



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO. 1
CP(IB):106/ND/2021

IN THE MATTER OF:

**M/s. Bagrecha Enterprises Ltd. V/s. M/s. Auram Asset Management
Pvt. Ltd. Pvt Ltd**

Order under Section 7 of Insolvency and Bankruptcy Code, 2016

Order delivered on 05.07.2023

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.

CP(IB)106/ND/2021 stands dismissed.

SD/-

(Rahul Bhatnagar)
Member Technical

SD/-

(Bachu Venkat Balaram Das)
Member Judicial



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-106/(ND)/2021

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:

Bachegra Enterprises Limited

...Financial Creditor/Applicant No 1

Babulal J. Jain

...Financial Creditor/Applicant No 2

Versus

M/s Auram Asset Management Ltd.
Formally Known as Unitech Advisors (India) Private Limited

...Corporate Debtor/Respondent

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

PRESENT

For the Petitioner/Financial Creditor: Adv. Gulshan Sachdev



ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER- JUDICIAL

Order Delivered on: 05.07.2023

This is an application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer for initiation of Corporate Insolvency Resolution Process against M/s Auram Asset Management Ltd.

Formally Known as Unitech Advisors (India) Private Limited for the alleged default on the part of the Respondent in repayment of debt of Rs. 90,00,000/- (Rupees Ninety Lakh) as on 27.07.2019.

2. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

a. The CD issued a Venture Capital Fund under the name of CIG Realty Fund Scheme IV and the Financial Creditors has invested in the said fund.

b. The Tenure of the scheme was of 7 years from Feb 2009 to September 2015 which was further extended by another 2 years.

c. The Financial Creditors vide letter dated 09.01.2018 (by Applicant No 1) and 27.07.2019 (by Applicant No 2) opted for disposal of project investment.

d. That despite communication made by both the Financial Creditors, the Corporate Debtor failed to



repay the due amount. The Corporate Debtor did not file its reply before this Adjudicating Authority. Hence, the present application.

4. The Corporate Debtor has neither appeared before us nor filed any reply. Accordingly, the CD was set ex parte vide order dated 22.11.2022.
5. We have heard Ld. Counsel for the Applicant and have gone through the petition filed by the Petitioner. Before going into the merits, it is necessary to examine whether the said petition is maintainable in terms of Section 4 of the IBC, 2016 as the Applicant is claiming Rs. 90,00,000/- from the Corporate Debtor as evident in the Part IV of Form 5 and the same has been filed before this Tribunal on 17.05.2020. It is seen that notification of MCA dated 24.03.2020 makes it unambiguously clear that the threshold limit to be considered for filing application under section 7 or 9 will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.03.2020.
6. We further refer to the Judgement of Hon'ble High Court of Kerala passed in the matter of *M/s. Tharakan Web Innovations Pvt. Ltd. Vs. National Company Law Tribunal Kochi Bench and Anr. in WP(C) NO. 27636 OF 2020 & 14158 of 2021 dated 01.02.2022 in para 24 it is observed that: -*

“24. In Ext.P9 order, the Tribunal has held that the notification dated 24.03.2020 is prospective in nature and it is not retrospective or retro-active in nature. It is further stated by the Tribunal that notification will not apply to pending applications before the concerned Adjudicating Authority under the IBC prior



to the issuance of the aforesaid notification. Ext.P9 was an order of the Tribunal at New Delhi and the issue was concerning an application which had been filed and was pending before the Tribunal. The order of the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal **(AT) (Ins) No.813 of 2021** was placed before the Court in which the order Ext.P9 was also considered. The Appellate Tribunal found that on facts, in the case considered in Ext.P9 demand notice under Section 8 was issued on 31.7.2019 and the application under Section 9 was filed on 5.9.2019 which were both before 24.3.2020, on which date the threshold limit was increased to Rs.1 Crore. The Tribunal hence found that the said decision cannot be relied upon to decide whether a petition can be maintained for an amount of less than Rs.1 Crore after 24.3.2020. The Appellate Tribunal went on to hold that the threshold limit will be applicable for applications filed under Section 7 or Section 9 on or after 24.3.2020, even if the debt is on a date earlier than 24.3.2020. The above view of the Tribunal is in consonance with the decision of the Hon'ble Supreme Court in Manish Kumar (supra). 25. Even otherwise, the Tribunal has in my opinion, gone wrong in its interpretation of Section 4 of the Act. Section 4, after amendment on 24.3.2020 clearly says that Part II of the IBC shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is Rs.1 Crore. As per Section 3(12) of the IBC, "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 paid by the debtor or the corporate debtor, as the case may be. What is to be noted is that Corporate debtors who are in default of less than Rs.1 lakh prior to the amendment and Rs.1 Crore after the amendment, also are defaulters. However, whether a proceeding for insolvency or liquidation of such corporate debtor should be initiated would depend on the amount in default. It is only if the Corporate debtor has incurred a default of at least the minimum amount stated in Section 4 that a proceeding under the provisions of the IBC under Part II can be initiated. The minimum amount of default is statutorily fixed, with power available to the Government to refix, upto a sum of Rs.1 Crore. Once the Government has exercised the said power by issuance of a notification fixing the minimum amount of default as Rs.1 Crore, the Section will have to be read by replacing the words “one lakh rupees” by “rupees one crore”. As such, from the date of amendment, Part II of the IBC can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 Crore. (emphasis supplied). Once that is the position, the application of Part II itself is taken away with effect from 24.03.2020 as far as defaults less than Rs.1 Crore are concerned and hence no application can be filed after 24.03.2020 regarding an amount where the default is less than Rs.1 Crore. By application of



Section 10A, even in cases where the default is more than Rs. 1 Crore, an application cannot be filed for a period of six months from 24.3.2020. There can be no other understanding of the statutory provisions, as there is no ambiguity in the language. It is well settled that the grammatical and ordinary sense of the words of the Statute should be adhered to, unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the provisions of the statute. In the words of Viscount Simon L.C. “The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning..... Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction” (see **Nokes v. Doncaster Amalgamated Collieries Ltd., [(1940) AC 1014 (HL)]**, **Chandvarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447]** and **B. Parmanand v. Mohan Koikal [(2011) 4 SCC 266]**). The above observations are fully supported by the judgment of the Apex Court in *Manish Kumar (supra)*, wherein the Hon'ble Supreme Court categorically held that the litmus test is whether there exists a default as defined in Section 4 of IBC, on the date of the application...”



7. Since the instant application filed under section 7 of the Code which is the subject matter of our consideration was filed on 17.05.2020, therefore the pecuniary threshold limit of Rs. 1 crore of debt will be applicable in the present case. Hence, for the above-mentioned reasons, the present Application as not maintainable.
8. Resultantly, this present application IB-106/(ND)/2021, stands dismissed as to no order to costs.

Let copy of the order be served to the parties concerned.

SD/-

(RAHUL BHATNAGAR)

MEMBER TECHNICAL

SD/-

(BACHU VENKAT BALARAM DAS)

MEMBER JUDICIAL