THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

Company Petition No. (IB)-983 (ND)/2020
&
IA 3626 /ND/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s Dilwara Leasing and Investment Limited

APPLICANT/FINANCIAL CREDITOR

Vs.

M/s Vibrant Buildwell Private Limited

RESPONDENT/CORPORATE DEBTOR

& In the matter of:

1. Pramila Sahni
   w/o Mr. Raj Kumar Sahni
   11/7B, Pusa Road, New Delhi-110060

2. Rajkumar Sahni & Sons HUF
   Through its Karta Mr. Raj Kumar Sahni
   11/7B, Pusa Road, New Delhi-110060

3. Rajkumar Sahni
   s/o Late Sh. Wishwa Nath Sahni
   11/7B, Pusa Road, New Delhi-110060

Order delivered on: **22.02.2022**

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SMT. SUMITA PURKASYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per Se- Mr. DHARMINDER SINGH, MEMBER (J)

1. The IA 3626/ND/2021 has been filed by the shareholders and a Director of Corporate Debtor, namely, M/s Vibrant Buildwell Pvt. Ltd.

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Under Section 65 of the Insolvency and Bankruptcy Code, 2016 (the Code), seeking rejection of the main IB petition number CP (IB) No. 983 of 2020 filed by financial creditor namely, Dilwara Leasing and Investment Limited.

2. Since main IB petition and IA no. 3626/ND/2021 are interrelated to each other, we will dispose the main IB petition and IA by this common order.

3. Brief facts of the main IB petition are as follows:

    a) The applicant Company is a Non - Banking Financial Company (NBFC) registered with the Reserve Bank of India (RBI) and has been advancing Loan(s) to the Borrowers at their request and is incorporated under the provisions of Companies Act, 1956 on 03.09.1992. Mr. Jugal Kishore Lohia, duly authorized on behalf of applicant vide Board Resolution dated 15.03.2020, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the Code. A copy of the Board Resolution dated 15.03.2020 has been placed on record.

    b) The Respondent Company M/s. Vibrant Buildwell Private Limited against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 01.11.2004 having its registered office situated at 22, Siri Fort Road, New Delhi, DL - 110049, India and Corporate office at A-359, Defence Colony, New Delhi-l 1 0024, 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.

c) The case of the applicant during the month of August, 2012, the corporate debtor approached financial creditor and requested for providing the margin money in the form of FDRs, as and when required to the Bank so that the corporate debtor may provide a Bank Guarantee in favor of Department of Town and Country Planning, HUDS, Chandigarh, Haryana to pay EDC etc to renew its license.

d) It is the case of the applicant that on 24.09.2012 and 24.03.2013, the financial creditor provides the margin money in the form of FDRs for the amount of Rs. 2,44,47,000/- on 27.09.2012 and of Rs. 4,25,00,000/- on 21.05.2013 to the corporate debtor. Further on 31.08.2018, the margin monies in the form of FDRs were returned to the Financial Creditor by the bank as a result of release of Bank Guarantee provided Department of Town and Country Planning, HUDS, Chandigarh, Haryana. Hence, the corporate debtor failed to pay the interest to the Financial Creditor on behalf of Corporate debtor to the bank. Furthermore the Balance Sheets of the corporate debtor for the Financial year 2012-13 to 2016-17 clearly reflects the said loan amount disbursed by the financial creditor along with interest @11% per annum.

e) It is submitted that the financial creditor issued recall demand notice dated 16.03.2020 for recalling the loan from the respondent company and also demanded the respective interest. Despite receipt of the said demand notice, the corporate debtor failed to take any step.

f) Therefore, as per part IV of the application it is claimed that as on 16.03.2020 a sum of Rs. 14,55,36,849/- is due and payable by the respondent company.

4. It is pertinent to mention here that the right to file reply of corporate debtor was closed by this adjudicating authority.

