

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-245(PB)/2017

IN THE MATTER OF:

Indiabulls Housing Finance LimitedFinancial Creditor
v.
Deltronix India Private LimitedCorporate Debtor

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Judgment delivered on 24.11.2017

Coram:

CHIEF JUSTICE M.M. KUMAR
Hon'ble President

Ms. Deepa Krishan
Hon'ble Member (T)

For the Financial Creditor:

Mr. Sumesh Dhawan & Ms. Vatsala Kak, Advocates

For the Respondent:

Mr. Biswajit Das, Mr. Akhilesh & Ms. Anjali Verma, Advocates

M.M. KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Indiabulls Housing Finance Limited has filed the instant application 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 Deltronix India Private Limited (for brevity 'the

Corporate Debtor'). It is appropriate to mention that the 'financial creditor' is a company incorporated under the Companies Act, 1956 and regulated by the National Housing Bank (NHB). The 'financial creditor' was incorporated on 10.05.2005 and was assigned identification number CIN No. L65922DL2005PLC136029. It has its registered office at M-62 & 63, First Floor, Connaught Place, New Delhi-110001.

2. Mr. Devbrat Mitra has been authorized by the Board Resolution dated 07.07.2017 (Annexure A-1) to sign and submit the petition.

3. The Corporate Debtor-Deltronix India Limited was incorporated on 26.07.1984. The identification number of the Corporate Debtor is CIN-U51909DL1984PLC018787 and its registered office is situated at A-323, Sarita Vihar, New Delhi-110076. Its authorised share capital is Rs. 40,00,00,000/- (Rupees Forty Crores) and the paid up share capital is Rs. 33,93,41,500/- (Rupees Thirty three Crores Ninety Three Lacs Forty One Thousand Five Hundred and Four) as per the master data available on the website of Ministry of Corporate Affairs as

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well as Memorandum of Association of the Corporate Debtor. A copy of the master data and the Memorandum of Association along with certificate of incorporation relating to Corporate Debtor has been placed on record (Annexure A-3(Colly)).

4. The Financial Creditor has proposed the name of Shri Sajeve Bhushan Deora, EC 13, Inderpuri, Delhi -110002, email id sajeve.deora@deora.com. His registration number is IBBI/IPA-

001/IP-00317/2017-18/10581. A written communication dated 28.07.2017 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record (Exhibit-2). There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Sajeve Bhushan Deora as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

5. In the application, the Financial Creditor has given the details of financial debt granted to the 'Corporate Debtor' with the

dates of disbursement. A perusal of part IV of the application has highlighted the following particulars of financial debt:

“PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>Indiabulls Housing Finance Ltd. granted various loans to the Corporate Debtor as follows:-</p> <p>a) Loan for an amount of Rs. 16,09,57,000/- (Rupees Sixteen Crores Nine Lacs Fifty Seven Thousand Only) vide Agreement dated 18.11.2010. (Loan 1) Date of Disbursal: 24.11.2010</p> <p>b) Loan for an amount of Rs. 7,55,66,552/- (Rupees Seven Crores Fifty Five Lacs Sixty Six Thousand Five</p>

		<p>Hundred and Fifty Two Only) vide Agreement dated 23.08.2012. (Loan 2)</p> <p>Date of Disbursal: 25.08.2012</p> <p>c) Loan for an amount of Rs. 4,97,32,752/- (Rupees Four Crores Ninety Seven Lacs</p>
		<p>Thirty Two Thousand Seven Hundred and Fifty Two Only) vide Agreement dated 27.06.2013. (Loan 3)</p> <p>Date of Disbursal: 27.06.2013</p> <p>d) Loan for an amount of Rs. 1,38,00,000/- (Rupees One Crore Thirty Eight Lacs Only) vide Agreement dated 21.07.2015. (Loan 4)</p>



		<p>Date of Disbursal: 21.07.2015</p> <p>e) Loan for an amount of Rs. 1,00,00,000/- (Rupees One Crore Only) vide Agreement dated 31.12.2013. (Loan 5)</p>
		<p>Date of Disbursal: 31.12.2013</p> <p>The total loan granted by the Applicant to the Corporate Debtor is Rs. 31,00,56,304/- (Rupees Thirty One Crores Fifty Six Thousand Three Hundred and Four only)</p>

The aforesaid details would show that vide loan No. 1 to 5 a total loan of Rs. 31,00,56,304/- (Rupees Thirty One Crores Fifty Six Thousand Three Hundred and Four only) was granted to the



Corporate Debtor on different dates. Copies of the loan agreements including the details concerning dates of disbursement have been annexed (Annexure A-4, A-5, A-6, A-7 & A-8) respectively.

6. As per the averments of the 'Financial Creditor', the principal amount in default under aforesaid five loan agreements as on 21.07.2017 is claimed to be Rs. 13,01,14,268/- (Rupees

Thirteen Crore One Lakh Fourteen Thousand Two Hundred Sixty Eight) and the particular date of default for each loan agreement is 27.07.2017. A copy of computation of amount of default and days of default has been placed on record (Annexure A-9).

