

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 17.03.2020

CAUSE LIST - 2

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 20/BB/2018	For pronouncement of order	Sec 7 of I&B Code 2016	M/s Benett Property Holding Company Ltd	M/s Poovayya & Co.,	M/s BCIL Realty Pvt Ltd	Poornima Hatti, Advocate

ADVOCATE FOR PETITIONER/s: *Shloka Narayanan for Manu Kulkarni*
Shloka

ADVOCATE FOR RESPONDENT/s:

ORDER

CP (IB) No. 20/2018 is disposed of by separate order.

Shri
member (T)

Shri
member (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.20/BB/2018
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

**M/s.Bennett Property Holdings
Company Limited**

5th Floor, Times Tower,
Kamla Mills Compound,
S.B.Marg, Lower Parel (West),
Mumbai- 400013.

- Applicant/Financial Creditor

Versus

M/s.BCIL Realty Private Limited

No.37-1/1, R.K. Chambers,
Ground Floor, Aga Abbas Ali Road,
Bangalore-560 042.

- Respondent/Corporate Debtor

Date of Pronouncement: 17th March, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Manu Kulkarni with
Ms. Shristi Widge

For the Respondent : Shri Ajesh Kumar Shankar

ORDER

Per: Ashutosh Chandra, Member (Technical),

1. This is a Petition being CP (IB) No.20/BB/2018, filed by Bennett Property Holdings Company Limited, the Petitioner, against BCIL Realty Private Limited, the Respondent, under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against the Respondent claiming a default of financial



debt of Rs.21,19,66,118/- (Rupees Twenty One Crore Nineteen Lakh Sixty Six Thousand One Hundred and Eighteen Only) as on 30.11.2017 due and payable under the Debenture Trust Deed (DTD) dated 19.09.2014.

2. This Petition is filed by Ms. Pooja Prasad Gaonkar, General Manager- Legal & Secretarial, being duly authorised by the Board Resolution dated 24.11.2017. Copy of the Board Resolution is annexed to the Petition.
3. It is submitted by the Petitioner that the Respondent entered into a Debenture Trust Deed dated 19.09.2014 with Vistra ITCL (India) Limited, formerly known as IL & FS Trust Company Limited, being the Debenture Trustee with Dr. Chandrashekar Hariharan and Ms. Kanchan Kaur, the personal guarantors, and Biodiversity Conservation India Limited being the Corporate Guarantor. The Respondent issued 2400 unlisted, senior, fully secured, redeemable, non-convertible debentures with face value of Rs.1,00,000/- each for an aggregate amount of Rs.24,00,00,000/- with an intention to raise funds. It is submitted by the Petitioner that it subscribed to all the 2400 unlisted senior fully secure redeemable non-convertible debentures, and further that the Respondent has not honoured its obligation of repayment of debenture subscription amount to the Debenture Trustee as required under the Debenture Trust Deed. Copy of the Debenture Trust Deed dated 19.09.2014 is annexed to the Petition.
4. The Petitioner has annexed the below mentioned documents to the Petition by way of which the Petitioner and the Debenture Trustee secured the interest:
 - 1.Memorandum of Deposit of Title Deeds dated 28.01.2015 executed by the Respondent in favour of the Debenture Trustee for the properties situated at Bengaluru;
 - 2.Mortgage Deed dated 23.09.2014 (Secondary Security) executed by Biodiversity Conservation India Private Limited for the properties situated at Mysuru;



