

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

C.P. (IB)343/KB/2021

*A petition 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:

Superspace Infrastructure Limited a company within the meaning of Companies Act, 2013 having CIN L70200GJ1985PLC013256 and having its registered office at Vitthal Rakhumai CO-OP Housing Society, Room No. 707, Balaram Khedekar Road, Near Wadala Depot, Wadala West, Mumbai- 400031.

..... *Financial Creditor/ Petitioner*

-versus-

Riteshwari Trading & Investments Private Limited, a company within the meaning of Companies Act, 2013 having CIN U51909WB1989PTC047900 and having its registered office at Room No. 602, 6th Floor 4 Fairlie Place Kolkata, WB 700001 IN

..... *Corporate Debtor/ Respondent*

Date of Hearing: 6th December, 2022

Date of Pronouncement of the order: 11th January, 2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

For the Financial Creditor:

Mr. Saunak Mitra, Adv.

Mr. Saurav Jain, Adv.

For the Corporate Debtor:

Mr. Meenakshi Manot, Adv.

Mr. Suparna Sardar, Adv.

ORDER

Rohit Kapoor, Member (Judicial):

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code”) by **Superspace Infrastructure Limited**, hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Riteshwari Trading & Investments Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 22 November 1989. The authorized share-capital of the company ₹2,50,00,000/- and the paid-up share capital of the company is ₹2,33,05,300/-.
4. The total amount claimed to be in default by the Financial Creditor, is ₹2,41,55,670/-. The date of default is 07.10.2021.
5. Part – I of this petition contains particulars of the Financial Creditor. Part- II of this petition contains the particulars of the Corporate Debtor. Part – III of the petition caters to the particulars of proposed Interim Resolution Professional. Part – IV of this petition provides the particular of Financial Debt and Part -V of this petition contains the particulars of the Documentations, Record and Evidence of Default.
6. The Financial Creditor has relied on the various documents in support of its claims, including:
 - a) Master Data of the Corporate Debtor, marked with Exhibit “C”;

- b) Copy of Certificate of Incorporation pursuant to name change, annexed as Exhibit “F”.
- c) Copy confirmation of books of accounts, annexed as Exhibit “H”.
- d) Copy bank statements, annexed as Exhibit “J”

7. Submissions on behalf of the Financial Creditor:

- 7.1 The Corporate Debtor availed certain financial assistance from Indian Overseas Bank. Upon failure to repay said debt the loan account of the Corporate Debtor was declared as NPA as per the RBI guidelines and the Indian Overseas Bank filed an Original Application before the Ld. Debt Recovery Tribunal II, Kolkata Bench being OA No. 639 of 2010.
- 7.2 The case of the Financial Creditor is that it had granted loan amounting to a total of Rs. 6,92,00,000/- in several tranches to the Corporate Debtor. The loan amount was initially granted from M/s. Surabhi Chemicals and Investment Limited. However, subsequently, the company had changed its name with effect from 04.03.2015 to M/s. Superspace Infrastructure Limited after complying with all the formalities under Companies Act, 2013.
- 7.3 The Corporate Debtor had made part-repayment of Rs. 5,25,30,000/- towards principal loan amount. As such, the principal amount due till date is Rs. 1,66,70,000/-. Further, the amount of interest accrued till 30.09.2021 is Rs. 2,39,72,536/-, whereas the Corporate Debtor had paid Rs. 1,64,86,866/- including Tax Deducted at Source (TDS) under the provisions of Income Tax Act, 1961.
- 7.4 The Corporate Debtor had confirmed the financial transactions and remittance of the debt granted by the financial creditor through the confirmation of accounts for the period of 01.04.2012 to 31.03.2013, 01.04.2014 to 31.03.2015 & 01.04.2015 to 31.03.2016. Thereafter, in spite of several attempts to attain the confirmation of books of accounts the same was not received from the Corporate Debtor.

7.5 The Financial Creditor had not received principal amount of Rs.1,66,70,000/- and interest amounting to Rs.74,25,670/- till 30.09.2021.

7.6 On 20.09.2021, Corporate Debtor was asked by the Financial Creditor to pay the entire financial debt as the dues were pending since long. In spite of several verbal follow-ups by the Financial Creditor, the Corporate Debtor did not make the payment of the remaining outstanding dues.

8. **Submissions of the Corporate Debtor:**

8.1 The Corporate Debtor has submitted that it had undergone severe financial crisis due to various reasons apart from the already existing pandemic scenario and is currently unable to pay back its dues to the Financial Creditor, a fact the Financial Creditor is well aware of. However, the Corporate Debtor is trying to resolve its financial problem and make its payment of its dues to the Financial Creditor. Still the Financial Creditor is taking undue advantage of the law to coerce the Corporate Debtor.

