

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT V**

C.P.(IB) No. 1043 of 2021

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule
4 of the Insolvency and Bankruptcy
(Application to Adjudication Authority)
Rule 2016)

In the matter of

Catalyst Trusteeship Limited,

Windsor, 6th Floor, Office No. 604, CST
Road, Kalina, Santacruz (East)

Mumbai - 400 098

Registered Office at GDA House, First
Floor, Plot No. 85, S. No. 94 and 95,
Bhusari Colony (Right), Kothrud, Pune
411038

.....Financial Creditor/ Petitioner

Vs

Futurefone Limited,

(CIN No: US51311MH1985PTC036105)

Knowledge House, Shyam Nagar, Off
Jogeshwari Vikhroli Link Road,
Jogeshwari (East), Mumbai — 400 060,
Maharashtra, India

.....Corporate Debtor/ Respondent

Order pronounced on: 09.05.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Adv. Gautam Ankhad

For the Corporate Debtor: Adv. Shyam Kapadiaa/w Mansi Nair i/b Naik Naik& Co.

Per: Kuldip Kumar Kareer (Judicial)

ORDER

1. This Company Petition is filed by Petitioner, namely, Catalyst Trusteeship Limited (hereinafter called "**Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Futurefone Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Financial Creditors. This petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Financial Debt of **Rs. 465,59,39,272/-**.

FACTS OF THE CASE

2. The Petitioner is a company incorporated under Companies Act, 1956 and acting as a Bond Trustee on behalf of Bond Holders, DB International (Asia) Limited, under a Bond Trust Deed dated 30.01.2020 read with the Supplemental Deed to the Bond Trust Deed dated 04.02.2020 (hereinafter jointly referred to as the "**Bond Trust Deed**") has been executed between the Corporate Debtor and the Financial Creditor. Under the said Bond Trust deed, the bond holders had invested Rs. 350,00,00,000/- in the 3,500 redeemable, rated, listed, principal protected, secured, non-convertible bonds (hereinafter referred to as "**Bonds**").

3. Since certain Events of Default had occurred under the Bond Trust Deed, the Petitioner, by way of the Acceleration Notice dated 03.11.2020 declared that the Debt in relation to 2,450 Bonds (**“Subject Bonds”**) to be due and payable and called upon the Respondent to mandatorily redeem the Subject Bonds and repay Rs. 310,42,27,741.93 to the Bond Holders and other Secured Parties in full on or before 04.11.2020.
4. The Petitioner has issued a notice on 25.03.2020, notifying the Respondent, that certain events of default had occurred under the Bond Trust Deed, dated 30.01.2020.
5. As the Respondent had failed to redeem the Subject Debt and repay the outstanding Debt within the stipulated timeframe, the Petitioner was constrained to issue another Acceleration Notice dated 16.12.2021 reiterating the contents of the earlier notice and calling again upon the Respondent to mandatorily redeem the Subject Bonds and repay the outstanding Debt of Rs. 311,06,80,935 to the Bond Holders, by 18.12.2020.
6. On 09.07.2021, the Petitioner issued an Acceleration Notice wherein the Debt in relation to the remaining 1050 Bonds (**“Balance Bonds”**) was declared to be due and payable and called upon the Respondent to mandatorily redeem the Balance Bonds and repay Rs. 135,04,76,958 to the Bond Holders in full on or before 12.07.2021.
7. Since the Respondent failed to make the payment under the said acceleration notices, this necessitated the Petitioner to file the present petition.

REPLY FILED BY THE RESPONDENT

8. At the outset, the Respondent has denied every allegations, averments, statement and contentions made by the Petitioner in the Petition.
9. The Respondent has submitted that the present petition is hit by Section 10A of the Code, since the Petitioner has issued a notice dated 25.03.2020 for notifying the events of defaults occurred under the Bond Trust Deed dated 30.01.2020. The Respondent has further submitted that the Petition mentions the date of default under Part IV of Form I, as 12.07.2021 for Balance Bonds, but the Petitioner is trying to avoid the date of default for 2450 number of bonds, as the Petitioner's notice, dated 03.11.2020, falls under Section 10A of the Code.
10. The Respondent has further submitted that the present petition was filed with gross inconsistencies. It has been stated that the petition was filed with respect of 3500 Bonds as Part IV of the Petition specified the total default as 465.59 Crores. But the date of default mentioned in the petition was with respect to 1050 bonds. There is no date of default specified in respect of the 2050 bonds.
11. The Respondent has further submitted that the present petition is filed without any valid authorisation as required for initiation of CIRP against the Respondent. It has been stated that the Board Resolution dated 21.09.2018, passed by Petitioner does not meet the requirement of the settled law as it does not give any specific authorisation to its Vice President, Mrs. Deesha Shrikkant to initiate any proceedings including CIRP, under the Code.

REJOINDER FILED BY THE PETITIONER

12. At the outset, the Petitioner has denied all the contentions and averments made by the Respondent in its reply.

13. The Petitioner submitted that as per Clause 11.33 of the Bond Trust Deed dated 30.01.2020, the Debt will become due and payable when it is declared by the Petitioner through an acceleration notice and the Petitioner may declare all or any part of Debt to be due and payable. The Petitioner further stated that as per Section 3(12) of the Code, the definition of 'Default' includes non-payment of any part or instalment of debt. The Petitioner has also relied upon the Hon'ble Apex Court decision in **Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407**. The Petitioner, therefore, has submitted that bar under Section 10A will not be applicable considering the Clause 11.33 of the Bond Trust Deed read with Section 3(12) of the Code.
14. On the issue of valid authorisation to file the Petition, the Respondent has referred to the judgement of the Hon'ble Apex Court in the matter of **Rajendra Narottamas Sheth & Anr. V. Chandra Prakash Jain & Anr (Civil Appeal No. 4222 of 2020)** wherein it was held that Application under Section 7 of the Code cannot be rejected on the ground that no specific authorisation has been issued by a financial creditor in favour of an officer. The Petitioner further referred the judgement of Hon'ble NCLAT in the case of **Neelkanth Township and Construction Pvt. Limited v. Urban Infrastructure Trustees Limited (Company Appeal (AT) Insolvency No. 44 of 2017)** wherein it was held that merit cannot be defeated on technical grounds of maintainability.
15. Further on the issue of multiplicity of proceedings, the Petitioner has submitted that proceedings before Hon'ble Delhi High Court are entirely separate and independent to the proceedings initiated before this Tribunal.

FINDINGS

16. During the course of arguments, it had been contended by the Ld. Counsel for the Petitioner that the Corporate Debtor is in default of Rs. 465.9 Crores and the date of default is 12.07.2021.

17. It has further been pointed out that the Petitioner issued Acceleration Notice in respect of 2450 bonds on 03.11.2020 asking the Respondent to repay the due amount of Rs. 3104,22,77,411.93/-. This notice was not responded to by the Corporate Debtor. Thereafter, another notice was issued on 16.12.2020 asking the Corporate Debtor to pay outstanding amount in respect of 2450 bonds. The Ld. Counsel for the Petitioner has further pointed out that consequent upon further default in respect of balance number of bonds, another notice was issued on 09.07.2021 which is annexed at Annexure-I-L. According to the Counsel for the Petitioner, *prima facie*, the factum of default stands proved on record. According to the Ld. Counsel for the Petitioner, since the Second Acceleration Notice was issued on 09.07.2021 in respect of 1050 bonds, the said date is required to be considered the date of default and, therefore, the present petition is not hit by Section 10 of the Code. The Counsel for the petitioner has prayed for the admission of the petition.
18. On the other hand, the Ld. Counsel for the Corporate Debtor has vehemently argued that the petition is barred by Section 10(A) of the Code. In this regard, the Counsel for the Corporate Debtor has pointed out that admittedly the acceleration notice in respect of 2450 bonds was issued on 03.11.2020 which has to be considered to be the initial date of default. In this regard, the Counsel for the Corporate Debtor has further pointed out that the present petition has been filed in respect of the 3500 bonds and, therefore, the initial date of default has to be treated as 03.11.2020. The Final Acceleration Notice, issued on 09.07.2021, was in respect of only 1050 bonds only cannot be made the basis to ascertain the date of default as initial default had occurred on 03.11.2020.
19. The Ld. Counsel for the Corporate Debtor has further pointed out that even otherwise, as per NeSL report relied upon by the Petitioner itself which is at Annexure-G, the date of default in respect of entire amount of Rs. 465.59 Crores is 04.02.2021. Thus, the petition is clearly barred under Section 10(A) of the Code.