7. The 'financial creditor' has placed on record an overwhelming evidence to prove the default. The details of the security held by, or created for the benefit of 'financial creditor'- Indiabulls Housing Finance Limited have been given in Part V which are set out below:-

- (i) Deed of Mortgage (without possession) dated 6.12.2010 over property bearing Farm House, M 66-67 Block, Jonapur Village, Plot No Opp Neem



Karoli, Ashram Mandi Road, Jonapur Delhi – 110047 annexed and marked as Annexure A-10.

(ii) Share Pledge Agreement – pledging 2,00,000 shares held in Sonia & Co Private Limited annexed and marked as Annexure A-11.

(iii) Declaration of creation of equitable mortgage over the property by the borrower. (Property being –

Farm House, M 66-67 Block, Jonapur Village, Plot No Opp Neem Karoli, Ashram Mandi Road, Jonapur, Delhi – 110047) annexed and marked as Annexure A-12 (Colly).

8. The estimated value of the aforementioned property bearing Farm House, M 66-67 Block, Jonapur Village, Plot No Opp Neem Karoli, Ashram Mandi Road, Jonapur Delhi – 110047 is approximately Rs. 31,71,10,800/- (Rupees Thirty One Crore Seventy One Lacs Ten Thousand Eight Hundred Only). In addition to aforesaid property the estimated value of security of 2,00,000 shares at par i.e. Rs. 10/- per share is approximately Rs. 20,00,000/- (Rupees Twenty Lacs Only).



9. A record of default is also available with the Credit Information Companies like the status classification report of the 'Corporate Debtor' issued by the TransUnion CIBIL dated 27.07.2017 (Annexure A-13).

10. The 'financial creditor' has then attached a list of other documents to the application to prove the financial debt, the total amount due and the date of default. Those documents are as under:-

- a) Legal Notices dated 21.07.2017 for recalling loan facilities sanctioned to the Corporate Debtor are annexed and marked as Annexure A-14 (Colly).
- b) Copies of Statement of Account and Foreclosure of the Loan Facilities of the Corporate Debtor are annexed and marked as Annexure A-15 (Colly.)

11. Mr. Dhawan, learned counsel for the petitioner has argued that under five agreements loan was advanced to the Corporate Debtor and it was specifically mentioned in the loan agreement



that delay in payment of EMI was not to require issuance of notice or reminder and it was to render a Corporate Debtor liable to pay additional rate of interest. The liability of the borrowers is stipulated to be joint and several. In that regard learned counsel has drawn our attention to Article 2.10 and 2.11 of the loan agreement. A reference has also been made to Article 6.2 to argue that after the notice or lapse of time an event of default is deemed to have happened and the Financial Creditor was to give notice to

the Corporate Debtor in writing and thereupon the entire principal amount of the loan together with interest was to become due and payable. According to learned counsel the total amount of default due to the Financial Creditor as on 21.07.2017 is over Rs. 13 crores as is evident from column II of part IV of the proforma application and the date of default for each loan is 27.07.2017. The computation is also available (Annexure A-9). The present application was filed on 01.08.2017 by asserting that the default has occurred on 27.07.2017 and the days of default was only one day. Learned counsel has also pointed out that the loan agreements were executed and loan amount was disbursed on 21.07.2015 which were payable by 21.07.2017 through EMI.

On account of default legal notice dated 21.07.2017 was issued

recalling the loan facility sanctioned to the Financial Debtor. He has drawn our attention to para 6 & 8 of the notice dated 21.07.2017 where the event of default and the letters written by the Financial Creditor on 13.02.2017 and 10.03.2017 have been mentioned. Those two paras 6 & 8 reads as under:-

“6. That, you have been irregular in your payment of EMI’s, and you have lastly made the part payment on 30.06.2017 and you have failed to repay instalments as per terms of the loan agreement. IHFL vide its letters dated 13.02.2017 & 10.03.2017 had called upon the Addressees No. 1 to 6 to regularize the repayments. However, despite repeated reminder both verbal as well as written, IHFL did not receive the payment of outstanding dues payable in accordance with the Loan Agreement.

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8. In view of the recall of the Loan Facility you the Addressees No. 1 to 6 are called upon to pay the entire outstanding amount of Rs. 4,75,00,048/- (Rupees Four Crore Seventy Five Lakhs Forty



Eight Only) by way of Outstanding Principal and interest till 21.07.2017 is due and payable by you along with future interest @ 16.90% per annum w.e.f. 22.07.2017 (“outstanding Amount”) till actual date of payment within 4 days from the date of issue of this notice, together with any interest, penal interest, Cheque Bouncing Charges, cost and other charges which may fall due, failing which the Secured Creditor will take remedy under civil as well as criminal law to recover the loan amount.”

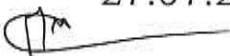
12. Mr. Dhawan, learned counsel has also pointed out that all the requirements of Section 7 of the Code have been met. The Interim Resolution Professional has been duly proposed in part III of the application i.e. Mr. Sajeve Bhushan Deora who has filed his declaration.

