**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH**

**C.P. NO. IB-691(PB)/2018**

**IN THE MATTER OF:**

IFCI Venture Capital Funds Ltd.....Financial Creditor/Petitioner

v.

VVA Developers Private Limited.....Corporate Debtor/Respondent

**SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016**

**JUDGMENT DELIVERED ON 06.06.2019**

**CORAM:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**
**HON'BLE PRESIDENT**

**S.K. MOHAPATRA**
**HON'BLE MEMBER (T)**

**PRESENT:**

For the Petitioner: Dr. Sandeep Singh & Mr. Vishnu Langawat, Advocates

For the Respondent: Mr. S.M. Sundaram, Advocate

**M.M.KUMAR, PRESIDENT**

**JUDGMENT**

The 'Financial Creditor'-IFCI Venture Capital Funds Limited has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of VVA Developers Private Limited.

2. The Corporate Debtor-VVA Developers Private Limited is a company registered under the provisions of the Companies Act, 1956 and was incorporated on 19.04.2007. The identification

number of the Corporate Debtor is U45400DL2007PTC162293 and its registered office is situated at 422, Ansal Chamber-II, 6, Bhikaji Cama Place, New Delhi-110066.

3. The Financial Creditor has proposed the name of Resolution Professional, Mr. Deepak Maini with the address 73, National Park, Lajpat Nagar IV, New Delhi-110024 and email id – Deepak.maini@insolvencyservices.in. His registration number is IBBI/IPA-001/IP-P00676/2017-18/1114. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. It is submitted by the Petitioner that it is a Public Sector Financial Institution engaged in the business of granting financial assistance by way of short term loan, equity participation, debentures subscription or advances of other nature to entrepreneurs.

5. It had granted financial assistance to the Respondent to the tune of Rs. 22 crores. The Respondent executed several documents towards availing the aforesaid financial assistance from the Petitioner. True Copies of each one of those namely, Corporate Loan Agreement, Promissory Note, Deed of

Hypothecation, Declaration and Undertaking for Mortgage by deposit of title deeds of immovable property, deed of guarantee, deed of personal guarantee have been placed on record (Annexure A/12, A/15 to A/20).

6. The details of the securities held by, or charge created for the benefit of 'financial creditor'-IFCI Venture Capital Funds Limited which fulfils the requirements of Section 77 & 78 of Companies Act, 2013 have been given in Part V of the application.

7. As per the averments of the 'Financial Creditor', the account of the Corporate Debtor was declared as Non-Performing Asset (NPA) on 30.09.2017 in its books. In view of the repeated defaults on the part of the Corporate Debtor, the Financial Creditor was constrained to issue default notice to the Corporate Debtor and its Directors highlighting that they have been committing default in respect of the Corporate Loan of Rs. 22 crores in not complying with the repayment of the principal and interest dues therein. Another notice dated 19.02.2018 (Annexure-A/11) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was also sent to

the Corporate Debtor, its Directors and guarantors but inspite of the notice they failed to clear the unpaid debt/liability.

8. The precise case of the Petitioner is that the total amount in default due to the financial creditor by the corporate debtor as on 30.09.2017 is Rs. 20,64,54,713/-.

9. On 18.10.2018, during the course of hearing learned counsel for the Respondent made a statement that a notice under Section 13 (4) of the Securitisation Act was issued and thereafter symbolic possession of the mortgaged property was taken by the Petitioner. Considering his statement, a direction was issued by us that the parties would meet and explore the possibility of auctioning the property by mutual arrangement to assess whether sale proceeds could satisfy the claim of the Financial Creditor.

10. Subsequently an application being C.A. No. 1205(PB)/2018 has been filed by the Respondent with a prayer that after issuance of notices under Section 13 (2) of the SARFAESI Act, the property of the Respondent has been put on auction and the last date for inviting bids was 18.02.2019. The total claim made in the petition is Rs. 20 Crores and the reserve price of the property kept by the Petitioner is more than Rs. 39 Crores. Therefore, the

claim made by the Petitioner in the petition may consider to be satisfied.

11. It is in the light of our order dated 05.02.2019, both the parties inserted advertisements in various newspapers for sale of the assets taken by the Petitioner under Section 13 (4) of the SARFAESI Act. Unfortunately, no bid in response to the auction notice was received.