3. Mortgage Deed dated 25.09.2014 (Secondary Security) executed by Biodiversity Conservation India Private Limited in favour of the Debenture Trustee;
 4. Mortgage Deed dated 09.10.2014 executed by the Respondent in favour of the Debenture Trustee for the properties situated at Ottiyambakkam village, Kancheepuram ;
 5. Deed of Pledge dated 19.09.2014 by the Corporate Guarantor and Dr. Chankdrashekar Hariharan, Personal Guarantor and the Respondent herein in favour of the Debenture Trustee by pledging 10,000 fully paid up shares of the Company,
 6. Deed of Personal Guarantee of Mr. Chandrashekar Hariharan and Ms. Kanchan Kaur dated 19.09.2014.
5. It is submitted by the Petitioner that Debenture Subscription Amount being an amount raised pursuant to issuance of debentures, is a financial debt as per section 5(8)(c) of the Code, 2016.
 6. The Petitioner has annexed a letter dated 03.07.2017 issued by the Respondent to the Debenture Trustee stating that the Respondent is willing to make part prepayment of Rs. 18,00,00,000/- (Rupees Eighteen Crores only) and seeking release of security on the Mortgaged Property situated in Ottiyambakkam Village, Kancheepuram, created inter alia for securing the NCDs.
 7. The Debenture Trustee, Vistra ITCL (India) Limited, issued a conditional No Objection Certificate dated 03.07.2017 for the part prepayment of Rs 18 Crore. Copy of the Conditional No Objection Certificate is annexed to the Petition.
 8. The Petitioner submits that the Debenture Trustee issued a Discharge Receipt dated 21.07.2017 in favour of the Respondent herein. The Petitioner submits that it has been wrongly recorded in the Discharge receipt that the

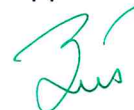
Respondent has paid the entire loan amounts. The Petitioner submits that it is typographical error and that the Respondent has not made the entire payments till date. Copy of the said Discharge Receipt is annexed to the Petition.

9. The Petitioner has annexed a copy of the Notice dated 01.12.2017 issued to BCIL Realty Private Limited, the Corporate Debtor; Biodiversity Conservation India Private Limited, the Corporate Guarantor; and the personal guarantors, Dr. Chandrashekhar Hariharan and Ms. Kanchan Kaur, invoking its rights under the DTD seeking immediate repayment of the amounts due and payable under the same. Further, the guarantees extended under DTD were also invoked vide Notice dated 01.12.2017. Copies of the abovementioned Notices are annexed to the Petition.
10. The Petitioner has also annexed the Reply Notice dated 05.12.2017 issued by the Personal Guarantors and the Reply Notice dated 19.12.2017 issued by Biodiversity Conservation India Private Limited denying the allegation of non-payment of financial debts. The Guarantors in their Reply Notice have relied upon the registered Discharge Receipt issued by the Debenture Trustee which discharges the Respondent of the entire financial debt.
11. It is submitted by the Petitioner that the Respondent has not honoured its obligations under the DTD and the financial debt was not repaid as agreed upon. The Petitioner submits that a 'Deed of Rectification' was executed by the Debenture Trustee in favour of the Respondent to rectify the typographical error recording that the entire loan amounts have been paid and that the Respondent is discharged of the entire loan amount. An unsigned copy of the Deed of Rectification dated 09.01.2018 is annexed to the Petition.
12. The Respondent filed its Statement of Objections on 07.06.2018 stating that it has made payments to the ESCROW account maintained by the Debenture



Trustee. That upon full repayment, the Debenture Trustee issued a Deed of Discharge Receipt dated 21.07.2017 bearing Document No. 8198/2017, stored in the office of Sub-Registrar, Selaiyur, in favour of the Respondent. Further, a copy of Sale Deed bearing Document No.8199/2017 executed by the Respondent of the property situated at Ottiyambakkam Village, Kancheepuram District is annexed to the 'Memo of submissions' filed by the Respondent.

13. It is contended by the Respondent that issuance of Deed of Discharge Receipt is conclusive proof that the Respondent is absolved of any liability. It is further contended by the Respondent that the Debenture Trustee has modified the Discharge Receipt on 09.01.2018 with a fraudulent intent and without any prior information.
14. The Respondent submits that the fact of modification of discharge receipt and the material errors were intimated by the Respondent to the Sub-Registrar, Selaiyur vide letter dated 05.02.2018. The Sub-Registrar, Selaiyur vide letter dated 08.02.2018 directed the Petitioner to rectify the error in the Discharge Receipt based on the letter dated 05.02.2018 issued by the Respondent. Copies of the Letter dated 05.02.2018 and the letter dated 08.02.2018 are annexed to the Statement of Objections.
15. The Petitioner filed its Rejoinder on 25.06.2018 and it is contended that the said Rectification Deed dated 09.01.2018 registered with the Sub-Registrar, Selaiyur is in line with Letter dated 03.07.2017 issued by the Respondent to the Debenture Trustee showing willingness to make part prepayment. Copy of the Rectification Deed dated 09.01.2018 is annexed to the Petition.
16. It is contended that the entire payment has not been received and denied that there have been any account transfers from the Respondent and in support of this contention the Petitioner has relied on the Bank Statement of the ESCROW account and the bank statement of the Applicant.



