



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT – VI**

**Item No. 1**  
**IB-124/ND/2023**

**IN THE MATTER OF:**

**M/s. Arti Securities and Services Ltd.**

**...Petitioner**

**Vs.**

**M/s. Duxton Hills Builder Pvt. Ltd.**

**...Respondent**

**ORDER UNDER SECTION 7, IBC, 2016**

**ORDER DELIVERED ON: 02.08.2023**

**CORAM:**

**SHRI. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

IB-124/ND/2023 stands admitted.

SD/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-124/(ND)/2023**

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/s. Arti Securities and Services Limited**

**At:** Shop No. FF-01, First Floor, Lotus Pond Plot No. 2A,  
Indirapuram, Ghaziabad, UP- 201014

...Applicant/Financial Creditor

**Versus**

**M/s. Duxton Hills Builder Private Limited**

**At:** Chander Mal Complex, Plot No. 9,  
Dharamvir Market, Badarpur,  
New Delhi 110044

...Respondent/ Corporate Debtor

**Coram:**

**Shri. Bachu Venkat Balaram Das, Member (Judicial)**

**Shri. Rahul Bhatnagar, Member (Technical)**



**Counsel for Petitioner:** Adv. Palash S. Singhal

**Counsel for Respondent:** Adv. Gaurangi Gupta

**ORDER**

**PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Date: 02.08.2023**

1. This is an application filed by M/s. Arti Securities and Services Limited to initiate corporate insolvency resolution process (“CIRP”) against M/s. Duxton Hills Builder Private Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default on the part of the Respondent in settling an amount of Rs. 1,07,18,335.81/- (Rupees One Crore Seven Lakhs Eighteen Thousand Three Hundred Thirty-Five and Eighty-One Paise) along with interest at the rate of 8.50% per annum as on 31.01.2023. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:



- i. That the Applicant/ Financial Creditor entered into the Loan Facility Agreement dated 01.03.2022 with the Corporate Debtor for the disbursement of Loan wherein the Agreement stipulates all the necessary terms and conditions attached with the disbursement of Loan. The Applicant thereafter disbursed the loan amount pursuant to the execution of Agreement to the Corporate Debtor on various dates as mentioned in the Form 1.
- ii. As per 3.4, of the Loan Facility Agreement, the Corporate Debtor agreed that the entire loan disbursed shall be payable on or before expiry of 24 months from the date of disbursement of loan amount which was 02.02.2024.
- iii. The Applicant disbursed the amount of Rs.1,00,00,000/- (Rupees One Crore) to the Corporate Debtor upon the execution of the MoU and the Corporate Debtor became liable for the payment of interest @8.50% per annum in terms of the clause 4.2 of the Loan Facility Agreement. Further, the Schedule I of the agreement categorically stipulates the Due Dates for EMI(s) wherein the first EMI was due and payable on 02.05.2022.



- iv. That the Corporate Debtor failed to adhere with the EMI due dates and aggrieved by the violation of the agreed and settled terms of repayment, the Applicant herein was constrained to issue a default letter dated 24.06.2022 to the Corporate Debtor duly demanding repayment of the principal loan amount of Rs. 1,00,00,000/- (Rupees One Crore) along with accrued interest @ 8.50% per annum amounting to Rs. 3,26,361.12 /- (Rupees Three Lakh Twenty-Six Thousand Three Hundred Sixty-One and Twelve Paise) as on 24.06.2022.
- v. That the Respondent/ Corporate Debtor vide letter dated 11.07.2022 in response to default notice requested three months' time to make complete payment along with the interest due to financial crisis going on in their company.
- vi. That upon the request of Respondent, the Applicant granted three months' time to Respondent to make complete payment as per the demand raised, however, to the utter disappointment of Applicant, the Respondent failed to make the payment of even a single instalment as promised by them. Being aggrieved by the continuous



default on behalf of the Respondent, the Applicant again sent a demand notice dated 06.10.2022 to the Respondent on account of consequent default from the due date of first instalment till date.

vii. That the Applicant sent a Loan Recall Notice dated 14.01.2023 which was duly received by the Applicant vide speed post on 21.01.2023. In terms of the Loan Recall Notice, the Applicant called upon the Corporate Debtor to repay the outstanding loan of Rs. 1,00,00,000/- (Rupees One Crore Only) along with the interest at the rate of 8.50% within 10 days from the receipt of the notice. However, the Corporate Debtor failed to repay the debt which became due and payable on the receipt of the demand notice as per the time period envisaged therein i.e., 31.01.2023 and committed a default in terms of the provisions of IBC. Hence the instant Application.



2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

- i. That the Corporate Debtor in the year 2022 had approached the financial creditor for seeking financial assistance of Rs. 2,00,00,000/- as an unsecured loan for meeting working capital of business operations.
- ii. That the financial Creditor in view of such request by the present respondent, issued letter dated 20.02.2022 and intimated that based on their internal discussion they had approved a loan facility of Rs.1,50,00,000/- once the terms and conditions is agreed by the present respondent.
- iii. That after consent by both the parties, the Financial Creditor and the Respondent entered into loan facility agreement dated on 01.03.2022 wherein financial creditor as per schedule-1 of the said agreement agreed to disburse an amount of Rs. 1,50,00,000/- to the Respondent, however the financial creditor only released an amount of Rs.1,00,00,000/- to the Respondent.



- iv. That the Applicant in 2 tranches disbursed an unsecured loan amounting to Rs. 1,00,00,000/- with interest at the rate of 8.50% per annum for a period of 24 months, however it could not meet the demand of working capital on account of partial disbursement of the loan amount by the applicant.
- v. That on account of expiry of due date of instalment, the Respondent had requested the Applicant to disburse remaining Rs.50,00,000/- to meet the financial requirements as per the agreement.
- vi. That the Respondent sought an extension of two months for repayment of due instalments but admittedly had committed a default in repaying the outstanding debt of the Financial Creditor on account of internal financial distress happened to respondent company due to Covid 19 pandemic.
- vii. That the Corporate Debtor herein is seeking some further extension of time to repay the remaining outstanding dues.
- viii. That the business of the Corporate Debtor suffered losses on account of Covid-19 pandemic and the Corporate Debtor could not repay the debt.



- 3.** We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on behalf of the parties. The Applicant has claimed the default on part of the Respondent for an amount of Rs. 1,07,18,335.81/- (Rupees One Crore Seven Lakhs Eighteen Thousand Three Hundred Thirty-Five and Eighty-One Paise) along with interest at the rate of 8.50% per annum as on 31.01.2023.
- 4.** The Corporate Debtor has acknowledged the debt in its reply to the present Section 7 Application and submitted that the present state of affairs of the Corporate Debtor are not favorable and they require time to pay the amount to the Financial Creditor.
- 5.** Mere reading of the provision under section 7 of IBC shows that in order to initiate CIRP under Section 7 the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the Adjudicating Authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of



default before admitting the application. What constitutes a ‘default’ must be determined under the provisions of the Code.

Section 3(12) of the Code defines default as:

“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

6. The documents submitted by the Financial Creditor substantiate the Financial Creditor’s claim that the Corporate Debtor has indebted and defaulted the repayment of debt. Further, the Corporate Debtor has nowhere denied the existence of debt.
7. We are satisfied that the present application is complete in all respects 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.
8. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this



petition and initiates CIRP on the Corporate Debtor with immediate effect.

**9.**Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Vineet Gupta for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP-P-01689/2019-2020/12680. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed



Interim Resolution Professional Mr. Vineet Gupta has submitted the declaration in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 08.02.2023. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

**10.** Mr. Vineet Gupta having registration number IBBI/IPA-001/IP-P-01689/2019-2020/12680 is appointed as an Interim Resolution Professional.

**11.** 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.

**12.** 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.”



**13.** 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.

**14.** 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 preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (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.

**15.** 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. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and



specific mention regarding admission of this petition must be notified to the public at large.

**SD/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

**SD/-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**