



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT - IV

C.P. (IB) NO.: 7/ND/2024

[Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

**SITAL LEASING AND FINANCE
LIMITED**

...APPLICANT/FINANCIAL CREDITOR

VERSUS

**GRACIOUS PORTFOLIO
PRIVATE LIMITED**

...RESPONDENT/CORPORATE DEBTOR

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 20.12.2024



For the Applicant : Ms. Sumit Nagpal Adv.
For the Respondent :

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

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1. The present Petition has been filed by Sital Leasing & Finance Ltd. (Applicant) through Mr. Surendra Kumar Jain, Auhtorised Representative of the Petitioner herein in accordance with Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as well as other allied rules therein, for the alleged default by the Respondent herein in repayment of a financial debt amounting to INR 1,23,23,113/- (Rupees One Crore Twenty-three Lakhs Twenty-three Thousand One Hundred Thirteen only) as on 31.07.2023.
 2. The Applicant herein is body corporate under the category of Non-Banking Financial Institution which had been constituted under the provisions of Companies Act, 1956; having its registered office at 322, 3rd Floor, Plaza Commercial Complex, Mayfield Garden, Sector-47, Gurugram, Haryana. The Applicant herein has filed the instant Application under the aforementioned section in order to initiate corporate insolvency resolution process against the Corporate Debtor/Respondent herein.



3. The Corporate Debtor/Respondent herein is a company duly incorporated in the year 1996, under the provisions of the Companies Act, 1956. The Registered office of the Respondent herein is situated at R-815, B-11, Rajender Nagar, Central Delhi-110060.

CONTENTIONS

4. The details of the transactions which have led to the filing of the instant Application, as averred by the Applicant herein, have been briefly summarized hereunder:

- a. That the Corporate Debtor/Respondent herein is a company registered under the provisions of the Companies Act, 1956. It is submitted that the director of the Corporate Debtor/Respondent herein, applied for a business loan for the purpose of expanding their business of Securities and Investments in India and based on the representations stated herein, the Applicant granted a business loan vide Sanction Letter dated 15.03.2023.
- b. That it is submitted by the Applicant that on the acceptance of said terms and conditions of the sanction letter, the Applicant executed a Business Loan Agreement on 07.04.2023 for the amount of Rs.1,20,00,000/- (Rupees One Crore Twenty Lakhs only) for a period of three months. The amount was subsequently disbursed by the Applicant vide two separate tranches. In the said loan facilities, it was



agreed that the rate of interest applicable is supposed to be 12% per annum, along with ascertaining the re-payment schedule for the Respondent herein.

- c. That it has been categorically submitted by the Applicant herein that the amount that had been disbursed by the Applicant in favour of the Respondent herein, was in the form of a loan, thereby making the amounts advanced to the Respondent herein have the commercial effect of borrowing as mentioned under section 5(8) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'Code').
- d. That the Respondent herein, in accordance with the re-payment schedule concerning the interest levied on the loan amount, paid the amount of Rs. 10,061/- (Rupees Ten Thousand Sixty-one only) as the interest of the alleged loan disbursed as per the loan agreement dated 07.04.2023. However, the Respondent herein failed to pay the interest for accrued on the loan thereafter.
- e. That due to the failure of the payment for the outstanding dues on behalf of the Respondent herein, a letter dated 01.07.2023 intimating about the said default was issued to the Respondent. Subsequently, a loan recall notice dated 10.07.2023 was also served upon the Respondent herein calling upon to pay the outstanding amount within 7 days of the receipt of the said notice.
- f. That it is submitted that the Respondent herein categorically acknowledged the aforementioned debt *vide* letter dated 13.07.2023



wherein the Respondent requested for an extension of one month on the re-payment of the outstanding dues.