12. Learned counsel for the Corporate Debtor has opposed the admission of the petition by asserting that:-

(i) The initiation of CIR Process would be against the very object of the Code and it would ultimately reduce the value of the assets of the Corporate Debtor.

(ii) Dues can be fully satisfied with the sale proceeds of secured assets and the sale proceeds may entail refund of residual amount after adjusting the dues of Respondent including any expenses incurred by them even if the assets secured are sold by them on a distress value which is Rs. 57.04 Crores.

(iii) Default is due to market condition and not committed on the part of the Respondent.

(iv) 75% of the three towers has been completed and the rest construction is continuing. If the application is admitted, it will undermine the interest of all stakeholders, more than one hundred flat owners, Promoters and the Petitioner as well.

13. A rejoinder to the reply has been filed by the Financial Creditor reiterating the submissions made in the petition and controverting the assertions in the reply.

14. Now we deal with the submissions made on behalf of the Petitioner-Financial Creditor.

15. Learned counsel for the petitioner has argued that all requirements of Section 7 for the initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, he has submitted that the petition as prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 (2) of IBC is complete in all respects. He has further submitted that the details of the default along with the dates have been stated in part IV and the additional documents have been submitted subsequently along with all the minute details. There is overwhelming evidence available to prove default and

name of the resolution professional has been specified who does not suffer from any disqualification.

16. It is pertinent to mention that the resolution process is an attempt to rescue a fund starving body corporate from the financial challenging conditions and to restore it back to a sustainable financial ease. It may involve financial restructuring, any other arrangement by involving another fund infusing company or even by compromise with its creditors. The object of the 'Code' is to resolve the insolvency which could not be achieved unless the petition is admitted. The resolution as against liquidation would only be possible if the Corporate Insolvency Resolution Process is triggered and efforts in that direction are made. Even this petition could be withdrawn after admission if requirement of Section 12A of the Code are fulfilled. Even before constitution of CoC the CIR Process could be withdrawn by filing an application under Rule 11 of NCLT Rules, 2016. In that regard the parties have to fulfil the requirements of law as laid down the Supreme Court in Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors. (Writ Petition (Civil) No. 99 of 2018 decided on 25.01.2019.

17. Under sub-section 5(a) of section 7 of the code, the application filed by the petitioner financial creditor has to be admitted on satisfaction that:

(i) Default has occurred;

(ii) Application is complete, and

(iii) No disciplinary proceeding against the proposed IRP is pending.

18. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The IRP proposed does not have any disciplinary proceedings pending against him.

19. In view of the above we find that there was an advancement of loan and default on part of the respondent- corporate debtor is established. Even Otherwise there is overwhelming documentary evidence on record which support those findings.

20. As a sequel to the above discussion, this petition is admitted and Mr. Deepak Maini is appointed as the Interim Resolution Professional.

21. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code. The public announcement is required to be made in all territories/areas where the business have been transacted by the Corporate Debtor so that all stakeholders may have noticed of the fact that Corporate Insolvency Resolution Process has been triggered in respect of the Corporate Debtor.

23. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the

expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

24. The objection raised on behalf of the Corporate Debtor do not require any serious consideration. It is already observed that the object of the Corporate Insolvency Resolution Process is to rescue a fund starving body corporate from the financial stress as is discussed in para 16 of the order and it is not understood as to how the Corporate Insolvency Resolution Process could be flouted merely because a property could fetch the amount which has been taken over by the Financial Creditor under Section 13 of the Securitization Act. Likewise, there would be no undermining of interest of the stakeholders/flat owners merely because 75% of the work on the three towers has been completed and the construction is still in progress. These factors have no bearing on the admission of the petition.

25. Before parting we must notice a general complaint being agitated against Financial Creditors, Banks, NBFC and Asset Reconstruction Companies for charging exorbitant rates of interest or compounding of interest on penal rates of interest or discrepancies in the statement of account. We cannot determine the amount due. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly.

26. 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, NCR, New Delhi at the earliest 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.

Sd/-

**(M.M. KUMAR)**
**PRESIDENT**

Sd/-

**(S.K. MOHAPATRA)**
**MEMBER(TECHNICAL)**

**06.06.2019**
**Vineet**