5. Brief facts of IA 3626/ND/2021:

a) It is submitted that the corporate debtor operates as a quasi-partnership, wherein shareholding is equally held by two groups i.e. one group owned by the Applicants herein and the second group being owned and controlled by the Respondent No. 1 (financial creditor) and its group. The partnership was entered between the groups for the purpose of development of a project in Bahadurgarh (Harayana) on a 50-50.

b) The case of the applicant is that the respondents breached principles of the partnership and have fraudulently and for malicious purpose, illegally invoked the provisions of the Code.

c) The corporate debtor entered into a Joint Venture Agreement with one M/s Dhingra Developers Pvt. Ltd for development of a residential group housing on the plot of land situated in Village Sarai Aurangabad, Bahadurgarh, Haryana. However, the project could not be developed. In 2012 the respondent no.2 expressed its interest in the project of the Corporate Debtor. It was agreed between the parties that the Respondent No.1 comes in as a shareholder in the Corporate Debtor to invest maximum of Rs. 15 crores into the project of the Corporate Debtor and in exchange was allotted 50% shareholding of the Corporate Debtor. The Respondent No. 2 was also included as Director of the Corporate Debtor. Thereafter the license of corporate debtor was renewed having a validity upto 08.08.2015.

d) It is stated that on interference of son of Respondent No.2 the project development work at site stopped resulting in increase of EDC amount and also the DTCP refused to further renew the license of corporate debtor. Thereafter, on advice of the respondent no.2 the corporate debtor migrated the project to a new policy being Deen Dayal Jan Awas Yojna and licence no. 41 of 2018 was obtained.

e) Apparently, the respondent no.2 and 3 instead of launching project issued loan recall notice dated 16.03.2020. It is alleged that the applicant came to knowledge of letters dated 24.03.2013 and 24.09.2012 as these letters were never part of the records and have been fraudulently created.

f) The Applicant No. 2 filed a Police Complaint against the Respondent No. 2 & 3 for fabricating documents to initiate false and frivolous proceedings.

g) It is submitted that inter-se dispute arose between the two groups which resulted in filing the main IB petition filed by Respondent No.1 which is wholly owned and controlled by Respondent No.2. The applicant further stated that the Respondent No.2 also malafidly created hurdles in issuing authorisation to represent Corporate Debtor before this Tribunal. It is also alleged that the Respondent No. 2 is breaching the duties as a Director of Corporate Debtor. it is also claimed that there was transaction took placed between Corporate Debtor and Respondents having commercial effect of borrowing.

6. The Respondent no.1 (financial creditor) in IA 3626/ND/2021 has filed their reply and submitted as follows:

a) It has been pointed out that the right to file reply of corporate debtor was closed vide order dated 17.12.2020. Thereafter, the applicant filed an application under Section 60(5) of the Code seeking intervention in the main IB petition which was rejected by this Authority vide order dated 02.03.2021. It is submitted that the grounds raised by applicant herein are similar to the grounds raised in the earlier application. The applicant even filed appeal before NCLAT and Hon'ble Supreme Court but the order dated 17.12.2020 was upheld in both the appeals.

b) Further, it has been pointed out that the Financial Statements for the Financial Years 2012-2013 up till 2016-2017 clearly reflects the loan amount given by Respondent No.1, the said Financials are duly signed by the applicant Mr. Raj Kumar Sahani.

c) In the month of August 2012, the Corporate Debtor approached Respondent No.1 requesting margin money in the form of fixed deposit receipt (FDR) and the Respondent No.1 agreed to provide the said margin money in form of FDRs to the Bank and accordingly, respondent no. 1 on 27.09.2012 and 21.05.2013 provided the margin money to the tune of Rs. 2,44,47,000/- and Rs. 4,25,00,000/- respectively.

d) It is stated the loan amount alongwith interest thereon, were long overdue the part of Corporate Debtor and therefore, the respondent no. 1 issued Demand Notice dated 16.03.2020.

e) The respondent argued that the present application is misuse the process of law with mala fide intention to delay the process of main IB petition.

7. The applicant has filed rejoinder and submitted as follows:

a) It is stated that the present application has been filed to establish the fact that the instance case is nothing more than inter-se dispute between the Board and Shareholders of the Corporate Debtor.

b) The respondent no.1 has failed to make out any case of disbursal against consideration of time value of money and there is no commercial effect of borrowing. It is also stated that there is prime facie case against respondent no.1 that the main

IB has been filed with malicious intentions and for the purpose other than resolving insolvency of corporate debtor.