- g. That the Applicant herein issued several reminders regarding the re-payment of the loan to the Respondent, however, to no avail. It is further submitted that the Applicant herein registered the debt and default by the Respondent on the NeSL information Utility Portal; as a result, Form-D was issued thereby authenticating the said default by the Respondent on 18.09.2023.
- h. In the light of the aforesaid facts and circumstances, the Corporate Debtor had failed to pay the financial debts amounting to Rs. Rs. 1,23,23,113/- (Rupees One Crore Twenty-three Lakhs Twenty-three Thousand One Hundred Thirteen only) as on 31.07.2023; as a result of which the Applicant has filed the instant Application under Section 7 of the Code to initiate the CIRP of the Respondent.

5. The Corporate Debtor has failed to make any appearances before this Adjudicating Authority despite repeated notices being served upon the Respondent successfully. It is further submitted that the Applicant herein has also furnished an affidavit of service effecting the same upon the Respondent. As a result, this Adjudicating Authority has directed to proceed as *ex-parte* for arguments concerning the Respondent *vide* Order dated 03.07.2024. Thereafter, this Adjudicating Authority directed the Applicant to furnish an Affidavit stating that the Applicant is not in collusion with the Respondent in the present matter *vide* Order dated 26.07.2024.



6. That the Applicant, vide its Affidavit dated 14.08.2024 have made the following averments:

- a. That it is submitted that the Applicant herein is neither colluding with the Respondent by filing the present application against the Respondent, nor are the parties involved here are related to each other.
- b. That the Applicant goes on record to state that the Respondent herein is a registered NBFC with the Reserve Bank of India; however, it is not performing any activities of a Financial Service Provider as elucidated in Section 3(15) of the Code.

7. We have heard the Ld. Counsel appearing for the Petitioner and perused the averments as well as enclosures placed on record by the Applicant herein. This Adjudicating Authority further directed the Applicant herein to place their written submission along with relevant judicial precedents on record vide Order dated 04.09.2024.

8. Consequently, we have thoroughly perused the contents of the all of the arguments placed on record via their written submissions as well.

ANALYSIS

9. We have examined as well as deliberated upon the contents of the averments placed on record by the Applicant herein. It has been sufficiently established



that the Respondent is a Non-Banking Financial Institution registered with the Reserve Bank of India under the relevant provisions. It is settled position of law that if an NBFC is registered, then its insolvency falls under the special regulatory framework for financial service providers, and not under the Code herein.

10. A bare reading of the provision under Section 3 of the Code shows that financial service providers are specifically excluded from the purview of the Code. This Section clearly and distinctly bars all Financial Service Providers from being included for the purposes of the proceedings under the Code. The relevant excerpt of the Section is reiterated hereinbelow:

“3. In this Code, unless the context otherwise requires—

*(1) — (6) ****

*(7) “**corporate person**” means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but **shall not include any financial service provider**;*

*(8) — (15) ****

*(16) “**financial service**” includes any of the following services, namely—*

(a) accepting of deposits;



(b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;

(c) effecting contracts of insurance;

(d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;

(e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—

(i) buying, selling, or subscribing to, a financial product;

(ii) availing a financial service; or

(iii) exercising any right associated with a financial product or financial service;

(f) establishing or operating an investment scheme;

(g) maintaining or transferring records of ownership of a financial product;

(h) underwriting the issuance or subscription of a financial product; or

(i) selling, providing, or issuing stored value or payment instruments or providing payment services;

*(17) “**financial service provider**” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;”*

11. The decision passed by Hon’ble National Company Law Appellate Tribunal (hereinafter referred to as ‘Appellate Authority’), in the matter of *Housing Development Finance Corporation Ltd. vs. PHC Holding Pvt. Ltd., C.A. (AT) (Ins.)*