17. The Petitioner has annexed Letter dated 16.02.2018 issued by the Petitioner to the Sub-Registrar seeking the copies of the Letters referred to in the letter dated 08.02.2018.
18. Heard Shri Manu Kulkarni along with Ms. Shristi Widge, learned Counsels for the Petitioner and Shri Ajesh Kumar Shankar, learned Counsel for the Respondent. We have carefully perused the pleadings of the parties and the extant provisions of the Code. The relevant documents annexed with the respective submissions have been examined.
19. On a perusal of the Discharge Receipt bearing Document No.8198/2017 registered in the office of the Sub-Registrar, Selaiyur, it is observed from the recital of the said Receipt that the Respondent has repaid the entire loan amount. The relevant paragraph from the Discharge Receipt is extracted below:
- “BCIL have already repaid the entire loan amount provided to them by the mortgagee together with its applicable interest and the Mortgagee has issued NOC evidencing the payment of the loan amounts entirely by BCIL. The mortgagee have issued a NOC dated 03.07.2017 denoting their release of the charge created by them on the Schedule Property entirely. The NOC issued by the Security Trustee /Mortgagee shall form part and parcel of this Discharge Receipt.”*
20. Further, on perusal of copy of the ‘Deed of Rectification’ of the Discharge Receipt dated 09.01.2018 annexed to the Application, it is observed that the document does not contain the signature of the Respondent. The document has been unilaterally executed by the Debenture Trustee. The recitals of this Deed are produced below:



“WHEREAS in the Principal Discharge Receipt dated 21.07.2017, in line 14 of page No.2, the word ‘entire’ was wrongly typed instead of ‘part’.

WHEREAS in the Principal Discharge Receipt dated 21.07.2017, in line 16 of page No.2, the word ‘entirely’ was wrongly typed instead of ‘partly’.”

21. On perusal of the Discharge Receipt dated 21.07.2017 and Deed of Rectification 09.01.2018, it has to said that once a party is discharged of its obligations by a Registered Document which clearly states that the entire loan amounts have been repaid, any rectification to such a Deed can be executed only with the consent of the other party, and not unilaterally, to effect any such rectification. It is also seen that the Rectification Deed annexed to the Rejoinder, does not contain the signature of the authorised representative/Signatory of the party to the Principal Discharge Deed. Such a Deed which does not contain the signatures of both the parties to the original Deed of Discharge cannot be treated as a valid document and has to be ignored.
22. It is further observed that the Petitioner has only annexed a draft Rectification Deed at the time of filing of the original petition on 10.01.2018. Belatedly, a copy of the Rectification Deed dated 09.01.2018 bearing Document No.153/2018, stored in the office of Sub-Registrar has been filed by the Petitioner. On perusal of the same, it is found that the same does not contain signature of the authorised representative of the Respondent.
23. In view of the above position, it is the Deed of Discharge Receipt dated 21.07.2017 bearing Document No. 8198/2017, stored in the office of Sub-Registrar, Selaiyur, which holds ground in favour of the Respondent. The Petitioner has thus failed to establish that there was any amount due from the Respondent and that there is a ‘financial debt’ in respect which the Respondent has defaulted in paying to the Applicant. In the absence of financial debt which is a condition precedent to be satisfied for a Petition

under section 7 of the Code 2016 to be admitted and CIRP being triggered, the instant Petition has to be dismissed.

24. In view of above facts and circumstances of the case, C.P. (IB) No.20/BB/2018 is hereby dismissed. However, this order will not come in the way of Petitioner to invoke any other remedy available under any other law so as to get its grievance redressed. No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL