakalatnama' within three days and reply within two weeks. However, on the next date of hearing i.e., 09.03.2023, neither anyone appeared on behalf of Corporate Debtor nor reply on behalf of the Corporate Debtor in compliance of



the order dated 31.01.2023 was filed. Accordingly, this Adjudicating Authority vide its order dated 09.03.2023 had forfeited the Corporate Debtor's right to file reply.

9. This Adjudicating authority further observes that on the hearing dated 27.03.2023, the Ld. Counsel for the Corporate Debtor had prayed for recalling the order passed on 09.03.2023 in this matter and to afford an opportunity to file the reply. This Adjudicating Authority vide order dated 27.03.2023 had directed the Corporate Debtor to make appropriate application for recalling the order dated 09.03.2023 and also to file a delay condonation application along with the reply within one week by serving an advance copy upon the Counsel for the Financial Creditor.
10. This Adjudicating Authority on hearing dated 10.05.2023 had noted that nobody had appeared on behalf of the Corporate Debtor despite the order dated 27.03.2023 and neither any application for recalling the order dated 09.03.2023 nor reply to application filed under Section 7 has been filed so far. Moreover, this Adjudicating Authority on the final hearing dated 05.07.2023 had heard the arguments advanced by the Applicant whereas the Learned Counsel for the Corporate Debtor had submitted that his client requires time for amicable resolution of the matter.
11. It is pertinent to note that Section 7(4) of the Code, 2016 provides that the Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2) of Section 7, 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) of Section 7. Taking into consideration the fact, that the Code stipulates a time bound procedure, wherein adherence to the time limits is crucial for the achievement of the objectives of Code, it seems that despite adequate opportunities being granted to the Corporate Debtor for taking necessary steps to place their reply on record and defend their stand in the matter, they have chosen not to avail of



those opportunities leading to a prima-facie conclusion that non-placing of their reply on record or not appearing regularly in the matter is nothing but a mere dilatory tactic on the part of Corporate Debtor to derail the entire process.

12. Be that as it may, on a meticulous perusal of the submissions of the Applicant, this Adjudicating Authority has browsed the official website of RBI, based on the information that the Corporate Debtor i.e., M/s. Transnational Growth Fund Limited is engaged in the business of finance, investment and trading, hire-purchase, leasing and to finance lease operations of all kinds. This Adjudicating Authority found that the Corporate Debtor i.e., M/s. Transnational Growth Fund Limited having CIN: U65999DL1986PLC024089 is a registered Non Banking Financial Company of NBFC-NDSI category as per the list of Non-Banking Financial Companies (NBFCs) and Asset Reconstruction Companies (ARCs) registered with the Reserve Bank of India (RBI) as on May 31, 2023.

13. The term “Corporate Person” is defined under Section 3(7) of IBC, 2016, “Financial Service” is defined under Section 3(16) of IBC 2016 and the term “Financial Service Provider” and “Financial Sector Regulator” are defined under Section 3(17) and 3(18) respectively. The relevant definitions and provisions of Insolvency and Bankruptcy Code, 2016 are reproduced herein below:-

Section 3(7) “corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

Section 3(16) “financial service” includes any of the following services, namely: –

(a) accepting of deposits;

(b) **safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;**



- (c) effecting contracts of insurance;
- (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
- (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of— (i) buying, selling, or subscribing to, a financial product; (ii) availing a financial service; or (iii) exercising any right associated with financial product or financial service;
- (f) establishing or operating an investment scheme;
- (g) maintaining or transferring records of ownership of a financial product;
- (h) underwriting the issuance or subscription of a financial product; or
- (i) selling, providing, or issuing stored value or payment instruments or providing payment services;

Section 3(17) “financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;

Section 3(18) “financial sector regulator” means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government;

14. At this juncture, it is to be noted that Section 3(7) of the Code, 2016 defines a ‘corporate person’, which excludes from its definition any ‘financial service provider’ and consequently excludes the same from the definition of a ‘corporate debtor’. To qualify as a ‘financial service provider’ as defined under Section 3(17) of the Code, 2016, a person must be “engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator”. Moreover, Section 3(16) of the Code, 2016 provides a



non-exhaustive list of ‘financial services’. If any of the services under Section 3(16) are being provided, then the definition of ‘financial service provider’ would be sufficiently met, as the list provided in the definition is an inclusive list.