8. Heard. The records have been thoroughly perused. Apparently, the right to file reply of the respondent corporate debtor was closed by this Tribunal vide order dated 17.12.2020. The said order was challenged by the applicants before Hon'ble NCLAT and Hon'ble Supreme Court, but the order dated 17.12.2020 was upheld in both the Appeals.

9. The applicants also filed CA No. 1 of 2020 for impleadment/intervention with similar grounds, but the same application was also dismissed vide order dated 02.03.2021. The applicants have tried twice to raise similar grounds before this Tribunal. Reasonable opportunity was given to corporate debtor for contesting the main IB petition but failed to do so. Now, the present application has been filed by the applicants raising similar objections against the main IB petition and claim of the Financial Creditor. The applicants even raised similar objections before Hon'ble NCLAT and Hon'ble Supreme Court, but both the Hon'ble Courts dismissed the grounds of the applicants.

Thus, the applicants cannot be allowed to raise same objections by way of different applications, when the same has already been dealt. The respondent herein by virtue of the applications wasn't to defence the case, wherein the right to defend has already stand closed. Hence, the applicant cannot be permitted to do (defend) indirectly what he cannot do directly by virtue of filing such like applications. Moreover, merely that one of members of company is partner in the partnership (one of group) and entered into collaboration with the respondent does not establish that there was collusion. Further, there is contention that meger accounts are added in the balance sheet, but that does not prove fraud, because of the reason that when the project is developed and then whatever amount is spend whether is meger one, the same is required to be accounted for. On the basis of the same, the interference could not drawn that entries were absolutely wrongly made in Balance Sheet and those amounts were actually not spend. Hence there is nothing on the record to establish that there was fraud and malicious initiation of section 9 on behalf of the petitioner hearing. Secondly, the applicants in their application have themselves submitted that the Financial Creditor was earlier invested in the project which was then converted into different project under Deen Dayal Jan Awas Yojna, therefore the financial creditor has reasonable cause to recall its loan given to the applicant for a different project. Further, the corporate debtor even failed to get renew the license for completion of the earlier project.

10. In view of the above discussion, we find no merits in the application of the applicants, resultantly, IA 3626/ND/2021 is dismissed with no order as to costs.

11. In respect of the Main IB petition filed under Section 7 of the Code, the Financial Creditor has placed Balance Sheets of the Corporate Debtor reflecting debt given by the Financial Creditor acknowledged. The Financial Statements for the F.Y. ending 2012-2013 to 2016-2017 was duly signed by the director of Corporate

Debtor namely, Mr. Raj Kumar Sahani i.e. the other director. It is reiterated that the corporate debtor failed to raise any objection within stipulated time provided by this Tribunal.

12. The Financial Creditor has invested its money for a project and the corporate debtor has failed to complete the project and infact changed the entire project into another type of project. Therefore, it is well within the rights of the financial creditor to recall its financial debt as the project is not the same. In view of the documents placed on record, the financial creditor proved that financial debt was given to the corporate debtor and the corporate debtor has defaulted in repayment of said financial debt.

13. Needless to say, that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs.1 Lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code. The applicant has also placed copies of Form- 26AS showing deposit of TDS on interest over financial debt deposited by the corporate debtor.

14. In the facts it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditor had provided financial

facility to the respondent corporate debtor and the respondent acknowledged the same debt in its Balance Sheets and committed default in repayment of the outstanding financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same.

15. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

16. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is here admitted.

17. The financial creditor has proposed name of Mr. Ashish Singh for appointment as Interim Resolution Professional of the Corporate Debtor. Mr. Ashish Singh has given its written consent dated 29.06.2020. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

18. Therefore, Mr. Ashish Singh, having registration number IBBI / IPA-002 / IPN0004167/ 2017-18 / 11230 having email – id ashishsinghcs@gmail.com is appointed as an Interim Resolution Professional for corporate debtor.

19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this

application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

20. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Ashish Singh to meet out the expenses 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 from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

21. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 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;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

22. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

23. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or

anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

24. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

-Sd-

(SUMITA PURKAYASTHA)

MEMBER (T)

-Sd-

(DHARMINDER SINGH)

MEMBER (J)