20. We have considered the contentions raised by both the parties and perused the records.
21. The instant Petition has been filed by the Financial Creditor, acting as Bond Trustee on behalf of Bond Holders, under the Bond Trust Deed dated 30.01.2020. The Bond Holders had invested in 3,500 redeemable, rated, listed, principal protected, secured, nonconvertible bonds issued by the Corporate Debtor for a total sum of Rs. 350 Crores. Since the Corporate Debtor was unable to redeem the bond and pay the amount claimed, the Financial Creditor has filed the present proceedings under Section 7 of the Code, claiming the aggregating amount of Rs. 465.59 Crores which includes Rs 325.91 Crores for 2450 bonds and Rs.139.67 Crores for 1050 bonds.
22. It is not disputed that on default in redemption of the bonds, the Financial Creditor issued Acceleration Notice dated 03.11.2020 and 16.12.2020, for 2450 bonds (subject bonds) for Rs. 310.42 Crores. The Financial Creditor further issued Acceleration Notice dated 09.07.2021 for the remaining 1050 bonds (balance bonds) amounting to Rs. 135.04 Crores.
23. It is pertinent to mention that Financial Creditor has in Part IV of the petition claimed a total amount of Rs. 465,59,39,272/- which is the default amount in respect of 3,500 number of bonds as confirmed under particulars of claim (Annexure I-C). However, the Financial Creditor has claimed the Date of Default as 12.07.2021 which is based upon the Acceleration Notice dated 09.07.2021 issued to the Corporate Debtor in respect of 1050 bonds as the Corporate Debtor failed to redeem the said number of bonds within the time given in the Acceleration Notice dated 09.07.2021.
24. On the contrary, NeSL Form 'C' Report which has been annexed with the petition by the Petitioner itself as Annexure I-G, the date of default is

mentioned as 04.02.2021 in respect of the entire claim amount of Rs. 465,59,39,272.00/-. Even otherwise the date of default has to be considered in respect of the entire claim amount, especially when the claim in the petition is in respect of the default of the entire 3500 bonds. It cannot be bifurcated by the Petitioner according to its convenience to bypass provisions of Section 10A of the Code.

25. During the course of the arguments Counsel for the Corporate Debtor has also relied upon Judgement of Supreme Court in **Ramesh Kymal Vs Siemens Gamesha Renewable Power Private Limited (2021) 3 SCC 224**. We have gone through the cited case but the same does not appear to be applicable to the facts and circumstances of the present case. In the cited case, it has been merely held that the bar under Section 10(A) does not extinguish debt owed by the Corporate Debtor or the right of creditors to recover it. Therefore, the said judgment does not seem to be applicable to the petitioner in any manner.
26. In consideration of the above discussion and after perusing the documents annexed to the petition, we are of the considered view that since the default occurred either on 04.02.2021 (as per NeSL report) or 04.11.2020 (as per Acceleration Notice dated 03.11.2020) which are covered under Section 10A of the Code, the present petition cannot be admitted being barred under the said section.
27. Accordingly, the present Company Petition no. 1043 of 2021 is hereby **“dismissed”** and **“disposed of”**.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)