No.:26 of 2019, is a landmark judgment which squarely covers and distinctly elaborates upon the issues raised herein by the Applicant with regards to the Respondent being a registered NBFC. It has been explicitly stated by the Applicant herein that the Respondent is a registered NBFC; however, the contention raised by the Applicant is with regards to the Respondent not conducting any activities to uphold the same. In the aforementioned case, it was observed that the as long as the Respondent is categorised or registered under the relevant provisions for the Financial Service Provider, the provisions of Section 7 of the Code cannot be invoked against the Respondent, irrespective of the details surrounding the conditions attached to the Respondent. The relevant excerpt of the aforementioned judgment is reproduced hereinbelow:

*“7. The definition of Corporate Person in Section 3(7) of IBC specifically provides that it shall not include “any financial service provider”. Considering the Certificate issued by the Reserve Bank of India and also documents as placed on record by the Appellant – Corporate Debtor, we have no hesitation to hold that the Corporate Debtor in the present matter on date of Application being financial service provider, the provisions of IBC could not have been invoked against the Corporate Debtor. **It would not be in the realm of Adjudicating Authority and thus, for this Tribunal to go into the details whether the conditions attached have been followed or not by the NBFC as held in the matter of HDFC (supra). If there is any violation of conditions, the aggrieved person may bring it to the notice of RBI to look into the same.** According*



to us, whenever the Corporate Debtor demonstrates that it is financial service provider and supports the claim with evidence by Certificate by Reserve Bank of India, it is appropriate for the Adjudicating Authority to lay off its hands from such Corporate Debtor considering the definition of “Corporate Person”, under Section 3(7).”

12. Furthermore, it has also been opined by the Hon’ble Appellate Authority that any Application filed under Section 7 of the Code is not maintainable against the company that has been granted a certificate of Registration under the Reserve Bank of India Act, 1934 giving the status of a ‘Non-Banking Financial Institution’. The germane portion from the said precedent has been reiterated as under:

“It is an admitted position that the Respondent is a holding company, which invests in shares, bonds, debentures, debts or loans in group companies and gives guarantees on behalf of group companies. Being a holding company, the Respondent is a separate entity altogether and hence the services being provided by the Respondent constitutes offering and managing assets consisting of financial products belonging to another person.”

13. Hon’ble Appellate Authority in the matter of *Randhiraj Thakur vs Jindal Saxena Financial Services & Anr.*, C.A. (AT) (Ins.) No.: 32 & 50 of 2018, has held that:



*“10. If the entire scheme of the I&B Code is seen, it will be evident that the Code is to consolidate and amend the laws relating to reorganization and insolvency resolution of ‘corporate persons’, ‘partnership firms’ and ‘individual’ in a time bound manner. It is a self-contained Code which is exhaustive in nature when it comes to reorganization and insolvency resolution. **However, an exception had been carved out while enacting the Code that the ‘financial service providers’ have been kept outside the purview of the Code. Being a consolidating legislation, only acts are permitted which are mentioned in the Code and it cannot be made applicable to ‘financial service providers’ including ‘non-banking financial institutions’ and MFI’s banks, which have been kept outside the purview of the Code.”***

14. The contention raised by the Applicant herein with regards to the Respondent not conducting activities that can be categorised as Financial Service Providers is the prerogative of the Reserve Bank of India, as the over-arching monitoring agency. The settled position of law, as elucidated hereinabove, is that such a question relating to violation of the certificate as provided by the Reserve Bank of India, falls beyond the purview of this Adjudicating Authority. Therefore, the contention is not of consequential importance while adjudicating the present application.

15. Resultantly, this Adjudicating Authority is of the considered view that the present application is not maintainable under the Section 7 of the Code; and



therefore, the Applicant herein is not entitled to claim its outstanding debt from the Respondent under the present application.

CONCLUSION

16. In light of the abovementioned facts as well as averments along with arguments on part of the Applicant herein, this Adjudicating Authority **rejects** this petition. Accordingly, **C.P. (IB) No.:7 of 2024 is dismissed as non-maintainable.**

17. This Adjudicating Authority makes it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Applicant herein before any other forum shall not be prejudiced on account of dismissal of the instant application.

18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)