13. Mr. Biswajit Das, learned counsel for the Corporate Debtor opposed the admission and has argued that basic object of Insolvency and Bankruptcy Code is to explore a negotiated resolution with pre-supposed compromise offer from the



Financial Creditor as a penultimate exercise prior to triggering of Corporate Insolvency Resolution Process and that such a harsh process of CIRP should not be triggered at the drop of a hat and for every kind of default particularly when the Financial Debtor is solvent. In essence the argument of Mr. Das is that a fair opportunity to reach an amicable settlement should be explored before actually triggering the CIRP. In that regard he has placed reliance on para 71 of the judgment of Hon'ble the Supreme Court

rendered in the case of ***Mardia Chemicals Limited v. Union of India***, (2004) 4 SCC 311. Learned counsel has emphasized that in the present case only because of delay of one day the petition has been filed to trigger the CIRP. He has also referred to paragraphs 2 and 6 of affidavit dated 16.08.2017 filed by the Financial Debtor to show that all efforts have been made by the Financial Creditor to devastate the debtor without caring for the long relationship existing for more than seven years. According to the learned counsel the 'Financial Debtor' has been paying in bonafide manner all the instalments and as the petition has been filed on the basis of delay of one day the same is premature and is liable to be dismissed. This is all evident from the letter dated 27.07.2017 for foreclosure of loan account sent by the Financial



Creditor. Learned counsel has also referred to clause 6.2 of the loan agreement and claimed that the same shall be read with clause 2.1 which would mean that adequate notice has to be issued and no CIRP be triggered without first exhausting the possibility of settlement particularly when the Financial Debtor is a solvent entity. Learned counsel has also referred to the affidavit dated 05.10.2017 to bank upon exchange of e-mails dated 06.09.2017 (Annexure-G), 24.09.2017 & 26.09.2017 and argue

that the parties had resolved their dispute. The Financial Debtor accordingly was to pay a sum of Rs. 1.40 crore towards foreclosure to show their bonafide. It was also agreed that as part of the same arrangement, Financial Debtor was to begin making payment of Rs. 35 lakhs w.e.f. November, 2017 till the completion of foreclosure of all accounts. In that direction e-mail was exchanged on 24.09.2017 when a request was made that two cheques which were to be deposited on 17.09.2017 may be deposited after 15 days. However, both the cheques were presented and they were dishonoured which caused utter embarrassment to the Financial Debtor. A reference has been made to the e-mail dated 27.09.2017 (Annexure-I). It has also been submitted that the Financial Debtor is passing through

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temporary financial constraints on account of back to back default committed by its own debtor which has lowered its own revenue. He has also referred to huge foreign direct investment which is likely to come to the Financial Debtor and the same can be utilised for payment of the total amount of foreclosure to the Financial Creditor.

14. We have thoughtfully considered the submissions made by
the learned counsel for the parties and are of the view that the instant petition merits admission. It is established on facts that before taking extreme steps of foreclosure on 21.07.2017 was taken the Financial Debtor has committed default on more than one occasion. The aforesaid facts have been highlighted in paras 6 & 8 of the notice dated 21.07.2017 (supra). In the aforesaid paras the Financial Creditor has pointed out to the Financial Debtor about irregularity in payment of EMI's and the last part payment made on 30.06.2017. He had failed to repay instalments as per the terms of the loan agreement. A reference has also been made to the letter dated 14.03.2017 when the Financial Debtor was called upon to regularize the repayment which has not been done despite repeated reminders in writing as well as oral request

sent by the Financial Creditor. There is adequate notice with regard to breach of terms of the loan agreement and request made for payment of defaulted EMI's on 14.03.2017. It was after more than four months that on 21.07.2017 the loan amount has been recalled. The principles of natural justice as per clause 2.10 read with clause 6.2 of the loan agreement stand adequately complied with. The bogey raised by the Financial Debtor with regard to the breach of principles of natural justice by citing para 71 of the judgment rendered in the case of **Mardia Chemicals Limited** (*supra*) would not survive for consideration in view of the aforesaid factual backdrop. We are unable to conclude that the present petition is premature.

15. It is also pertinent to mention that while the petition was pending we granted numerous opportunities to the Financial Debtor for settlement with the Financial Creditor. In that regard reference may be made to the interlocutory order dated 23.08.2017. According to the aforesaid order the parties were given opportunity to reconcile all the loan accounts with each other and explore the possibility of settlement of the accounts and the matter was to be disposed of on merits if such a settlement is

not reached. On 07.09.2017 the hearing was deferred to facilitate the settlement. Even we delayed the dictation of this order as the Financial Debtor has been asking for time upto 15.10.2017 and the order was reserved on 09.10.2017. There is no settlement insight despite the expiry of about six weeks, therefore, the efforts of the Financial Debtor to enter into a settlement has not born any fruit and we are not in a position to further delay the admission of the present petition. All this has been done in order

to avoid the triggering of Insolvency process so that the Financial Debtor may continue with his enterprise and there is no demoralising effect. Alas! all these efforts are in vain. We find that there is admission with regard to loan and its default. The Financial Creditor has also named the Interim Resolution Professional and it satisfies all the requirements of Section 7 of the Code. Therefore, the petition warrants admission and the same is hereby admitted.

16. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 7 of

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the Code. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”



17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20

& 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value