15. The Central Government under Section 227 read with clause (zk) of sub-section (2) of Section 239 of the Code had notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (“FSP Rules”) on November 15th, 2019. Ministry of Corporate Affairs (“MCA”) on 18th Nov, 2019 had issued a notification under Section 227 of the Code designating Reserve Bank of India (“RBI”) as the appropriate regulator of Non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more, as per last audited balance sheet. i.e., systematically important Non-Banking Financial Companies (“NBFC-NDSI”).

16. Further, the Notification No.DNBR.009/ CGM(CDS)-2015 dated March 27, 2015 issued by Reserve Bank of India defines ‘Systemically important non-deposit taking non-banking financial company’. The definition of Systemically important non-deposit taking non-banking financial company as provided in Clause 2(xxvi) of the said notification is reproduced herein below:-

‘Systemically important non-deposit taking non-banking financial company’, means a non-banking financial company not accepting / holding public deposits and having total assets of Rs. 500 crore and above as shown in the last audited balance sheet.

17. According to Rule 6 FSP Rules, CIRP can be initiated against the FSP only when an application is filed by the “appropriate regulator”. The application so filed shall be dealt with in the same manner as that of an application by Financial Creditor under Section 7 of the Code.



18. Since, the name of the Corporate Debtor is registered as Non Banking Financial Company under NBFC-NDSI category ('Systemically important non-deposit taking non-banking financial company') and is reflected at S.No. 1029 of the said list of NBFCs registered with the RBI as on May 31, 2023, it is suffice to conclude that the Corporate Debtor is a Registered Non-Banking Financial Company. Therefore, the Corporate Debtor is covered under the definition of "Financial Service Provider" under Section 3(17) of IBC 2016.

19. **The Hon'ble NCLAT in case "Randhiraj Thakur, Director, Mayfair Capital (P) Ltd. Vs. M/s. Jindal Saxena Financial Services (P) Ltd" [2018 ibclaw.in 79 NCLAT]** held that:-

"10. If the entire scheme of the I&B Code is seen, it will be evident that the Code is to consolidate and amend the laws relating to reorganisation and insolvency resolution of 'corporate persons', 'partnership firms' and 'individual' in a time bound manner. It is a self-contained Code which is exhaustive in nature when it comes to reorganisation and insolvency resolution. However, an exception had been carved out while enacting the Code that the 'financial service providers' have been kept outside the purview of the Code. **Being a consolidating legislation only those acts are permitted which are mentioned in the Code and it cannot be made applicable to 'financial service providers' including 'non-banking financial institutions' and MFI's banks, which have been kept outside the purview of the Code.**"

20. Since, from the records, it is clear that the Corporate Debtor is a registered Non-Banking Finance Company registered with the Reserve Bank of India, and therefore, the services of the Corporate Debtor herein are regulated by the Reserve Bank of India which is squarely covered under the definition of "Financial Sector Regulator" under Section 3(18) of IBC 2016.



21. In view of the aforesaid discussion, we conclude that Corporate Debtor herein is a “Financial Service Provider” in terms of Section 3(17) of IBC 2016 and as a consequence of that, it cannot be considered a “Corporate Person” as defined under Section 3(7) of IBC 2016. Moreover, the Corporate Debtor is classified as a ‘Systemically important non-deposit taking non-banking financial company’ (NBFC-NDSI) as per the list of Non-Banking Financial Companies (NBFCs) and Asset Reconstruction Companies (ARCs) registered with the Reserve Bank of India (RBI) as on May 31, 2023 . Accordingly, in view of the MCA Notification dated 18.09.2019, no application under Sections 7 of IBC 2016 can be filed against a “financial service provider” to initiate its CIRP without prior approval from the Regulator i.e., Reserve Bank of India as the same is in contravention of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application and Application to Adjudicating Authority) Rules, 2019.

22. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./63(ND)/2023 stands dismissed with costs of Rs. 25,000/- (Indian Rupees Twenty Five Thousand only)** payable to Bharat Kosh within a period of 14 days from pronouncement of this order, for the failure on part of the Section 7 applicant for non-disclosure of the fact that the Corporate Debtor is a Non-Banking Finance Company Registered with RBI.

Sd/-

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

Sd/-

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