8.2 The purpose of the Code is resolution of the insolvency of the Corporate Debtor and it is not meant to be used as a weapon by the Financial Creditors. In the instant case, the petition filed is creating undue pressure on the Corporate Debtor.

9. **Supplementary Affidavit filed by Corporate Debtor:**

The Financial Creditor has filed the instant supplementary affidavit, bringing on record a copy of Non Banking Financial Institution (NBFI) Certificate of the Corporate Debtor, its balance sheet for the Financial Year 2021-22 and Memorandum of Association (MoA) and Article of Association (AoA).

10. **Analysis and Findings:**

10.1 Heard the Ld. Counsel on behalf of the Financial Creditor and the Ld. Counsel on behalf of the Corporate Debtor and perused the record.

- 10.2 In the course of arguments, the Ld. Counsel on behalf of the Corporate Debtor argued that the Corporate Debtor is a NBFC and since the provisions of the Code cannot be applied to initiate CIRP against financial service providers, the instant petition is not maintainable.
- 10.3 In support of its contention, the Corporate Debtor has relied to the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of **Saumil A. Bhavnagri vs. Messers Nimit Builders Private Limited & Anr.**¹ wherein it was held that:
- “8. We do not find fault with the Impugned Order of Adjudicating Authority where it observed that it does not have jurisdiction to recall its Order of admission but do not agree with its other findings referred earlier and imposing of costs. However, this Tribunal has jurisdiction in Appeal to consider whether initiation of CIRP process against the Corporate Debtor is legal or not. As we find that the Corporate Debtor in the present matter is NBFC and being financial service provider, Section 7 Application could not have been admitted against such Corporate Debtor, we set aside not only the Impugned Order but also the original Order dated 15th January, 2019 passed by the Adjudicating Authority admitting the Application under Section 7 of IBC.”*
- 10.4 In order to prove its status as a financial service provider under section 3(17) of the Code, the Corporate Debtor has produced its Certification of Registration as an NBFII as granted by the Reserve Bank of India as well as its MoA and AoA. On perusal of the MoA, it can be seen that the objects of the Corporate Debtor include, among other activities, carrying on business of investment company and investing in shares, bonds, stocks etc, as well as making loans or advances.
- 10.5 On the question whether the objects of the Corporate Debtor are covered under the definition of ‘financial services’, would like to rely on the decision of Hon'ble NCLAT in the matter of **Housing Development**

¹ MANU/NL/0557/2019, decided on 21st November 2019

Finance Corporation Ltd. vs. RHC Holding Private Ltd.², wherein the following was held by the Hon'ble NCLAT:

"13. The definition of 'financial services' as defined in Section 3(16) of I&B Code is not limited to the 9 activities as shown at Clause (a) to (i) of Section 3(16). The aforesaid Clauses (a) to (i) are inclusive which means there are other services means there are other services which come within the meaning of "financial services"."

- 10.6 The Registration of Certificate issue by RBI shows that it has granted certificate to commence/carry on business of "non-banking financial services". Further, Chapter IIIB of The Reserve Bank of India Act, 1934 (RBI Act) relates to "Provisions Relating to Non-Banking Institutions Receiving Deposits and Financial Institutions". According to Section 45-I(a) therein, business of a non-banking financial institution' means carrying on the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in clause (f), unless the context requires otherwise.
- 10.7 Further, according to Section 45-I(c) of the RBI Act, "financial institutions" means any non-banking institution which carries on as its business or part of its business activities including the financing of any activity other than its own, whether by way of making loans or advances or otherwise. It is noted that the Corporate Debtor, in the instant matter, is involved in the business of making loans and advance, indicating that it falls within the meaning of financial institutions under Section 45-I(c) of the RBI Act. As such, it is a financial service provider under the Code.
- 10.8 It is further noted that in the matter of ***RHC Holding Private Ltd*** (supra), wherein the Corporate Debtor was involved in the business of investment in shares, bonds, debentures, debts or loans, the Hon'ble NCLAT was of the opinion that the Corporate Debtor therein, being a non-banking financial institution and carrying on business of financial

² MANU/NL/0290/2019, decided on 10th July 2019

institution, is a financial service provider and does not come within the meaning of Corporate Debtor under the Code.

- 10.9 Keeping in mind the afore mentioned judgments, the facts and circumstances of the instant matter, this Adjudicating authority is satisfied that since the respondent herein does not qualify to be a Corporate Debtor in terms of the Code and therefore the instant petition is not maintainable and is liable to be rejected.
- 10.10 Consequently, **C.P.(IB) No. 343/KB/2021** shall stand *rejected*. Needless to say, the Operational Creditor is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.
- 10.11 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 10.12 Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 11th day of January, 2023

SM[LRA]